EX. 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

THE PEOPLE OF THE STATE OF CALIFORNIA *EX REL.* EDMUND G. BROWN JR., **v.** **STATE STREET CORPORATION, STATE STREET CALIFORNIA INC., STATE STREET BANK AND TRUST COMPANY, STATE STREET GLOBAL MARKETS, AND DOES 1 THROUGH 100, INCLUSIVE.**	Case No. 34-2008-00008457-CU-MC-GDS **COMPLAINT IN INTERVENTION** Violation of the California False Claims Act (Cal. Gov. Code, § 12651) Unlawful Business Practices (Bus. & Prof. Code § 17200) Demand for Jury Trial

Plaintiff, the People of the State of California, by and through California Attorney General Edmund G. Brown Jr., allege as follows:

INTRODUCTION

1. This action is brought against State Street Corp., State Street California Inc. ("State Street California"), State Street Bank and Trust Company ("State Street Bank"), and State Street Global Markets ("Global Markets") (collectively "State Street"). For years, State Street, led by a group of its internal "risk traders," raided the custodial accounts of California's two largest public pension funds, in a total amount exceeding $56 million, by fraudulently pricing foreign currency ("FX") trades State Street executed for the pension funds. State Street Bank is the custodial bank and fiduciary for the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) (collectively "the Pension Funds"). State Street Bank executed FX trades for the Pension Funds when notified that the Pension Funds required foreign currency to close foreign securities trades, or when the Pension Funds requested that State Street convert foreign currency held in the Pension Funds' custodial accounts into U.S. Dollars.

2. Beginning in 2001, State Street Bank's contracts with the Pension Funds guaranteed that the Pension Funds would receive the most competitive rates available for all FX transactions, regardless of size, currency, or contract type because, as State Street represented, all trades would be priced based upon the Interbank Rate ("Interbank Rate") at the time the trades were executed. The Interbank Rate is the price at which major banks that operate within the interbank market buy and sell currency. The Interbank Rate fluctuates throughout each day and is tracked and published by various industry sources. However, rather than price the Pension Funds' custody FX trades at the Interbank Rate, State Street consistently "marked-up" the prices using rates far in excess of the Interbank Rate at the time State Street executed the trades. Conversely, when State Street executed custody FX trades to convert or "repatriate" foreign currency held in the Pension Funds' custodial accounts into U.S. Dollars, State Street "marked-down" the price the Pension Funds received to an amount far below the Interbank Rate at the time State Street executed the trades.

3. State Street concealed its fraudulent pricing practices by entering false exchange rates into its electronic trading databases, which automatically debited the Pension Funds' custodial accounts, and by reporting false exchange rates in numerous documents, including FX Spot Purchase Activity Reports and account statements submitted to the Pension Funds and the Pension Funds' outside investment managers. State Street also entered false exchange rates into its on-line reporting database, MyStateStreet.com, from which the Pension Funds obtained reports detailing their account activity. State Street further disguised its fraudulent scheme by pricing the FX trades within the interbank high and low rate of the day and by failing to provide time stamp data for the trades that would reveal when State Street actually executed the trades.

4. State Street's concerns about revealing its fraudulent custody FX pricing practices are reflected in its internal e-mails. When discussing inquiries by the Pension Funds about providing "transparency" in FX execution costs, one Senior Vice President with State Street California commented to other State Street executives that, "[i]f providing execution costs will give [CalPERS] any insight into how much we make off of FX transactions, I will be shocked if [a State Street V.P.] or anyone would agree to reveal the information." Another State Street California executive sought help from State Street executives in formulating a strategy to deflect the Pension Funds' attention away from custody FX "transparency," writing, "[a]ny help you can offer would be appreciated. The FX question is touchy and if we can't provide any further information, we have to somehow get [CalPERS] comfortable with that since our RFP response indicated we could provide execution cost transparency."

5. State Street's false claims for unauthorized custody FX "mark-ups" and their concealment of their obligation to pay the Interbank Rate for repatriation trades, which began in 2001 and persist to the present day, have resulted in damage to the Pension Funds in an amount exceeding $56 million.

6. On April 14, 2008, Associates Against FX Insider Trading, filed this action pursuant to the *qui tam* provisions of the California False Claims Act. (Gov. Code § 12652, subd. (c).) The People have filed this Complaint in Intervention pursuant to the Attorney General's

Notice of Election to Intervene and proceed with the action as authorized by Government Code Section 12652, subdivision (c)(6)(A).

PARTIES

7. Attorney General Edmund G. Brown Jr. is the Chief Law Officer of the State of California. He brings this action in the name of the People of the State of California as Plaintiff and real party in interest (hereinafter "the People").

8. Associates Against FX Insider Trading is the *qui tam* and a Delaware general partnership.

9. Defendant State Street Corporation is a financial holding company, incorporated in Massachusetts and headquartered in Boston. It provides custodial banking and FX services to the Pension Funds through several of its subsidiaries. It touts itself and its subsidiaries as the "No. 1 servicer of U.S. pension plans," and as of mid-2009, had $16.4 trillion in assets under custody and $1.6 trillion under management.

10. Defendant State Street California, a subsidiary of State Street Corp., is incorporated in California, is headquartered in California and has an office in the CalPERS headquarters in Sacramento. It provides custodial banking and FX services to the Pension Funds. State Street California maintains an office in Alameda, which services the Pension Funds' accounts for State Street Bank and Global Markets. State Street California is the entity responsible for the overall business relationship, including client satisfaction, service delivery, quality standards, business profitability and business growth with the Pension Funds.

11. Defendant State Street Bank and Trust Company, a subsidiary of State Street Corp, is incorporated in Massachusetts, is headquartered in Boston, Massachusetts and has offices in California. It also provides custodial banking and FX services to the Pension Funds and is the signatory to the custodial agreements with the Pension Funds.

12. Defendant State Street Global Markets, LLC, a subsidiary of State Street Corp., is incorporated in Delaware and is headquartered in Boston, Massachusetts. It provides specialized investment research and trading in foreign exchange, equities, fixed income and derivatives for the Pension Funds.

13. The true names and capacities, whether corporate, associate, individual, partnership or otherwise of Defendants Does 1 through 100, inclusive, are unknown to the People, which therefore sues said Defendants by such fictitious names. The People will seek leave of court to amend this Complaint to allege their true names and capacities when the same are ascertained.

14. At all relevant times each of the Defendants, including Doe defendants, was and is the agent, employee, employer, joint venturer, representative, alter ego, subsidiary, and/or partner of one or more of the other defendants, and was, in performing the acts complained of herein, acting within the scope of such agency, employment, joint venture, or partnership authority, and/or is in some other way responsible for the acts of one or more of the other defendants.

15. CalPERS is an agency of the State of California and the nation's largest public pension fund, providing benefits to more than 1.6 million public employees, retirees, and their families.

16. CalSTRS is an agency of the State of California and the nation's second largest public pension fund, providing retirement related benefits to over 800,000 members and beneficiaries.

JURISDICTION AND VENUE

17. Venue is proper in this Court because Defendant State Street California maintains an office in Sacramento County, and because State Street engaged in conduct directed at the State of California and residents of the State of California.

18. Furthermore, much of State Street's misconduct took place in this county, and the acts complained of, including the submission of false statements and records, occurred in and were directed at government offices and officials located within this county.

STATE STREET'S FRAUDULENT SCHEME

Contracts with CalPERS/CalSTRS

19. State Street has served as master custodian over CalPERS' assets since 1992 and over CalSTRS' assets since 1986.

20. In 2000, CalPERS issued a Request for Proposal ("RFP") soliciting responses from various banking institutions interested in becoming CalPERS' master custodian. In 2001, CalPERS re-selected State Street as its custodial bank. The 2001 contract took effect on September 1, 2001, and incorporated by reference State Street's 2000 RFP response (the contract and RFP response are collectively referred to as "the CalPERS contract"). This contract expired on June 30, 2006.

21. Also in 2000, CalSTRS issued an RFP soliciting responses from various banking institutions interested in becoming CalSTRS' master custodian. In 2001, CalSTRS re-selected State Street. The 2001 contract took effect on July 1, 2001, and incorporated by reference State Street's 2000 RFP response (the contract and RFP response are collectively referred to as "the CalSTRS contract"). This contract is currently in effect.

22. Collectively, the CalPERS and CalSTRS contracts are referred to as "the Pension Fund Contracts."

23. The Pension Fund Contracts explicitly controlled how State Street could charge the Pension Funds for custody FX transactions stating that all "trades are priced based on the Interbank Rates at the time the trade is executed." The Interbank Rate is tracked and published by industry sources, such as Reuters.

State Street's Processing of FX Orders

24. The Pension Funds initiated FX trades with State Street in one of two ways: directly or indirectly.

25. With direct FX trades, the Pension Funds or their outside investment managers ("OIMs") communicated the trade information to a State Street salesperson who quoted a rate that the Pension Fund or the OIM could choose to accept or reject. If the rate was accepted, the trade was executed at the agreed upon price.

26. With indirect FX trades, also called custody FX trades, neither the Pension Funds nor their OIMs negotiated rates with State Street and State Street did not quote rates. Instead, the Pension Funds or their OIMs instructed their custody group representative within State Street to execute FX transactions for the Pension Funds. When a security trade included a request to

execute the required FX to fund the transactions, or repatriate foreign currency, the FX trade request was routed electronically via State Street's Market Order Management System (MOMS) from the custody side of State Street for execution and pricing by a group of "risk traders" working at State Street's FX trading desk.

27. After receiving custody FX requests through the MOMS system, at some time during the trading day State Street's risk traders executed the custody FX trades by entering the trade information, including the false exchange rates into the MOMS system. The MOMS system automatically fed the trading data into State Street's former accounting network called the IBS system which was later upgraded to a system called Wall Street Systems ("WSS"). IBS/WSS automatically released the custody FX trades to State Street's Multi-Currency Horizon system which debited or credited the Pension Funds' custodial accounts utilizing the false exchange rates entered into MOMS by State Street's risk traders. Sometime in 2005, State Street created a new business group that relieved State Street's risk traders of responsibility for executing and pricing custody FX trades with the Pension Funds. However, State Street's new business group continued the same scheme of executing and pricing custody FX trades with the Pension funds utilizing false exchange rates.

28. State Street derived its false exchange rates by taking the Interbank Rate at the time the trades were executed and adding or subtracting "basis points" or "pips" from the rate depending upon whether the Pension Funds were acquiring or repatriating foreign currency. A basis point, or pip, is a unit equal to 1/100th of a percentage point. For example, the smallest move the USD/CAD (U.S. Dollar/Canadian Dollar) currency pair can make is 1/100 of a penny ($0.0001), or one basis point. When the Pension Funds acquired currency through State Street's custody FX program, State Street's false exchange rates often ranged 25 pips above or below the Interbank Rate and, in some cases exceeded the Interbank Rate by 144 pips. The cumulative effect of these overcharges and underpayments by State Street resulted in over $56 million in damages to the Pension Funds.

State Street's False Claims, Records, and Statements

29. As the custodian bank for the Pension Funds, State Street had direct access to the Pension Funds' custodial accounts. With the Pension Funds' money on account with State Street, State Street routinely made false claims for payment from the Pension Funds' custodial accounts by entering fictional FX exchange rates into State Street's MOMS, IBS, WSS and Multi-Currency Horizon System.

30. These claims were false because, despite the language in the Pension Funds Contracts, State Street claimed funds using fictional exchange rates substantially outside the prevailing Interbank Rates at the time State Street executed the trades.

31. State Street provided both Pension Funds with monthly "FX Spot Purchase/Sale Activity Reports," detailing all custody FX transactions executed for the Pension Funds in order to settle any underlying securities transactions, including repatriation. State Street also downloaded custody FX trading detail onto its on-line reporting database, MyStateStreet.com. These reports and database identified each FX transaction executed by State Street for the Pension Funds. The reports and trading detail were false because the exchange rate they identified and recorded was not the Interbank Rate at the time State Street executed the trades but, rather, an inflated and fictional rate disguising State Street's undisclosed and unauthorized "mark-up" or a reduced rate disguising State Street's undisclosed and unauthorized "mark-down" depending on whether the transaction was a purchase or a sale of foreign currency.

32. State Street used these false reports and fraudulent reporting systems for the purpose of obtaining payment or approval of State Street's withdrawal of funds from the Pension Funds' custodial accounts and for the purpose of avoiding payment of the Interbank Rate to the Pension Funds when State Street repatriated the Pension Funds' foreign currency holdings into U.S. Dollars.

33. The fraudulent requests, false reports and fraudulent reporting systems alleged herein concealed millions of dollars in State Street's overcharges and underpayments to the Pension Funds, and were material to the Pension Funds' payment and approval of State Street's

false claims and material to State Street avoiding its obligation to pay the Pension Funds at the Interbank Rate when converting foreign currency to U.S. Dollars.

The State Street Conspiracy

34. State Street has, through their agents, subsidiaries, and/or associated companies, participated in a common law conspiracy to violate Government Code Section 12651, subdivision (a)(7), and a conspiracy in violation of Government Code Section 12651, subdivision (a)(3), by, among other things, creating, servicing, maintaining, and participating in a fraudulent custody FX trading system that State Street used to: (1) generate false claims to funds held in the Pension Funds' custodial accounts; (2) generate false documents to obtain payment and/or approval of debits from the Pension Funds' custodial accounts; (3) generate false documents and records to avoid State Street's obligation to pay the Interbank Rate at the time they executed repatriation trades to convert foreign currency held in the Pension Funds' accounts into U.S. Dollars; and (4) conceal State Street's use of fictitious custody FX rates when executing FX trades for the Pension Funds.

35. State Street agreed among themselves that: (1) State Street would route all custody FX trade requests State Street received from the Pension Funds through Global Markets for execution; (2) Global Markets would "mark-up" the custody FX exchange rate above the Interbank Rate at the time it executed custody FX trades with the Pension Funds; (3) Global Markets would "mark-down" the custody FX exchange rates below the Interbank Rate when it executed repatriation trades converting foreign currency held in the Pension Funds' custodial accounts into U.S. Dollars; and (4) Global Markets would enter these false exchange rates into State Street Bank's MOMS system and other electronic trading platforms.

36. State Street further knew, intended and agreed that, in direct violation of Pension Fund Contracts, their fraudulent pricing scheme generated false claims for funds held in the Pension Funds' custodial accounts and improperly debited those accounts for custody FX trades using exchange rates substantially outside the Interbank Rate at the time State Street executed the trades. State Street further knew, intended and agreed that, in direct violation of Pension Fund Contracts, their fraudulent pricing scheme generated false records and reports that State Street

submitted to the Pension Funds and used to avoid paying the Interbank Rate when State Street executed repatriation trades converting foreign currency held in the Pension Funds' custodial accounts into U.S. Dollars.

37. State Street further knew, understood and agreed that this fraudulent pricing scheme would have a material effect on the Pension Funds' decision to continue paying the false claims alleged herein and that the purpose of the scheme was to get the Pension Funds to pay and/or approve State Street's false claims. State Street thereby conspired to, intended and did, defraud the Pension Funds by getting false claims allowed and paid by the Pension Funds in violation of Government Code section 12651, subdivision (a)(3). State Street thereby also conspired to, intended and did, create and use false statements, records and reports to conceal, avoid and decrease their obligation to pay the Pension Funds in violation of Government Code Section 12651, subdivisions (a)(7) and (a)(3).

FIRST CAUSE OF ACTION

False Claims Act - Government Code § 12651, subd. (a)(1)

(Against All Defendants)

38. The People incorporate herein by reference the allegations in paragraphs 1 through 33 of this complaint.

39. This is a claim for treble damages and penalties brought by the People under the California False Claims Act, Government Code Section 12650 *et seq*.

40. State Street knowingly presented or caused to be presented to the Pension Funds false claims for payment of money and false claims to approve debits from the Pension Funds' custodial accounts.

41. As a proximate result of the State Street's actions, the Pension Funds suffered damages in a specific amount to be determined at trial.

SECOND CAUSE OF ACTION

False Claims Act - Government Code § 12651, subd. (a)(2)

(Against All Defendants)

42. The People incorporate herein by reference the allegations in paragraphs 1 through 33 of this complaint.

43. This is a claim for treble damages and penalties brought by the People under the California False Claims Act, Government Code Section 12650 *et seq*.

44. State Street knowingly made, used, or caused to be made or used false records and statements to get false claims for funds from the Pension Funds' custodial accounts paid and approved by the Pension Funds.

45. As a proximate result of the State Street's actions, the Pension Funds suffered damages in a specific amount to be determined at trial.

THIRD CAUSE OF ACTION

False Claims Act - Government Code § 12651, subd. (a)(7)

(Against All Defendants)

46. The People incorporate herein by reference the allegations in paragraphs 1 through 33 of this complaint.

47. This is a claim for treble damages and penalties brought by the People under the California False Claims Act, Government Code Section 12650 *et seq*.

48. State Street knowingly made, used, and caused to be made or used false FX Spot Purchase/Sale Activity Reports, false MyStateStreet.com database entries, false statements in their electronic custody FX trading platforms and accounting databases, and other false documents and statements to conceal, avoid and decrease their obligations to pay the Interbank Rate when State Street executed repatriation trades converting foreign currency held in the Pension Funds' custodial accounts into U.S. Dollars in violation of Government Code Section 12651, subdivision (a)(7).

49. As a proximate result of the State Street's actions, the Pension Funds suffered damages in a specific amount to be determined at trial.

FOURTH CAUSE OF ACTION

False Claims Act Conspiracy - Government Code § 12651, subds. (a)(7) and (a)(3)

(Against All Defendants)

50. The People incorporate herein by reference the allegations in paragraphs 1 through 37 of this complaint.

51. This is a claim for treble damages and penalties brought by the People under the California False Claims Act, Government Code Section 12650 *et seq*.

52. Defendants, and each of them, conspired to conceal, avoid and decrease an obligation to pay the State in violation of Government Code Section 12651, subdivisions (a)(7) and (a)(3).

53. Defendants, and each of them, intended to defraud the People, and acted in furtherance of the conspiracy to defraud the People by participating in the schemes, set forth above, to falsely report the Interbank Rate at the time State Street executed custody FX transactions with the Pension Funds and to conceal State Street's fraudulent custody FX pricing scheme.

54. As a proximate result of the above-described acts, the Pension Funds have been injured and suffered damages in a specific amount to be determined at trial.

FIFTH CAUSE OF ACTION

Violation of Business & Professions Code §17200, et seq.

(Against All Defendants)

55. The People incorporate herein by reference all the allegations in paragraphs 1 through 37 of this complaint.

56. The above described acts by State Street constitute unfair competition within the meaning of Business & Professions Code Section 17200, in that they include, but are not limited to the following fraudulent business practices:

a. State Street falsely represented that custodial FX trades executed by State Street for the Pension Funds would be priced at the Interbank Rate at the time the trades were executed;

b. State Street executed tens of thousands of custody FX trades for the Pension Funds at rates other than the contractually-allowed Interbank Rate at the time that the transactions were executed, reaping an undisclosed profit.

c. State Street knowingly presented or caused to be presented to the Pension Funds false claims for payment of money and false claims to approve debits from the Pension Funds' custodial accounts by falsely reporting Interbank Rates to the Pension Funds;

d. State Street knowingly made, used, or caused to be made or used false records and statements to get false claims for funds from the Pension Funds' custodial accounts paid and approved by the Pension Funds.

e. State Street knowingly made, used, and caused to be made or used false FX Spot Purchase/Sale Activity Reports, false MyStateStreet.com database entries, false statements in their electronic custody FX trading platforms and accounting databases, and other false documents and statements to conceal, avoid and decrease their obligation to pay the Interbank Rate when State Street executed repatriation trades converting foreign currency held in the Pension Funds' custodial accounts into U.S. Dollars.

57. These acts and practices constitute unfair competition within the meaning of Business & Professions Code section 17200 in that they violate Government Code Section 12650, *et seq*. as more particularly described in paragraphs 1 through 37.

58. As a proximate result of State Street's unlawful business practices, State Street obtained and wrongfully retained monies that rightfully belonged to the Pension Funds in a specific amount to be determined at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff, the People pray for relief against all Defendants as follows:

1. Three times the damages which the Pension Funds sustained as a result of Defendants' false claims in an amount to be determined;

2. Civil penalties in the amount of $10,000 for each false claim pursuant to Government Code Section 12651, subdivision (a);

3. Civil penalties in the amount of $2,500, pursuant to Business & Professions Code Section 17206, for each act by Defendants in violation of Business & Professions Code Section 17200;

4. For a permanent injunction pursuant to Business & Profession Code Section 17203 restraining and enjoining Defendants, and each of them, and all those acting under, by through or on behalf of them, from engaging in or performing directly or indirectly, any or all of the following:

a. Making, or conspiring to make, any false claim as set forth in paragraphs 1 through 37;

b. Making, conspiring, using, or causing to be made or used false statements, documents or records to avoid the obligation to pay the Pension Funds amounts owed for repatriation of foreign currency as set froth in paragraphs 1 through 37;

c. Engaging in any acts of unfair competition described in paragraphs 1 through 37, or any other act of unfair competition.

5. That Defendants be ordered to make full restitution, pursuant to Business & Professions Code Section 17203, of any money that may have been acquired and/or wrongfully retained by means of their violation of Business and Professions Code Section 17200;

6. For costs of suit incurred herein.

7. Such further or additional relief as the Court deems proper.

Dated: October 20, 2009

Respectfully Submitted,

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Attorneys for the People of the State of California

EX. 2

JAMS, INC.

Volume: 1

Pages: 1-109

Ref. No. 1345000011

Exhibits: 0

In Re: STATE STREET ATTORNEYS FEES

Before: SPECIAL MASTER HONORABLE GERALD ROSEN,
UNITED STATES DISTRICT COURT, RETIRED

Date: June 19, 2017

Time: 11:17 a.m.-2:10 p.m.

Deposition of MICHAEL P. THORNTON, taken by counsel to the Special Master held at JAMS, Inc., One Beacon Street, Boston, Massachusetts before Cynthia Stutz, CPR, Notary Public of the Commonwealth of Massachusetts.

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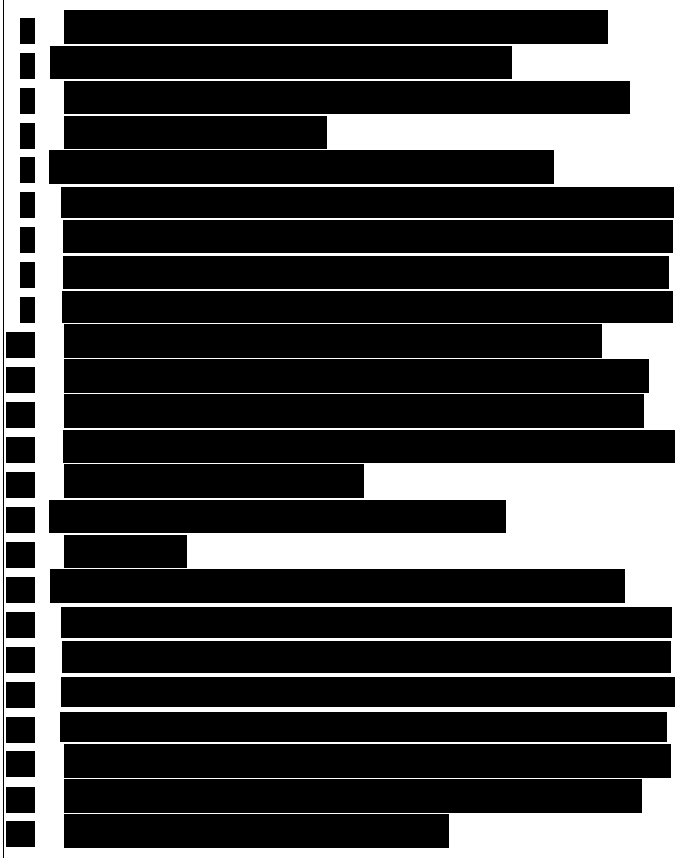

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Q. And did the focus of the firm shift to Boston?

A. As far as my work did. Bill Mulvey, who is a very fine lawyer and still a fine lawyer and a friend, he was from Portsmouth. He grew up there. And he wasn't sure that the asbestos thing was going to be that good of a deal and he, he wanted to focus on Portsmouth. So we mutually agreed that we would separate the offices and he would no longer have an interest in the one in Boston and I would no longer have an interest in the one in Portsmouth.

Q. So what was the name in firm in Boston now that you had the interest in?

A. It was probably Thornton and Thornton Early. And for a while it was Motley. Ron Motley was a very well known litigator that did, was really a real pioneer in the asbestos litigation. His home base was South Carolina, but he was rarely there. He traveled the country. And he and I had been working on these cases beginning -- We first met in December of 1977 when I was actually still at the Burns office and it was from him that I found out that there was going to be such a thing as asbestos litigation. I mean, I knew it was a mineral before

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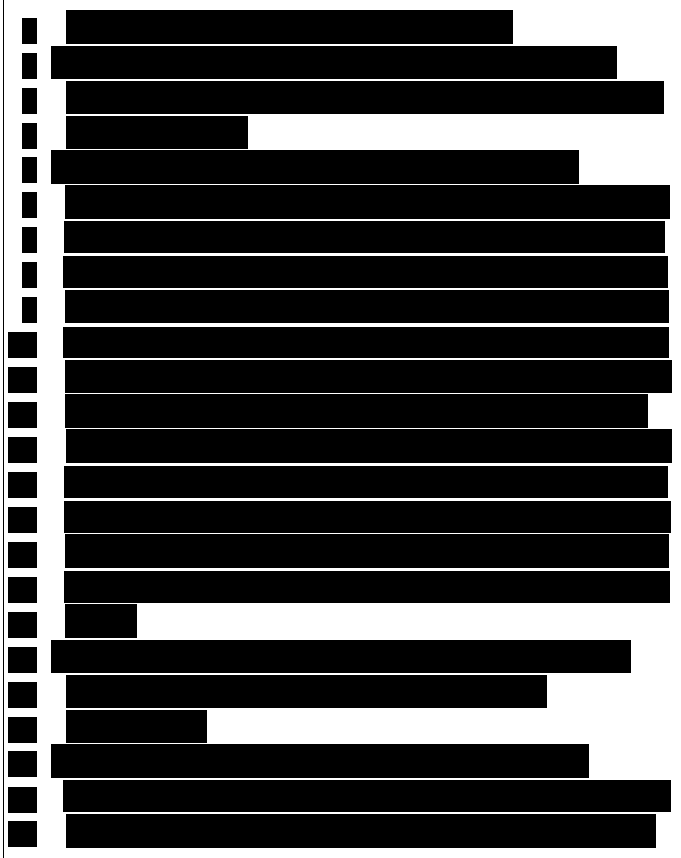

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because it morphed from just the semiconductor plants to we now also represent families who were exposed to teratogenic pesticides in fields as farm workers. So our stuff is mostly in California now in the central valley and southern California. And that's gotten enormously complicated, for a number of reasons. They're harder cases, because people outdoors are not inside in terms of proving exposure, quantifying exposure and, in accordance with that, causation. But we, we believe in it. It's the kind of stuff that suits our firm well. We feel good about the cases.

Q. Do you have an office in California?

A. No.

THE SPECIAL MASTER: How many lawyers do you have now?

THE WITNESS: I think we've got eighteen. We're a small firm. We're large for a plaintiffs' firm, but, you know, eighteen is a very small law firm. We have almost fifty employees beyond that.

Q. What's your role in the firm currently?

THE SPECIAL MASTER: Of the fifty employees, you have eighteen attorneys?

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[redacted]

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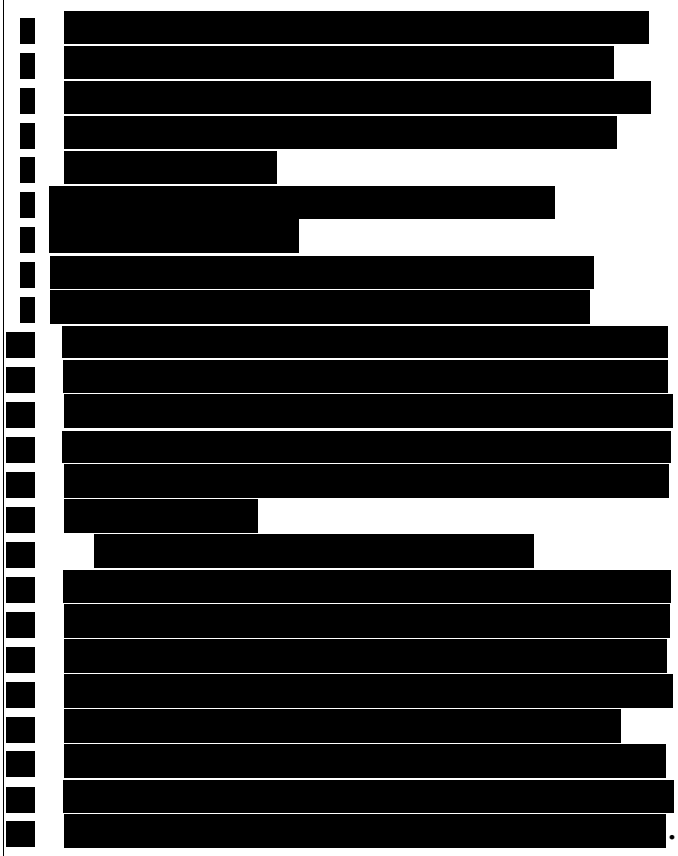

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And it's very depressing, you know. Some parts of the business, when you read about the last admission to the hospital of somebody, particularly somebody you knew. I used to know all the clients. I don't any more, but I can certainly sympathize with their plight. But I am -- I don't try cases any more. I don't do depositions any more, this one notwithstanding.

THE SPECIAL MASTER: Are you effectively CEO of the firm, then?

THE WITNESS: Yeah, yes.

THE SPECIAL MASTER: Spend a lot of time administering and running the firm?

THE WITNESS: Yes, I do, although a lot less since Garrett became -- I relinquished the role of managing partner last year, summer, and Garrett Bradley has been doing that since. He still knocks on my door too often to ask me, because I don't miss the administrative stuff at all. I like, I still like the practicing law. I enjoy it, but I do a lot less of that now. Almost none.

Q. Let's move a little bit forward, Mike, to the time period just prior to the State Street case. Had you and the firm worked in any foreign exchange matters before State Street?

A. Yes.

Q. Could you tell us about that and how they came about?

A. We had worked -- Referring to the State Street class action, I think?

Q. Yes.

A. Is that correct? We had filed prior, well prior to filing the State Street class action, our first whistle blower Qui Tam case against State Street on behalf of California pension funds in California, along with the law firm of Lief Cabraser, Heimann and Bernstein. So that was our first foreign exchange venture.

Q. And how did you come to be aligned with Lieff Cabraser in that matter?

A. Well, we've known them for a long time. I can't tell you exactly where we started. I've known Bob Lieff. I've known Richard Heimann for a long time. From, I'd say maybe the eighties and we got to know each other better because they were heavily involved in the tobacco litigation in the nineties. Unlike us, they represented several states, so they were known. And I had an opportunity to work with and become friends with Bob Lieff and Richard Heimann and Elizabeth Cabraser. And I thought, I know they're very good lawyers and they're nice people, people to work with.

So when we were filing something in California, we obviously needed California counsel. None of my firm were members of the California bar, and we asked if they would join us and they did.

Q. And was the whistle blower in that case yours or someone else's?

A. The whistle blowers were ours.

Q. Okay. And how did the whistle blowers come to you, just in general terms?

A. They were referred to us by someone -- It's a little involved. Harry Markopolos -- I don't know if you're familiar with him or not.

Q. Of Madoff?

A. Of Madoff fame, in a not totally direct, but a pretty direct way, he makes his living by referring whistle blowers to law firms to bring actions. And Harry gave me, through Mike Lesser, who was head of our Qui Tam department, and he knew of Mike because Mike had done some good work in New York, he and a lawyer he worked with there. He gave

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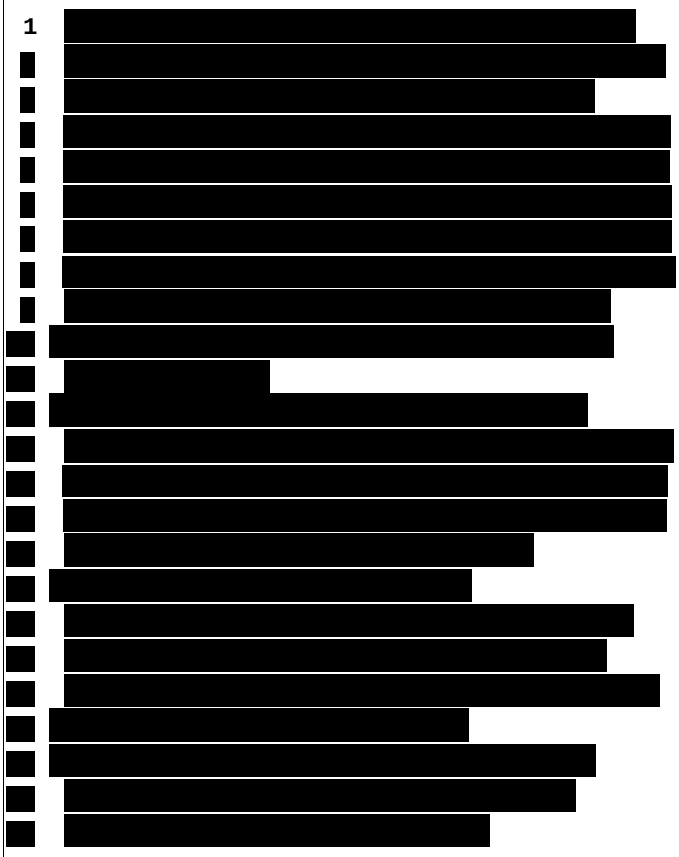

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Q. Was Markopolos the referral for all of those relaters?
A. Yeah. Well, in one way or the other, he was.
Q. How was he compensated for these referrals?
A. He gets a portion of this. The relaters pay him. We can't.
Q. I see. Is he an attorney?
A. No.
Q. Was there any competition, Mike, as far as other firms besides you and Lieff that were interested in doing foreign exchange cases?
A. Not early on, because nobody else knew about it. There had never been a case brought like it, that I know of, or I think I probably would have known of it involving foreign exchange. I mean, the rest of the attorneys in America were as dumb as I was in terms of, you know, what goes on in banks, you know, sometimes. Some banks in some areas.
Q. At some point around this time, you know, post the intervention of the Attorney General, did you develop an association with the Labaton law firm?

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started.
Q. And what was the first partnership along those lines with Labaton?
A. I can't recall. I can't remember what the first one was.
Q. Did they come on board in the California case?
A. No.
Q. And with respect to the instant case, the State Street case?
A. Right.
Q. What was their first involvement in that?

[redacted]

to them all the time. So he wanted to look into it further to see if he could, if there had been

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anything wrong done regarding State Street and

[redacted]

Q. And that was Mr. Hopkins?
A. That was Mr. Hopkins.
Q. And is it fair to say he proved to be a valuable client?
A. Well, he was a good client. I mean, he was, he was -- He had guts, because it takes -- You know, most pension funds don't want to, they don't want to screw around with their custodians. Custodians are very important to them. They provide a lot of valuable services. They've got relationship managers and if you have ever talked to a relationship manager at one of these banks, I wish to Christ we could get someone like that working for us. They were very talented people. They make the relationships go. And funds don't want to -- They're very reluctant to part ways or certainly get involved in litigation with their custodial bank. George, George Hopkins didn't want to either. We went to Chicago at EnnisKnupp, which is one of their advisors, Arkansas advisors,

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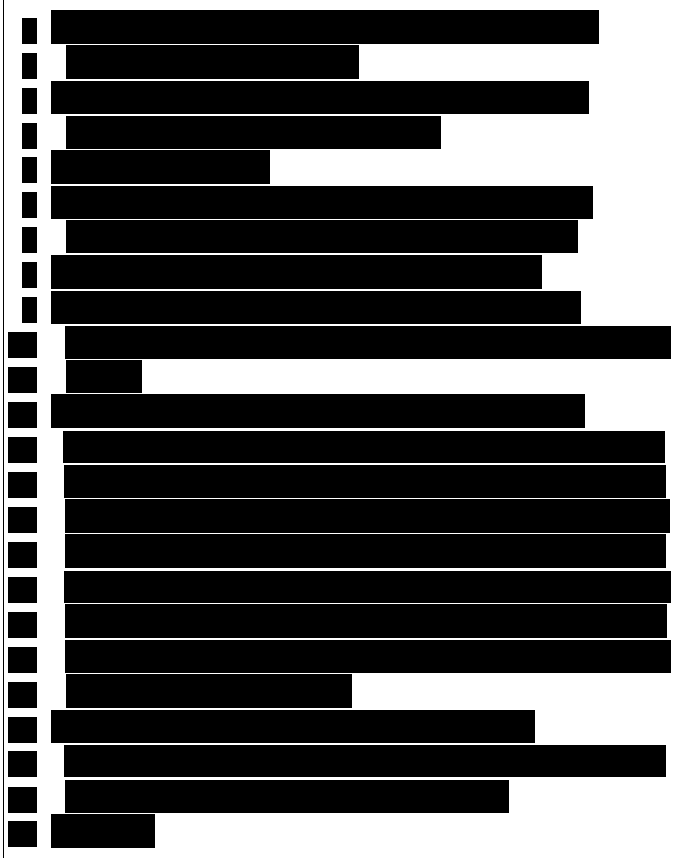

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Q. And how much was discussed, at least initially?
A. Bob Lieff, who'd been down this road before with multiple firms in class litigation, I think, determined that it would be a lot, it would be well for us to come to an agreement beforehand, well beforehand on what the fee breakdown would be between ERISA and consumer class. He knew the factors involved and I think he negotiated primarily with Lynn Sarko on that, but I'm sure he talked to the others. He would have had to, because unanimous consent. And he came to us at one point. I think he had already pretty much worked out, pending our approval, that the fair thing would be for ERISA attorneys to get 9% of the attorneys' fee and that would probably be off the top.
Q. At some point did that percentage change?
A. It did.
Q. And when did that happen?
A. It's right toward the end. And Larry Sucharow and probably Bob Lieff thought that they deserved, for what they had done or for whatever might have been the amount of funds they had, they were going to get an additional 1%, and so we agreed

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to raise it to 10%.
Q. Did you have my misgivings or objections to that?
A. No.
Q. The firm didn't?
A. No.
Q. And we talked earlier about Mr. Hopkins, George Hopkins. What was your and the firm's contact with him during the mediation process?
A. He came to a number of the mediations and he would speak at the mediations. I mean, he's not a wilting flower.
THE SPECIAL MASTER: He's not a potted plant.
THE WITNESS: No, he's not a potted plant. He has his views and there is --
Q. He's not shy, is he?
A. He's not shy and he spoke up and he had his own ideas of how things should be going. And so we saw a lot of him in the mediations. And we see him occasionally other times, we'd get together and talk about how things were going and where we were.
Q. He was a very active participant in the life of this case?

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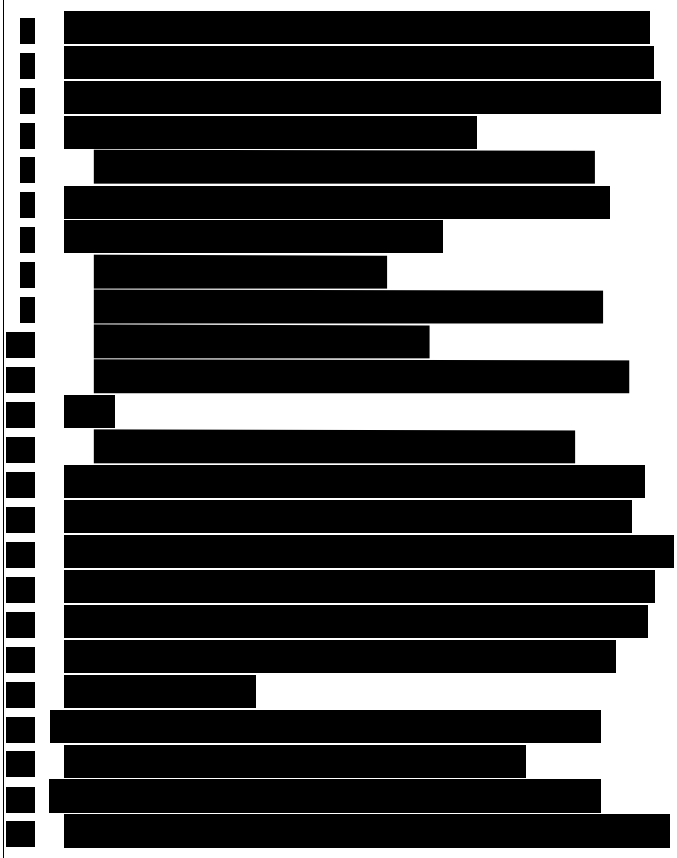

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document review hours were accounted for?
A. I think Evan Hoffman was monitoring him.
Q. And did his hours ever come to your attention for any reason, good, bad, indifferent?
A. No.
Q. And as of early 2015, Mike, what was your understanding of how the cost sharing arrangement with Labaton and Lieff would be represented in a fee petition?
MR. KELLY: I'm sorry, as of what date, Bill?
MR. SINNOTT: As of early 2015.
A. We had, as of that date, I think what we had agreed that we would, each of the three firms would receive 20% of the fee. This is, this is after ERISA attorneys were paid, so I think that came off of the top. I'm pretty sure that it did. And that the remaining 40% would be negotiated between the three firms when we got closer to really meaning something, which we still weren't at at that point.
Q. Was there any understanding at that time as far as who would claim what staff attorney hours?
THE SPECIAL MASTER: For purposes of

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the fee petition?
MR. SINNOTT: Yes.
A. Yeah, I think. I mean, it was my understanding that if you paid for it, if you paid for the staff attorney, you'd get the hours.
Q. Was anybody in particular responsible for insuring that that would happen?
A. There was no one individual responsible for monitoring that. I mean, it's like, you know, I guess there's a spreadsheet someplace. It is what it is. You know, they worked and did you pay for this person, you know, and if you did, put the hours that they work, that's the way it would work.
Q. Who handled the fee petition or prepared the fee petition on behalf of Thornton?
A. That would be Mike Lesser, Garrett Bradley and probably Evan Hoffman.
Q. And did you ever review Thornton attorney hours in that fee petition?
A. I reviewed my own hours. I didn't review any other hours. I saw what they, totals and stuff, but I was mainly concerned about my own hours.
Q. You didn't review staff attorney hours?
A. No.

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Q. In Larry Sucharow's affidavit there's language in Paragraph 7 -- And could I have that, please? Let me strike that.
Let me first ask you if you reviewed Garrett Bradlee's Declaration in Support of Lead Counsel's Motion for Award of Attorneys' Fees and Payment of Expenses, do you remember reading that?
A. Yes.
Q. And, Mike, let me show you Paragraph 4.
A. I'm familiar with Paragraph 4.
Q. Okay. I bet you are. Paragraph 4 reads, The hourly rates of the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services which have been accepted in other complex class actions.
Do you agree with that language?
A. It's true, but it's not clear and it's poorly worded.
Q. Okay. Explain that.
A. Because we are a contingent fee firm, we never, virtually never charge anybody by the hour. So it would have been, it would have been more -- I think most people know we're a contingent firm.

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Q. Sure, yeah.
(Document handed to the witness.)
A. Yeah, it's the same. Thank you.
Q. So does that make you think that that language tracked, your language or Garrett's language tracked?
A. Yes.
Q. Labaton's language?
A. Yes.
Q. Okay.
THE SPECIAL MASTER: Your firm, had your firm done fee petitions in other complex class actions?
THE WITNESS: I'm trying to think back to the tobacco litigation, if that was, if it was actually a petition that was done or if it was done differently. I don't recall.
THE SPECIAL MASTER: Was your firm involved in the B-O-N-Y, the BNY Mellon case?
THE WITNESS: Yes. And we did have an individual. Thank you.
THE SPECIAL MASTER: And did you do a fee petition in that, if you remember?
THE WITNESS: I imagine we did,

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he told me about the $500 an hour, I had a conversation with him about that, because I wanted to know what the other document reviewers -- But, you know, like I say, he took it on a contingency basis and it wasn't that much more than what everyone else was getting. And the fact that we didn't have to pay him for a couple years and we didn't have to pay him never if the thing didn't work out made it seem ballpark fair to me.

Q. Let me, once again, bring you to November of 2016 and ask you how you learned about the billing hours in the fee petition?

A. We found out from our counsel that there had been a duplicate billing, inadvertent, but duplicate on some of the hours that we had for our, the lawyers that we were paying for that they were also claimed on the other two firms.

Q. And when did you learn that, as best you remember?

A. It was in November of 2016.

Q. And was this before or after the Boston Globe had inquired of the firm?

A. Right after.

Q. And what was your reaction when you

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EX. 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-10230 MLW
ARNOLD HENRIQUEZ, *et al.*, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, STATE STREET GLOBAL MARKETS, LLC and DOES 1-20, Defendants.	No. 11-cv-12049 MLW
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, *et al.*, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

DECLARATION OF LAWRENCE A. SUCHAROW IN SUPPORT OF (A) PLAINTIFFS' ASSENTED-TO MOTION FOR FINAL APPROVAL OF PROPOSED CLASS SETTLEMENT AND PLAN OF ALLOCATION AND FINAL CERTIFICATION OF SETTLEMENT CLASS AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, PAYMENT OF LITIGATION EXPENSES, AND PAYMENT OF SERVICE AWARDS TO PLAINTIFFS

LAWRENCE A. SUCHAROW declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a member and Chairman of the law firm of Labaton Sucharow LLP ("Labaton Sucharow"), attorneys for Plaintiff Arkansas Teacher Retirement System ("ARTRS") and Court-appointed Lead Counsel[1] for the Settlement Class in the above-titled consolidated Class Actions. I am admitted to practice before this Court *pro hac vice*.

2. I respectfully submit this declaration in support of the assented-to motion of Plaintiff ARTRS and Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employee Savings and Profit Sharing Plan, and James Pehoushek-Stangeland (collectively, the "ERISA Plaintiffs," and together with ARTRS, "Plaintiffs"), individually and on behalf of the Settlement Class, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the proposed Class Settlement of these consolidated Class Actions (the "Settlement") and for approval of the Plan of Allocation of the Net Class Settlement Fund (the "Plan of Allocation").

3. I also respectfully submit this declaration in support of Lead Counsel's motion, on behalf of all Plaintiffs' Counsel,[2] pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, for an award of attorneys' fees, payment of Litigation Expenses, and payment of Service Awards to Plaintiffs.

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[1] Unless otherwise indicated, capitalized terms have the same meanings as in the Stipulation and Agreement of Settlement, dated as of July 26, 2016 (the "Settlement Agreement," ECF No. 89).

[2] In addition to Labaton Sucharow, Plaintiffs' Counsel includes Thornton Law Firm LLP ("TLF"), Lieff Cabraser Heimann & Bernstein LLP ("Lieff Cabraser"), Keller Rohrback L.L.P. ("Keller Rohrback"), McTigue Law LLP ("McTigue Law"), and Zuckerman Spaeder LLP ("Zuckerman Spaeder"). Labaton Sucharow, TLF, and Lieff Cabraser are counsel in the *ARTRS* Action, No. 11-cv-10230, which asserted class claims on behalf of all otherwise eligible custody clients of State Street (including ERISA plans) for violations of the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A ("Chapter 93A"), §§ 9, 11, and for breach of fiduciary duty and negligent misrepresentation. Keller Rohrback and McTigue Law/Zuckerman Spaeder are counsel in the *Andover Companies* Action (No. 11-cv-12049) and *Henriquez* Action (No. 12-cv-11698), respectively, which asserted federal statutory claims under the Employee Retirement Income Security Act of 1974 ("ERISA") solely for the benefit of ERISA plan custody clients of State Street.

A. Benefits of the Settlement to the Settlement Class

4. The Settlement Agreement provides that Defendant State Street Bank and Trust Company ("State Street" or the "Bank") will pay or cause to be paid a total of Three Hundred Million Dollars ($300,000,000.00) in cash (the "Class Settlement Amount") into an interest-bearing escrow account for the benefit of the Settlement Class.

5. Pursuant to the terms of the Settlement, the Class Escrow Account has been fully funded and earning interest for the benefit of the Settlement Class since September 6, 2016.

6. To my knowledge, the Settlement is by far the largest common fund settlement in any case brought under Chapter 93A, and is the third-largest common fund settlement, excluding federal securities actions, to be filed within the First Circuit.

7. The Settlement consideration and any accrued interest, after the deduction of attorneys' fees, Litigation Expenses, and any Service Awards awarded by the Court, Notice and Administration Expenses, and Taxes and Tax Expenses (the "Net Class Settlement Fund"), will be distributed among Settlement Class Members pursuant to the Plan of Allocation.

8. As further described below, the proposed Plan of Allocation is itself an essential term of the Settlement because allocations of settlement monies to certain categories of Class Members will satisfy the financial terms of State Street's tandem regulatory settlements with the U.S. Department of Labor ("DOL") and the U.S. Securities and Exchange Commission ("SEC"). State Street has also entered into a separate regulatory settlement with the U.S. Department of Justice ("DOJ").

9. In exchange for payment of the Settlement Amount, the Settlement Class will release all Released Class Claims against the Released Defendant Parties upon the Effective Date of the Settlement. Settlement Agmt. ¶¶ 1(yy), 1(zz). The Effective Date will be reached once

the Class Settlement has been approved, the Judgment has been entered and become Final, the DOJ Settlement and DOL Settlement are final, State Street has submitted an offer of settlement to the SEC (which will happen two business days after the Judgment becomes Final), and the order approving the proposed Plan of Allocation has become Final. Settlement Agmt. ¶ 55.

10. The Settlement Class, which the Court has preliminarily certified for settlement purposes, is defined as all custody and trust customers of State Street (including customers for which State Street served as directed trustee, ERISA Plans, and Group Trusts), reflected in State Street's records as having a United States tax address at any time during the period from January 2, 1998 through December 31, 2009, inclusive, and that executed one or more Indirect FX Transactions with State Street and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive (the "Class Period").

11. Excluded from the Settlement Class are Defendants; California Public Employees' Retirement System (CalPERS), California State Teachers' Retirement System (CalSTRS), and the State of Washington Investment Board; the predecessors and affiliates of the foregoing, or any entity in which they have a controlling interest; and the officers, directors, legal representatives, heirs, successors, subsidiaries and/or assigns of any such excluded individual or entity in their capacities as such. Also excluded from the Settlement Class is any Person who submits a timely and valid request for exclusion in accordance with the requirements set forth in the Notice. Settlement Agmt. ¶ 1(hhh).

B. Summary of Plaintiffs' Allegations and Claims

12. These Class Actions arise from State Street's allegedly unfair and deceptive practice of charging its custody and trust customers excessive rates and spreads in connection with certain foreign exchange ("FX") transactions, in violation of State Street's statutory, contractual, and fiduciary obligations.

13. State Street, headquartered in Boston, has long been one of the two or three largest U.S. custody banks. A custody bank is a specialized financial institution that holds and services securities and other assets on behalf of investors. Custodians are typically used by institutional investors that do not want to leave securities on deposit with their external investment managers ("IMs") or broker-dealers. By separating these duties, the use of custodians—at least in theory—reduces the risk of fraud or other misconduct. An independent custodian ensures that the investor has unencumbered ownership of the securities that other agents represent to have purchased on the investor's behalf.

14. The custody bank's responsibilities include the guarding and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities. Custody banks also generally provide a variety of ancillary services for their custody clients, and communicate with investment managers and others on the client's behalf. In essence, custody banks can and do virtually everything for their custody clients other than make investment decisions. And custody clients trust and rely upon their custodian to do those things properly.

15. During the Class Period, U.S.-based public pension funds and other institutional investors increasingly looked to overseas securities markets in order to diversify their portfolios and maximize investment returns. Such investors had to buy and sell foreign currency in order to carry out trades in foreign securities and to "repatriate" foreign-denominated dividend and interest payments into U.S. dollars.

16. State Street executed hundreds of thousands of FX trades on behalf of Plaintiffs and Class Members during the Class Period. These FX trades fell into two principal categories. In "direct" (or "negotiated") FX trades, custody clients or their IMs personally communicated

with State Street's FX trading desk. State Street would quote an exchange rate, bargaining would ensue, and a rate would be agreed to, often with a modest markup over the interbank rate in the case of a purchase, or a markdown in the case of a sale.

17. "Indirect" (or "standing-instruction") FX trades—the trades at issue here—did not involve arm's-length negotiation of the price. Custody clients and IMs did not negotiate rates with State Street in indirect trades, nor did State Street quote rates. Rather, as the name suggests, custody clients (or their IMs) engaged State Street to provide ongoing custody FX services in accordance with standing instructions, and relied upon State Street to execute those FX trades on their behalf. State Street's indirect FX services to custody clients—referred to as "Indirect FX Methods" for purposes of the Settlement—were a major profit center for the Bank during the Class Period.[3]

18. The FX trading day covers nearly 24 hours and plays out worldwide in countless numbers of currency trades. For each currency pair transaction during the course of the trading day, there is a high and a low trade, with all other trades falling in-between. The difference between the low and the high rates, called the "range of the day," allegedly defines the range at which custody banks and other FX market participants purchased and sold foreign exchange that day. ARTRS alleged that reported trades at rates that fall outside the range of the day did not bear a reasonable relationship to the interbank rate or other prevailing market prices.

[3] "Indirect FX Methods" means the methods at any time for submitting, processing, pricing, aggregating, netting, and/or executing foreign exchange transaction requests pursuant to instructions from custody or trust customers of SSBT [State Street] (or their investment managers) instructing SSBT or SSBT's subcustodians to execute such transactions at rates or spreads, which rates or spreads prior to December 2009 were not widely disclosed to the customers or investment managers prior to execution, including, but not limited to, the methods of executing foreign exchange transactions that are or were at any time known as Indirect FX, standing instruction foreign exchange, custody FX, Automatic Income Repatriation, Automated Dividend and Interest Income Repatriation Service, or Security Settlements and Holdings Foreign Exchange Service or Hourly Pricing Foreign Exchange Service. Settlement Agmt. ¶ 1(ee).

19. Plaintiffs contended that custody clients, based on State Street's representations in its Custodian Contract with ARTRS governing the bank-client relationship, associated Fee Schedules governing State Street's compensation from custody services (which included hefty flat annual fees), and disclosure in State Street's Investment Manager Guides, were entitled to receive FX pricing on indirect FX trades that, at a minimum, was equivalent to the interbank rate and that was no less advantageous than the pricing on a comparable direct trade.

20. Plaintiffs also contended that State Street's Indirect FX Methods were designed to ensure maximum profits for the Bank to Class Members' direct detriment. State Street generally applied large markups and markdowns across the board that, for Indirect FX Transactions[4] relating to purchases and sales of foreign securities (referred to as Securities Settlement and Handling, or "SSH"), were subject only to the high or low of the range of the day. For Indirect FX Transactions to repatriate dividend and income payments, referred to as Automated Income Repatriation, or "AIR," markups and markdowns were not so limited.

21. Based in part on an empirical analysis of ARTRS's Indirect FX trades during the Class Period, ARTRS alleged that State Street's markups and markdowns on Indirect FX Transactions were undisclosed and excessive, such that they tended to exceed the spread expected on direct trades and often fell outside the range of the day.

22. The ERISA Plaintiffs made similar allegations on behalf of custody clients that are plans governed by ERISA.

[4] "Indirect FX Transactions/Trading" means foreign exchange transactions executed with SSBT [State Street] or SSBT's subcustodians at any time using Indirect FX Methods, including all foreign exchange transactions submitted using Indirect Methods. A transaction submitted or processed using an Indirect Method is an Indirect FX Transaction regardless of whether the rate at which the transaction was executed differed from the rates at which other transactions submitted using Indirect Methods were executed. Settlement Agmt. ¶ 1(ff). "Indirect FX" means Indirect FX Methods and Indirect FX Transactions/Trading. Settlement Agmt. ¶ 1(dd).

23. Plaintiffs collectively asserted that State Street's alleged unfair and deceptive Indirect FX Methods and nondisclosure thereof constituted violations of Sections 2, 9, and 11 of Chapter 93A; breach of alleged fiduciary duties owed by State Street to the Class Members; negligent misrepresentation by State Street; breach of ARTRS's Custodian Contract; violations of ERISA, 29 U.S.C. § 1106, for engaging in self-interested prohibited transactions and by causing the ERISA Plans to engage in party in interest prohibited transactions; violations of ERISA, 29 U.S.C. § 1104, for breaching duties of prudence and loyalty; and pursuant to ERISA, 29 U.S.C. § 1105, liability for breaches of co-fiduciary obligations.

C. ARTRS's and its Counsel's Due Diligence and Pre-Filing Investigation

24. The *ARTRS* Action has its origin in a *qui tam* complaint filed under seal on April 14, 2008 by Associates Against FX Insider Trading, a Relator represented by Plaintiffs' Counsel TLF and Lieff Cabraser, on behalf of California public pension funds.

25. That lawsuit was unsealed on October 20, 2009, when the Attorney General of California filed a Complaint-in-Intervention charging State Street with misappropriating more than $56 million from California's two largest public pension funds, the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS). The Complaint-in-Intervention was the first public indication of State Street's allegedly unfair and deceptive acts and practices concerning Indirect FX.

26. ARTRS retained Lead Counsel to investigate potential class and individual claims against State Street shortly thereafter. *See also* Declaration of George Hopkins, Executive Director of ARTRS ("Hopkins Decl."), Exhibit 1 hereto, ¶ 7. With ARTRS's approval, Lead Counsel chose to associate with TLF and Lieff Cabraser given, among other considerations, their

unique knowledge arising from their representation of the Relator, and began an investigation. Hopkins Decl., Ex. 1, ¶ 8.

27. This investigation comprised numerous tasks. ARTRS's counsel had to educate themselves about the essentials of currency trading, and the nature of negotiated (or direct) and non-negotiated (or standing-instruction or indirect) FX trades, and how they work in the context of custody banking. Counsel engaged FX Transparency LLC, a Massachusetts-based currency trading expert, to consult regarding the FX markets and to assist in extracting and analyzing ARTRS's global trading data.

28. FX Transparency conducted several preliminary and final analyses as counsel's investigation proceeded. Ultimately, FX Transparency identified more than 4,200 indirect FX trades executed by State Street for ARTRS's account during 2000-2010, with an aggregate trading volume of more than $1.2 billion. FX Transparency compared these trades to other FX trades logged and tracked in a comprehensive database of more than 2 million buy-side currency trades. By comparing ARTRS's trades in certain currencies with the same currency pair trades in the database, FX Transparency estimated the trading cost of ARTRS's indirect FX trades in relation to trades made worldwide.

29. Further, counsel for ARTRS reviewed an array of pertinent documents, including ARTRS's Custodian Contracts and Fee Schedules, monthly custodial reports and invoices received from State Street, other communications from State Street, and State Street's periodically updated Investment Manager Guides.

30. Further, counsel researched the applicable law on Chapter 93A, fiduciary duty, and negligent misrepresentation, and also reviewed various *qui tam* lawsuits that had been

unsealed against The Bank of New York Mellon Corp. ("BNYM"), a major U.S. custody bank and State Street's primary competitor, concerning BNYM's indirect FX practices.

31. Ennis Knupp & Associates ("Ennis Knupp") was a consultant engaged by ARTRS to oversee its investment managers and the performance of its investment portfolios. On September 9, 2010, Lead Counsel, TLF, and George Hopkins, Executive Director of ARTRS, met in Chicago with representatives of Ennis Knupp to discuss FX issues and potential claims against State Street. The discussion during the meeting generally supported the belief that ARTRS had claims against State Street concerning FX. *See also* Hopkins Decl., Ex. 1, ¶ 9.

32. Additionally, because ARTRS has been a custody client of State Street since 1998, and commencing litigation against one's custodian is not a routine matter, ARTRS sought to meet with State Street before filing an action. On December 20, 2010, Lead Counsel, TLF, and Mr. Hopkins met in Boston with State Street's outside counsel and in-house legal and business personnel. *See also id.* ¶ 10.

33. The meeting was ultimately unproductive, and ARTRS authorized Lead Counsel to commence this Action. *Id.*

D. The *ARTRS* Action Was the First Indirect FX Case

34. As the Court may be aware, a similar class action against BNYM was filed in 2012 and settled in September 2015 for a comparable $335 million in recovery to the class of BNYM custody clients, plus fines and penalties paid to various government agencies. *In re The Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, No. 12-MD-2335 (LAK) (JLC) (S.D.N.Y.) ("*BNYM FX*").

35. This action was the first indirect FX case brought, however. In investigating the claims, counsel for ARTRS worked essentially from a clean slate in terms of analyzing ARTRS's FX trades for prima facie evidence of excessive markups, researching the applicability

of Chapter 93A to State Street's Indirect FX Methods, analyzing whether a custody bank owes a fiduciary duty to its clients in connection with indirect FX services, and analyzing whether a nationwide class of custody clients can be certified and on what claims.

36. Notably, the first of several sealed *qui tam* complaints against BNYM was filed in October 2009, the month the California Attorney General intervened in the State Street *qui tam* lawsuit. The first government intervention and unsealing in connection with BNYM did not occur until January 2011.

37. ARTRS's initial Complaint, filed in February 2011 as noted below, was the first complaint publicly filed against a custody bank concerning indirect FX. ARTRS's Amended Complaint was filed before all but one of the constituent *BNYM FX* complaints, and predated all of the rulings on motions to dismiss those complaints.

38. Additionally, ARTRS investigated its claims and commenced its action without the benefit of regulatory or investigative action by the SEC, DOL or DOJ. To date, these agencies have not issued any public allegations, factual findings, or consent orders that might have benefitted ARTRS or the ERISA Plaintiffs in their efforts against State Street.

E. Procedural History of the Class Actions

39. On February 10, 2011, ARTRS filed a Class Action Complaint in this Court against State Street Bank and Trust Company, State Street Corporation ("SSC"), and State Street Global Markets, LLC ("SSGM"), alleging unfair and deceptive acts and practices in connection with Indirect FX and asserting claims for violations of Chapter 93A, § 2, 11, breach of duty of loyalty, and declaratory relief, on behalf of a class defined similarly to the Settlement Class. ECF No. 1.

40. On February 16, 2011, pursuant to Chapter 93A, § 9(3), ARTRS mailed a written demand for relief to State Street identifying the claimants and reasonably describing the unfair acts or practices relied upon and the injuries suffered.

41. On March 18, 2011, counsel for State Street sent a written response, annexed hereto as Exhibit 2, contesting ARTRS's allegations and declining to make an offer of relief.

42. On April 7, 2011, ARTRS filed an assented-to motion, pursuant to Rule 23(g)(3), to appoint Labaton Sucharow as Interim Lead Counsel for the proposed Class, designate TLF as liaison counsel for ARTRS and the proposed Class, and designate Lieff Cabraser as additional attorneys for plaintiffs and the proposed Class. ECF Nos. 7-8.

43. On April 15, 2011, ARTRS filed an Amended Class Action Complaint ("Amended Complaint"), again naming State Street, SSC and SSGM as Defendants and alleging unfair and deceptive acts and practices in connection with Indirect FX. The Amended Complaint added detailed allegations, including analyses of ARTRS's trades conducted by FX Transparency. The Amended Complaint asserted class claims for violations of Chapter 93A, §§ 2, 9, and 11, breach of fiduciary duty, and negligent misrepresentation, on behalf of a class defined similarly to the Settlement Class, and an individual claim for breach of contract on behalf of ARTRS. ECF No. 10.

44. On June 3, 2011, Defendants moved to dismiss the Amended Complaint. ECF Nos. 18-20. Defendants argued that ARTRS's fiduciary duty claim should fail because the parties' custody contracts defined and limited the scope of the parties' relationship, which was not fiduciary in nature. These contracts, according to Defendants, did not require State Street to execute FX transactions, to do so at a particular rate, or to disclose its margin on FX transactions.

Instead, the contracts required State Street to hold assets and provide administrative services to ARTRS. Defendants argued that Plaintiffs' contract claim should fail for the same reasons.

45. Defendants argued that ARTRS's claims under Chapter 93A and for negligent misrepresentation should fail because nothing unfair or deceptive occurs when the buyer or seller of a commodity does not disclose its margin on a purchase or sale. According to Defendants, State Street had no more duty to disclose the mark up on FX transactions than would any other merchant as to any other commodity. Moreover, Defendants asserted, Plaintiff cannot plausibly assert that ARTRS and its sophisticated IMs were unaware that the rates for its FX transactions were marked up from market rates. Defendants also argued that all of ARTRS's claims, which sought relief for events dating back to 1998, are in part barred by the applicable statutes of limitations.

46. On July 20, 2011, ARTRS filed a 65-page brief in opposition and accompanying submissions. ECF Nos. 22-23.

47. The motion to dismiss was fully briefed as of January 12, 2012. ECF No. 29. ARTRS filed notices of supplemental authority, to which Defendants responded. ECF Nos. 24, 30-31.

48. Also on January 12, 2012, the Court issued an Order appointing Labaton Sucharow as Interim Lead Counsel and designating TLF and Lieff Cabraser as liaison and additional counsel. ECF No. 28.

49. On November 18, 2011, Arnold Henriquez, on behalf of the Waste Management Retirement Savings Plan and its participants and beneficiaries, filed a class action complaint in this Court against State Street, SSGM, and Does 1-20. The *Henriquez* Action asserted claims of engaging in self-interested prohibited transactions under Section 406 of ERISA, 29 U.S.C.

§ 1106, breach of duties of prudence and loyalty under Section 404 of ERISA, 29 U.S.C. § 1104, and breach of co-fiduciary duties under Section 405 of ERISA, 29 U.S.C. § 1105, on behalf of a class of State Street custody clients that are ERISA plans.

50. On February 24, 2012, Henriquez filed an amended class action complaint, adding as plaintiffs Michael T. Cohn, on behalf of the Citigroup 401(k) Plan, and William R. Taylor and Richard A. Sutherland, on behalf the Retirement Plan of Johnson & Johnson.

51. On April 9, 2012, State Street and SSGM moved to dismiss the *Henriquez* Action.

52. On May 8, 2012, the Court heard oral argument on Defendants' motion to dismiss ARTRS's Amended Complaint. The hearing lasted nearly three hours, exclusive of a lunch break. In a detailed bench ruling followed by a written Order dated May 8, 2012, the Court denied the motion in its entirety as against State Street, dismissed the claims as against SSC and, by agreement of the parties, dismissed the claims as against SSGM without prejudice. ECF No. 33. The Court reserved judgment on whether ARTRS's Chapter 93A claims could proceed under Section 9 or Section 11 pending development of a factual record on whether ARTRS was a "consumer" or a "business" for purposes of the statute. *See* Transcript of May 8, 2012 Hearing, Exhibit 3 hereto, at 97:3-99:6.

53. The Court held a lobby conference immediately following the hearing. During the conference, and in the same Order dated May 8, 2012, the Court directed ARTRS and State Street to meet to discuss the possibility of settlement and participation in mediation, and to report back to the Court by July 13, 2012. The Order also directed the parties, in the absence of an agreement to engage in mediation (or a settlement agreement), to respond to an attached Notice of Scheduling Conference by August 30, 2012 and attend a scheduling conference on September 18, 2012. ECF No. 33.

54. On May 16, 2012, the Court granted State Street an extension to June 12, 2012 to answer ARTRS's Amended Complaint.

55. On June 11, 2012, the Court granted State Street a further extension to September 13, 2012 to answer ARTRS's Amended Complaint.

56. On July 13, 2012, ARTRS and State Street filed a Joint Status Report under seal advising that they met on June 22, 2012 to discuss the possibility of settling this case and agreed to engage in mediation with a mediator to be agreed upon. ECF Nos. 38-40.

57. On July 30, 2012, the Court ordered that the Joint Status Report be unsealed. ECF No. 41.

58. On August 17, 2012, ARTRS and State Street filed a further Joint Status Report advising that they had agreed to a mediation before a private mediator that is currently scheduled to conclude on October 25, 2012. ECF No. 42.

59. On August 21, 2012, the Court took the September 18, 2012 Scheduling Conference off calendar and directed the parties to report on the results of the mediation by November 2, 2012. ECF No. 43.

60. On September 12, 2012, Alan Kober, on behalf of The Andover Companies Employee Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan, filed a class action complaint in this Court against State Street and SSGM. The *Andover Companies* complaint asserted claims for breach of duties of prudence and loyalty under Section 404 of ERISA, 29 U.S.C. § 1104, and prohibited transactions under Section 406 of ERISA, 29 U.S.C. § 1106, on behalf of a class of State Street custody clients that are ERISA plans.

61. Also on September 12, 2012, the Court granted State Street a further extension to November 9, 2012 to answer ARTRS's Amended Complaint. ECF No. 46.

62. On October 18, 2012, plaintiffs in the *Andover Companies* Action filed an amended class action complaint, and voluntarily dismissed SSGM from the action.

63. On November 2, 2012, ARTRS and State Street filed a further Joint Status Report advising that they attended a mediation with a private mediator on October 23 and 24, 2012, and were unable to settle the case. The parties further advised that they agreed, subject to the Court's approval, on a framework for conducting discovery and managing this case, and requested a status conference to discuss their proposed plan. ECF No. 50.

64. State Street's transmittal letter filed with the Joint Status Report requested that a status conference include the ERISA Plaintiffs as well as ARTRS. ECF No. 49.

65. Also on November 2, 2012, the Court granted State Street a further extension to November 30, 2012 to answer ARTRS's Amended Complaint. ECF No. 48.

66. On November 8, 2012, the Court scheduled a status conference for November 15, 2012 in the three Class Actions, and directed the Parties to file a report by November 13, 2012 on the items to be addressed at the status conference. ECF No. 51.

67. On November 13, 2012, the Parties filed a Joint Status Report stating their intention to discuss, at the status conference, the Parties' plan for coordinating all three Class Actions, subject to the approval of the Court; the Parties' plan for exchanging certain document discovery (including extensive informal informational exchanges), subject to the approval of the Court; the Parties' plan to obtain the assistance of the mediator to avoid disputes and to facilitate efficient information exchanges; the Parties' plan to submit motions for a protective order to govern the exchange of confidential information in these cases, subject to the approval of the

Court; and the Parties' proposed schedule for these cases, subject to the approval of the Court. ECF No. 56.

68. During the status conference held on November 15, 2012, the Parties presented and discussed these issues in detail. The Court endorsed the Parties' cooperative approach toward exploring a resolution of the Class Actions through mediation and extensive informational exchanges. *See* Transcript of Nov. 15, 2012 Lobby Conference, Exhibit 4 hereto, at 13:18-14:21, 22:2-10, 25:6-16, 26:9-10.

69. On November 19, 2012, further to the Parties' presentations and the Court's remarks and directives during the status conference, the Court issued three Orders:

70. *First*, the Court approved the Parties' Stipulation, Joint Motion, and Proposed Order for the Production and Exchange of Confidential Information. ECF No. 61.

71. *Second*, the Court consolidated the three Class Actions for pretrial purposes. ECF Nos. 62-63.

72. *Third*, the Court approved the Parties' Stipulation and Joint Motion to Stay, which provided that the Parties will engage in informational exchanges, including formal document discovery where necessary, until December 1, 2013, during which time the Parties could also seek document discovery from and issue subpoenas to non-parties. The Stipulation provided further that the Parties reserved all rights with respect to formal discovery, including seeking relief from the Court where necessary, but prior to presenting any issue to the Court, the parties would use their best efforts in cooperation with the mediator to resolve any dispute concerning information exchange or discovery. The Stipulation stayed the Class Actions in all other respects until December 1, 2013, and provided for modification of the stay by the Court or the

Parties. Finally, the Stipulation withdrew the pending motion to dismiss filed in the *Henriquez* Action and certain other pending procedural motions without prejudice. ECF No. 62.

73. On December 26, 2013, the Court granted the Parties' request, filed on November 18, 2013 with the support of the mediator, to extend the stay to June 1, 2014. ECF No. 70.

74. On June 21, 2014, the Court granted the Parties' request, filed on May 30, 2014 with the support of the mediator, to further extend the stay to December 31, 2014. ECF No. 72.

75. On June 23, 2014, the Court issued an Order of Administrative Closing. ECF No. 73.

76. On June 2, 2016, ARTRS and State Street filed a letter with the Court advising that the Parties had agreed to resolve the Class Actions subject to resolution of State Street's ongoing discussions with various regulatory agencies, that these discussions were near conclusion, and requesting a status conference. Counsel indicated that they would make efforts to file a settlement agreement and motion for preliminary approval as soon as possible. ECF No. 76.

77. On June 6, 2016, the Court scheduled a status conference for June 23, 2016, and directed the Parties to file a status report by June 15, 2016 to update the Court as to any motion for preliminary approval of the settlement. ECF No. 77.

78. The Parties subsequently requested extensions of time to June 21, 2016 to file a Joint Status Report. ECF Nos. 79, 80.

79. On June 21, 2016, the Parties filed a Joint Status Report that set forth a summary of the procedural history of the Class Actions and the mediation and discovery efforts to date, and the general status of the settlement discussions. ECF No. 81.

80. On June 23, 2016, the Court held a status conference to discuss the matters set forth in the Joint Status Report.

81. On June 24, 2016, following the status conference, the Court (a) directed the Parties to file, by July 27, 2016, a joint motion for class certification and preliminary approval of a proposed settlement or a motion for an extension of time to do so; (b) scheduled a hearing on that motion for August 8, 2016; and (c) tentatively scheduled a hearing on final approval of a proposed settlement for October 25, 2016. ECF No. 83.

82. On July 26, 2016, Plaintiffs filed the fully executed Stipulation and Agreement of Settlement with exhibits (ECF No. 89), and an assented-to motion for preliminary approval of the Settlement, preliminary certification of the Settlement Class, and approval of the proposed form and matter of class notice. ECF Nos. 90-92.

83. On August 8, 2016, the Court held a hearing on the preliminary approval motion.

84. On August 10, 2016, pursuant to the Court's directives during the hearing, Plaintiffs submitted a proposed revised Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement ("Preliminary Approval Order"), Notice, and Summary Notice. ECF No. 95.

85. On August 11, 2016, the Court issued the Preliminary Approval Order. ECF No. 97. In the Preliminary Approval Order, the Court, *inter alia*:

(i) preliminarily found the Settlement to be fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing;

(ii) preliminarily certified the Settlement Class pursuant to Rules 23(a) and (b)(3);

(iii) appointed Labaton Sucharow as Lead Counsel, TLF as Liaison Counsel, and Lieff Cabraser as additional Counsel for the Settlement Class pursuant to Rule 23(g);

(iv) scheduled a Final Approval Hearing for November 2, 2016, at 2:00 p.m., to consider, among other things, whether to approve the Settlement and Plan of Allocation, whether to finally certify the Settlement Class, and whether to grant the motion of Lead Counsel, on behalf of all Plaintiffs' Counsel, for an award of attorneys' fees, payment of Litigation Expenses to Plaintiffs' Counsel, and payment of Service Awards to Plaintiffs;

(v) approved the form, substance and requirements of the Notice and Summary Notice;

(vi) approved the retention of A.B. Data, Ltd. ("A.B. Data"), an independent settlement and claims administrator recommended by Lead Counsel, as the Claims Administrator;

(vii) approved the proposed program for disseminating notice to the Settlement Class as meeting the requirements of Rule 23, the United States Constitution (including the Due Process Clause), and the Class Action Fairness Act of 2005, 28 U.S.C. § 1715;

(viii) set deadlines and procedures for serving and filing objections to the matters to be considered at the Final Approval Hearing;

(ix) set deadlines and procedures for requesting exclusion from the Settlement Class; and

(x) set deadlines for filing papers in support of the matters to be considered at the Final Approval Hearing and in response to any objections.

F. The Court-Endorsed Mediation and Discovery Process

86. After the Court substantially denied State Street's motion to dismiss ARTRS's Amended Complaint, Lead Counsel approached these Class Actions with the firm belief that a practical, "business-like" approach to resolving them—assuming State Street's cooperation—would ultimately produce an excellent settlement while controlling litigation costs and saving party, third-party, and judicial resources.

87. Lead Counsel submits that this approach has been fully vindicated by the proposed Settlement here. *See also* Declaration of Jonathan B. Marks ("Marks Decl."), Exhibit 5 hereto, ¶¶ 25-30. The groundwork for this was laid during the first Court-ordered exploratory settlement discussion on June 22, 2012, during which ARTRS and State Street agreed to participate in private mediation. Thereafter, the Parties and their counsel committed themselves to the innovative mediation and discovery framework approved by the Court after the November 15, 2012 status conference.

88. The Parties' arm's-length negotiations before Jonathan B. Marks, Esq. of MarksADR, LLC, an experienced and nationally recognized mediator of complex financial disputes, were protracted, intensive, and well-informed, and resulted in a valuable proposed Settlement that Plaintiffs and their counsel submit is eminently fair, reasonable, and adequate.

89. The Parties retained Mr. Marks on August 2, 2012, after the May 8, 2012 hearing on the motion to dismiss and subsequent lobby conference. *See also* Marks Decl., Ex. 5, ¶ 6.

90. Between August and October 2012, Mr. Marks held preparatory conference calls with the Parties, separate half-day in-person pre-mediation sessions with representatives of each side, and a full-day in-person pre-mediation session with both sides. *See also id.* ¶¶ 9-13.

91. These initial efforts culminated in a two-day in-person mediation in Boston on October 23-24, 2012, attended by numerous attorneys and Party representatives including Mr. Hopkins of ARTRS and the Chief Legal Officer of State Street. *See also* Marks Decl. ¶ 14; Hopkins Decl., Ex. 1, ¶ 14.

92. No settlement was reached in October 2012, but, as described above, the Parties developed a specific framework for exchanging certain discovery and managing the cases, which the Court endorsed.

93. Thereafter, Mr. Marks conducted 14 additional in-person mediation sessions in Boston, New York City, and Washington, D.C., some of which were *ex parte* and some were joint. The dates of these sessions were January 24, 2013; July 9, 2013; September 17, 2013; November 13, 2013; March 4, 2014; May 9, 2014; January 5, 2015; February 4, 2015; February 26, 2015; April 30, 2015; June 2, 2015; June 9, 2015; June 26, 2015; and June 30, 2015. Mr. Hopkins and State Street's Chief Legal Officer attended several of these mediation sessions. *See also* Marks Decl., Ex. 5, ¶ 16; Hopkins Decl., Ex. 1, ¶ 14.

94. The mediation sessions and additional discussions included extensive exchanges of views on the merits, in which each side worked to persuade the other to modify positions based on reevaluation of risks faced if the case did not settle. These extensive exchanges of views included presentations by both sides on certain class certification, liability and damages

issues, as well as a detailed presentation by a cost accounting expert engaged by State Street. *See also* Marks Decl., Ex. 5, ¶¶ 23-24.

95. Between mediation sessions, Mr. Marks conducted numerous, often lengthy, telephone calls with counsel for the Parties to understand the perspectives of the Parties and to gauge the distance between the Parties' respective positions. Additionally, the Parties and Mr. Marks exchanged hundreds of e-mails. *See also id.* ¶ 17.

96. The mediation sessions were informed by substantial discovery. In response to ARTRS's counsel's requests, State Street produced, and counsel for ARTRS reviewed, more than nine million pages of confidential documents. These documents included, among other categories, e-mails, presentation decks and other internal communications concerning Indirect FX pricing strategy and policy; documents concerning State Street's revenue derived from Indirect FX; FX pricing summaries and breakdowns for custodial clients; Investment Manager Guides; Product and Services Manuals; marketing presentations to prospective custodial clients; State Street's responses to Requests for Proposal from prospective custodial clients; and inquiries from custodial clients and their representatives concerning Indirect FX and State Street's responses thereto.

97. Further, in response to State Street's requests, ARTRS produced more than 3,500 documents, exceeding 73,000 pages, concerning the full scope of ARTRS's custodial relationship with State Street, as well as its relationship with relevant IMs and a consultant responsible for overseeing the IMs. The ERISA Plaintiffs also collectively produced more than 3,600 pages of documents relevant to their relationship with State Street.

98. In addition to objectively and subjectively coding all documents, counsel for ARTRS sorted probative documents by topic areas and key State Street witnesses. Counsel also

prepared various detailed factual memoranda to assist the mediation process and for use in targeted deposition discovery and readiness for trial. Topic areas broadly included historical margins from SSH and AIR Indirect FX Trades, Indirect FX costs to State Street, State Street's responses to Requests for Proposal from prospective custody clients, ARTRS's relationship with State Street, complaints and inquiries to State Street from custody clients or IMs, time-stamping of Indirect FX Transactions, the California Attorney General lawsuit, and changes to IM guidelines over time.

99. As such, counsel's work preparing for mediation and negotiation of the Settlement was coupled with substantial work "behind the scenes" preparing for litigation, including contested offensive and defensive discovery, depositions, and motion practice, in the event the mediation process broke down.

100. The settlement discussions were lengthened and complicated considerably by State Street's regulatory issues. State Street took a consistent position that any settlement with the Plaintiffs would have to occur simultaneously with settlements between the Bank and the DOL, SEC, and DOJ, each of which was investigating State Street's Indirect FX Methods.

101. Ultimately, the formal mediation sessions and follow-up mediated telephonic negotiations resulted in an agreement-in-principle to a monetary settlement of $300 million on June 30, 2015. The agreement-in-principle, however, was subject to State Street's final resolution of the investigations by the DOL, SEC, and DOJ. *See also* Marks Decl., Ex. 5, ¶ 18.

102. Mr. Marks has confirmed that the terms of the Settlement represent a compromise of the Parties' initial positions, and that these compromises are the product of the Parties' assessment of the perceived strengths and weaknesses of their positions, and the risks inherent in

continued litigation as well as State Street's desire to reach finality with the government regulators. *Id.* ¶ 25.

103. Mr. Marks has further confirmed that the Settlement is consistent with the judgments he himself reached about the strengths and weaknesses of the Parties' cases. *Id.* ¶ 26.

104. Between June 30, 2015 and September 2015, as State Street's discussions with the regulators continued, the Parties focused on memorializing the terms of the Settlement in a term sheet. The term sheet went through multiple iterations, given the number of interested parties and constituencies involved. The final Term Sheet was signed on September 11, 2015.

105. During this time, Lead Counsel also undertook to prepare drafts of the formal settlement documentation, including the Settlement Agreement (with multiple exhibits relating to draft orders and notices), and an initial draft of a plan of allocation.

106. Negotiation of the Settlement Agreement and related documents was lengthy and complicated considerably by State Street's ongoing and fluid discussions with the federal agencies. Dozens of drafts were circulated before the final Settlement Agreement was signed and filed with the Court on July 26, 2016.

G. Risks, Costs and Duration of Continued Litigation

107. Plaintiffs and their counsel submit that the proposed $300 million Settlement is eminently fair, reasonable, and adequate. Because, as described above, the Settlement is the product of arm's-length negotiations among sophisticated counsel facilitated by an experienced mediator, and Plaintiffs undertook substantial discovery, a presumption of fairness applies.

108. Plaintiffs and their counsel submit that there is nothing to rebut that presumption. The Settlement provides a certain and robust recovery for the Class in light of the risks, costs, and duration of continued litigation.

109. Based on Plaintiffs' Counsel's analysis of nonpublic data and information received from State Street on a confidential basis during the mediation process, the $300 million Settlement equals approximately 20% of the estimated aggregate overcharges to Class Members on Indirect FX Transactions during the Class Period, as further described below. Further, as disclosed in the Notice, the $300 million Settlement represents an average gross recovery of $200,000 per Class Member.

110. This 20% metric is comparable to the percentage of estimated damages recovered in the similar *BNYM FX* class action. The plaintiffs asserted there that the $335 million payment by BNYM to settle the customer class action equaled "nearly 24%" of plaintiffs' damages. Mem. of Law in Supp. of Lead Plaintiffs' Unopposed Mot. for (1) Provisional Certification of Settlement Class, etc., *In re The Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, No. 12-MD-2335 (LAK) (JLC) (S.D.N.Y. Mar. 27, 2015), at 27 n.43 (excerpt annexed as Exhibit 6).[5]

111. While Plaintiffs believed their claims had merit, they and Plaintiffs' Counsel recognized that proceeding with litigation carried substantial risk and additional costs, and would entail significant delay. The risks, costs, and duration of continued litigation support the proposed Settlement.

112. **Violation of Massachusetts Consumer Protection Act.** Plaintiffs faced a risk that Chapter 93A did not reach the conduct at issue, and that the Court would thus grant summary judgment or judgment as a matter of law at trial to State Street. State Street would also argue that the facts do not show that Plaintiffs or other Class Members were deceived by the alleged misconduct, and would point to, among other things, the fact that ARTRS and other

[5] An additional payment by BNYM of $155 million, to be distributed to class members over and above the $335 million customer class payment, was attributed to the settlement of a separate action brought by the New York Attorney General ("NYAG"), which was not subject to attorneys' fees. *See id.*

Class Members continued to engage in Indirect FX Transactions with the Bank after its Indirect FX Methods were revealed.

113. Further, in ruling on State Street's motion to dismiss, the Court reserved judgment as to whether ARTRS's Chapter 93A claims could proceed under Section 9 or Section 11 pending development of a factual record as to whether ARTRS was a "consumer" or a "business" for purposes of the statute. Section 11 likely requires a greater showing to establish a violation. *See* May 8, 2012 Hearing Tr., Ex. 3, at 97:3-99:6.

114. **Breach of Fiduciary Duty.** Plaintiffs' common law fiduciary-duty claim, arising from an agent's duty of trust or obligation to provide full disclosure to its beneficiaries, also raised challenging questions of law. Plaintiffs would have to prove both that State Street served as a fiduciary to its custody clients, and that in its fiduciary capacity, the Bank had a duty to fully disclose its Indirect FX practices to them. Those prerequisites to liability carried risk for Plaintiffs and other Class Members.

115. **Negligent Misrepresentation.** State Street would no doubt assert that Plaintiffs could not prove that (1) the Bank made any actionable misrepresentations, (2) they relied on any alleged misrepresentations, or (3) the alleged misrepresentations were material. State Street would likely further contend that Plaintiffs could not prove they suffered any injury, because (in the Bank's view) they could have used information readily available to them to determine at any time during the Class Period how much they were allegedly being overcharged for Indirect FX Transactions. State Street also would have likely challenged Plaintiffs' negligent misrepresentation and other claims on statute of limitations grounds.

116. **ERISA.** Likewise, litigation of Plaintiffs' ERISA claims presented certain risks. State Street does business using numerous wholly owned subsidiaries and operating entities,

allowing it to argue that even if one State Street entity is an ERISA fiduciary, other State Street entities are not. Even within a single entity, State Street sometimes offers different products and services, allowing it to argue that even if it acts as a fiduciary for certain purposes, it is not a fiduciary for other purposes. This different corporate relationships can lead to confusion and litigation risk. In addition, State Street's liability depends on a number of fairly technical liability theories, including prohibited transactions under ERISA § 406(b), 29 U.S.C. § 1106(b), prohibited party-in-interest transactions under ERISA § 406(a), 29 U.S.C. § 1106(a), exceptions to the prohibited transaction rules under ERISA § 408(18), 29 U.S.C. § 1108(18), Prohibited Transaction Exemptions 94-20 and 98-54, and basic fiduciary obligations of loyalty, care, prudence, diligence, and monitoring under ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

117. **Class Certification.** Class certification also presented complexities, which would have entailed a more extensive Rule 23 inquiry—and thus greater uncertainty and risk—than cases brought, for example, under the federal securities laws. In mediation, State Street contended that Plaintiffs would face insuperable hurdles to class certification because, in the Bank's view, among other things, (1) Massachusetts law, in particular Chapter 93A, could not be applied to a nationwide class; and (2) State Street would be able to demonstrate that Class Members possessed varying levels of knowledge with respect to the Indirect FX Methods, precluding a showing of predominance under Rule 23(b)(3).

118. Regarding the first point, Plaintiffs would have to show either that (i) Massachusetts law should generally apply to Class Members' claims, or (ii) if the laws of various states were to apply, a trial would be manageable. Presenting sufficient evidence to demonstrate the manageability of a trial under the laws of several states would have required Plaintiffs to detail the relevant states' laws, including any material differences among them, and prepare a

trial plan. While Plaintiffs believed a multistate class or subclasses could have been certified, obtaining certification would have been challenging and time-consuming.

119. Additionally, Plaintiffs would have devoted significant time and resources to refuting State Street's argument that individual issues predominated because (in the Bank's view) Class Members had disparate levels of knowledge regarding the Indirect FX Methods. State Street likely would have sought to depose numerous Class Members and their agents, as The Bank of New York Mellon did in the *BNYM FX* customer class cases. The parties also likely would present conflicting expert analysis on customer expectations within the FX market, heightening the costs and risks of litigation. Class certification is often granted in ERISA litigation, but State Street certainly would have waged a vigorous opposition. Success can never be assumed, and certification of the ERISA claims alone would have provided no relief to a majority of Class Members.

120. Even were Plaintiffs to obtain class certification in whole or in part, the class might have been decertified before or during trial, or on appeal. The risk of decertification is real where, as here, the Court might need to assess the manageability of a trial involving the laws of at least several states.

121. **Damages.** Further contributing to the risks Plaintiffs faced, the appropriate measure of damages was contested during the Parties' lengthy mediation process and would have been a focus of the litigation. Plaintiffs thus faced the risk that the damages now forming the basis of Class Members' recovery through this Settlement could never be proven at trial or would be greatly offset.

122. Plaintiffs' Counsel used the following basic methodology to estimate aggregate classwide damages. State Street applied fixed markups or markdowns, measured by basis points,

to its SSH and AIR Indirect FX Trades during the Class Period. The application of the fixed spreads was limited in two circumstances. First, State Street would "net" all of an IM's SSH trades in a given currency prior to execution, reducing the amount of currency traded, and, therefore, the total markup or markdown applied to the IM's clients' trades. Second, for SSH trades, the fixed spread markups and markdowns were limited by the high or low of the range of the day. Thus, if the difference between the starting point of the indirect pricing process and the high or low of the day was less than the fixed spread, State Street only applied a markup or markdown to the extent of the high or low rate and not beyond. State Street referred to the spread achieved on Indirect FX Trades after the application of such "netting" and "capping" as the "effective" spread.

123. Plaintiffs' Counsel began with the dollar volume of SSH Indirect FX Trades for each year for 1998 through 2009. The average effective markup across all currency pairs for SSH trades for 2009 was a narrow basis point range. Plaintiffs' Counsel multiplied the sum total of SSH volume for 1998-2009 by the high end of State Street's stated range of effective markups, to estimate damages on SSH trades at approximately $1.177 billion.

124. Plaintiffs' Counsel then took the dollar volume of AIR Indirect FX Trades for each year for 1998 through 2009. The volume is a small fraction of the SSH volume. Plaintiffs' Counsel multiplied the annual AIR volume for 1998-2009 by the known markups for each year to estimate damages on AIR trades at approximately $314.49 million.

125. Plaintiffs' Counsel thus estimates total damages at approximately $1.49 billion, of which the Class Settlement Amount would constitute 20 percent.

126. State Street would no doubt dispute this $1.49 billion damages estimate, contending, among other things, that it (a) materially overstates the effective spread for each year

during a long Class Period, (b) assumes that every fraction of penny of markup is an improper overcharge where custody clients willingly pay a spread on direct FX trades, and (c) ignores the actual costs to State Street of providing Indirect FX services.

127. In any event, the complexities relating to class certification, liability and damages, as well as the sheer volume of evidence, virtually ensured that continuing to litigate would have entailed millions more dollars in lodestar and expenses for Plaintiffs' Counsel, with an uncertain outcome.

128. As described herein, when the Settlement was reached, Plaintiffs and their counsel had a well-founded and realistic understanding of the strengths and weaknesses of the merits and value of the claims. On this score, Lead Counsel had the particular benefit of associating with TLF and Lieff Cabraser, both of which were directly involved in the *BNYM FX* litigation. TLF's and Lieff Cabraser's experience litigating *BNYM FX* at or about the same time as the mediation process here afforded valuable insight when balancing the certainty of the Settlement recovery against both the prospect of massive additional discovery and the risks attendant to trying these cases.

129. Plaintiffs support the Settlement. *See* Hopkins Decl., Ex. 1, ¶¶ 17-18, 21; Declaration of Michael T. Cohn ("Cohn Decl."), Exhibit 7 hereto, ¶ 10; Declaration of Arnold Henriquez ("Henriquez Decl."), Exhibit 8 hereto, ¶ 10; Declaration of James Pehoushek-Stangeland ("Pehoushek-Stangeland Decl."), Exhibit 9 hereto, ¶¶ 4, 6; Declaration of Richard A. Sutherland ("Sutherland Decl."), Exhibit 10 hereto, ¶ 10; Declaration of William R. Taylor ("Taylor Decl."), Exhibit 11 hereto, ¶ 10; Declaration of Janet A. Wallace, Trustee of The Andover Companies Employee Savings and Profit Sharing Plan ("Wallace Decl."), Exhibit 12 hereto, ¶¶ 5, 7.

130. In sum, the Settlement eliminates significant litigation risk and guarantees the Settlement Class a substantial cash recovery. Settling the Class Actions for $300 million, now, is in the best interests of the Settlement Class.

H. The Plan of Allocation of the Net Class Settlement Fund

131. Pursuant to the proposed Plan of Allocation, which is set forth in full in the Notice, A.B. Data will calculate each Settlement Class Member's Recognized Claim using information supplied by State Street, including Indirect FX Trading Volume data and classifications of each Class Member.

132. The Plan is based on transaction data maintained by State Street with respect to custodial clients that engaged in Indirect FX Transactions with the Bank during the Class Period. The Net Class Settlement Fund will be allocated to each participating Class Member based primarily on the Class Member's volume of Indirect FX Transactions during the Class Period and whether the Class Member is (a) an ERISA Plan; (b) a Group Trust, *i.e.*, an entity that has or had both ERISA-governed and non-ERISA assets; (c) an RIC (Registered Investment Company), most of which are mutual funds; or (d) entities not falling within those categories, including ARTRS and other public pension funds as well as private customers ("Public and Other").

133. The parties have relied on Indirect FX Trading Volume information provided by State Street to develop this Plan of Allocation. The respective allocations to each group of Class Members are summarized below.

134. **ERISA Plans and Eligible Group Trusts.** ERISA Plan and certain Group Trust Class Members will be allocated $60 million (the "ERISA Settlement Allocation"), on a gross basis, from the Class Settlement Fund, (i) plus 20% of any interest accrued on the Class Settlement Fund; (ii) minus 20% of any Taxes and Tax Expenses, Notice and Administration

Expenses, Service Awards, and Litigation Expenses; and (iii) minus attorneys' fees, if awarded by the Court, in an amount not to exceed $10,900,000.

135. ERISA Plans and eligible Group Trusts represent approximately 9%-15% of the total Indirect FX Trading Volume, depending on what portion of the Group Trusts' volume actually falls under ERISA.

136. The $10.9 million cap of attorneys' fees deductible from the ERISA Settlement Allocation means that if, for example, the Court awards the requested 24.85% fee, ERISA Plans and eligible Group Trusts will pay fees at a lower percentage rate than other Class members.

137. The ERISA Settlement Allocation was set based on the Indirect FX Trading Volume provided by State Street, including information concerning the total amount of Indirect FX Trading Volume executed during the Class Period by ERISA Plans and Group Trusts. In the course of administering the Settlement, A.B. Data will request information from Group Trusts concerning their ERISA Volume during the Class Period.

138. This allocation was negotiated directly between Lead Counsel, ERISA Counsel, and DOL representatives and, in light of claims available under ERISA, provides a premium per dollar of Indirect FX Trading Volume for ERISA Plans and eligible Group Trusts in comparison to allocations to other Settlement Class Members. The disparity between the recovery to ERISA Plans/eligible Group Trusts and other Settlement Class Members reasonably derives from differences in the remedies available to those respective entities.

139. Both the $60 million ERISA Settlement Allocation and the $10.9 million cap on fees deductible therefrom were agreed-to after Plaintiffs and State Street reached an agreement-in-principle on the $300 million Class Settlement Fund. *See also* Marks Decl., Ex. 5, ¶¶ 20-21. Further, DOL first proposed a cap on fees to Plaintiffs' Counsel in mid-July 2015, weeks after

the ERISA Settlement Allocation had been agreed-to, as a further condition for DOL's support of the entire Settlement. Plaintiffs' Counsel and DOL did not reach agreement on the $10.9 million amount until late August 2015.

140. **RICs.** Based on information provided by State Street, after the ERISA Settlement Allocation, the allocation to RICs will be approximately $142 million, on a gross basis. This amount, unlike the ERISA Settlement Allocation, does not reflect any premium and is derived solely from the RICs' percentage of total Indirect FX Trading Volume (taking into account the ERISA Settlement Allocation). The RIC Settlement Allocation (assuming payment of a certain amount of attorneys' fees, Litigation Expenses, Service Awards, and Notice and Administration Expenses) will meet the required Registered Investment Company Minimum Distribution of $92,369,416.51, which is an essential condition of State Street's settlement with the SEC.

141. That minimum distribution to RICs, like the ERISA Settlement Allocation, is also an essential condition of this Settlement, which State Street can terminate if those allocations are not made.

142. **Public and Other.** The Public and Other Settlement Allocation will be approximately $98 million, on a gross basis. The Public and Other Settlement Allocation, like the RIC Settlement Allocation, is derived solely from the Public and Other percentage of total Indirect FX Trading Volume, taking into account the ERISA Settlement Allocation.

143. Using information provided about each Class Member's Indirect FX Trading Volume(s) during the Class Period, A.B. Data will calculate the Class Member's Recognized Claim, and use those calculations to make the Settlement Allocations in accordance with the Settlement Agreement. To facilitate that process, State Street has provided A.B. Data with (1) the total Indirect FX Trading Volume for each Class Member during the Class Period; and (2)

information concerning whether each Class Member was an ERISA Plan, RIC, or Group Trust during the Class Period.

144. Under the allocation methodology described above, determining each Settlement Class Member's Recognized Claim will involve a two-step analysis:

145. *First*, A.B. Data will divide the Class Member's total Indirect FX Trading Volume during the Class Period into (i) RIC Volume, (ii) ERISA Volume, and (iii) Public and Other Volume, depending on whether the Class Member falls into the RIC, ERISA Plan, or Public and Other category. A.B. Data will then determine, based on the records provided by State Street, the respective amounts of each Class Member's RIC Volume, ERISA Volume, and Public and Other Volume.

146. For RICs, ERISA Plans, or entities falling into the Public and Other category, those Class Members' total Indirect FX Trading Volume during the Class Period will simply equal its RIC Volume, ERISA Volume, or Public and Other Volume, respectively. Because Group Trusts, on the other hand, may fall within more than one of the above categories, further scrutiny of their Indirect FX Transactions will be required.

147. Specifically, each Group Trust must provide A.B. Data with a certification (as set forth in the Notice) reporting the average proportion of the Group Trust's State Street-custodied assets held by an ERISA Plan or Plans during the Class Period or the average volume of Indirect FX Trades made by the ERISA Plan(s) during the Class Period, and identifying by name each ERISA Plan within the Group Trust. If the Group Trust does not have that information for each year of the Class Period but reasonably believes it held ERISA assets during the Class Period, it should report the years for which data is available and the results will be averaged by applying

the average proportion of the years with known ERISA assets or Indirect FX Trading Volume to the years with unknown ERISA assets or Indirect FX Trading Volume.

148. Using the information provided by the Group Trust, its ERISA Volume will equal the volume of Indirect FX Trades made by the ERISA Plan(s) in the Group Trust, or, if the information concerning the volume of Indirect FX Trades is insufficient, the proportion of assets held by the ERISA Plan(s) in a particular Group Trust. A.B. Data will categorize any non-ERISA Volume as Public and Other Volume (and its RIC Volume will be zero).

149. Any Group Trust that does not provide the required certification by December 20, 2016 will be treated for allocation purposes as if it held no ERISA Plan assets and will not be entitled to a recovery from the ERISA Settlement Allocation. Rather, its total Indirect FX Trading Volume during the Class Period will be categorized as Public and Other Volume (and its RIC Volume will be zero). The Plan of Allocation provides for an exception with respect to Group Trusts that do not provide certifications but are known by the parties to have ERISA assets based on previous consultations with the DOL, as set forth in the Notice.

150. *Second*, after calculating each Settlement Class Member's ERISA Volume, RIC Volume, and Public and Other Volume, A.B. Data will calculate the ERISA, RIC, and Public and Other Volumes for the entire Settlement Class. A Class Member's ERISA Recognized Claim will equal the Class Member's ERISA Volume divided by the Classwide ERISA Volume, multiplied by the amount of the ERISA Settlement Allocation. The same calculations will follow to determine the Class Member's RIC Recognized Claim and Public and Other Recognized Claim. Again, with the exception of Group Trusts, a Class Member will have only an ERISA Recognized Claim, an RIC Recognized Claim, or a Public and Other Recognized Claim, corresponding to the category into which that Class Member falls.

151. The Net Class Settlement Fund will be allocated among Class Members whose prorated distributions would be $10.00 or greater, given the fees and expenses associated with printing and mailing payments. Plaintiffs and State Street will use their best efforts to cause an initial distribution of the Net Class Settlement Fund, including the RIC Settlement Allocation, within one year after the Settlement's Effective Date, including by seeking the Court's authorization.

152. Class Members are not required to submit claims. In developing the Plan of Allocation, Plaintiffs took reasonable steps to ensure that State Street identified every custodial client of State Street, based on the Bank's records, which had a U.S. tax address and entered into an Indirect FX Transaction with the Bank during the Class Period. Upon final approval of the Settlement, each Class Member that does not opt out will simply receive a check or wire transfer in the amount of the Class Member's net recovery.

153. The Plan of Allocation reflects the considered judgment of Plaintiffs' Counsel, and has been reviewed and approved by the SEC and DOL. Plaintiffs respectfully submit that it should be approved.

I. Compliance With the Court's Preliminary Approval Order

154. The Preliminary Approval Order, among other things, approved the form and manner of individual and publication notice to the Settlement Class, and authorized Lead Counsel to retain A.B. Data as the Claims Administrator to supervise and administer the notice procedure for the Settlement. Preliminary Approval Order ¶¶ 7-9, 12.

155. In accordance therewith, Lead Counsel instructed A.B. Data to: (i) mail, on August 22, 2016, the Court-approved Notice by first-class mail to the Class Members identified in State Street's records; (ii) mail a cover sheet to Class Members that have been identified as Group Trusts to alert them of the certification requirement; and (iii) publish, on September 6,

2016, the Court-approved Summary Notice in the *Wall Street Journal* and over the PR Newswire. *Id.* ¶ 9; *see also* Declaration of Eric J. Miller of A.B. Data, Ltd. ("Miller Decl."), Exhibit 13 hereto, ¶¶ 2-8.

156. A.B. Data has complied with the notice mailing and publication requirements in the Preliminary Approval Order. *Id.* & Exs. A-C thereto.

157. Lead Counsel also worked with A.B. Data to establish a settlement-specific website, www.StateStreetIndirectFXClassSettlement.com. The website provides Class Members and other interested parties with information concerning the Settlement and the important dates and deadlines in connection with the Settlement, as well as access to downloadable copies of the Notice, the Settlement Agreement, the Preliminary Approval Order, and the Complaints in the Class Actions. *See* Miller Decl., Ex. 13, ¶ 11.

158. Additionally, A.B. Data established and maintains a toll-free telephone number and interactive voice-response system to respond to inquiries regarding the Settlement. *Id.* ¶ 9. Class Members can also contact A.B. Data by sending an e-mail to info@StateStreet IndirectFXClassSettlement.com. *See* Miller Decl. Ex. A at 1.

159. The deadline set forth in the Preliminary Approval Order for Class Members to file objections to the Settlement, Plan of Allocation, or application for attorneys' fees and expenses or to submit requests for exclusion from the Settlement Class is October 7, 2016. Preliminary Approval Order ¶¶ 14, 16.

160. As of the date hereof, no objections to any of these matters have been received, and A.B. Data has received no requests for exclusion. Miller Decl., Ex. 13, ¶ 12.

J. Request for an Award of Attorneys' Fees

161. Lead Counsel, on behalf of all Plaintiffs' Counsel, respectfully requests an award of attorneys' fees in the amount of Seventy-Four Million Five Hundred Forty-One Thousand Two Hundred Fifty Dollars ($74,541,250.00), to be paid out of the Class Settlement Fund.

162. The requested fee is approximately 24.85% of the $300 million Class Settlement Fund, and is equivalent to 25% of the Class Settlement Fund after deduction of the maximum Litigation Expenses disclosed in the Notice ($1,750,000) and the maximum Service Awards disclosed in the Notice ($85,000). Lead Counsel seeks this fee despite the fact that actual Litigation Expenses are substantially less than $1.75 million as described below, and regardless of whether Service Awards, also described below, are granted in full.

163. Lead Counsel submits that the fee request is supported by the fact that Plaintiffs' Counsel undertook these Class Actions with no assurance of compensation or recovery of costs, and faced substantial risk from the outset.

164. These Class Actions are atypical with respect to the nature of the defendant, the subject matter, and the application of the statutory claims, and are in many respects hybrids between consumer, securities, and ERISA actions.

165. These Class Actions are also complex. State Street's alleged unfair and deceptive acts and practices, breaches of fiduciary duty, negligent misrepresentations, and violations of ERISA occurred over a 12-year Class Period in multiple locations, and concerned an opaque market and a little-understood area of the financial services industry.

166. As more fully described in Part D above, the *ARTRS* Action was the first indirect FX case. Besides State Street, there are only four major U.S. custody banks: BNYM, JPMorgan Chase, Citibank, and Northern Trust. These banks were rarely, if ever, sued in relation to their custody businesses before these indirect FX pricing issues first began to surface. When

Plaintiffs' Counsel investigated ARTRS's claims and commenced the action, they were working essentially from a clean slate.

167. Additionally, as noted in Part D above, neither the litigation nor the Settlement was helped along by preexisting government enforcement actions or investigations. Private plaintiffs led the charge against State Street. Indeed, DOL and the SEC have benefitted significantly from Plaintiffs' Counsel's efforts in achieving the $300 million Settlement, as key terms of the Plan of Allocation are central to these agencies' settlements with State Street.

168. Further, as more fully described in Part G above, Plaintiffs' Counsel brought about this Settlement in the face of an array of litigation risks. These risks did not evaporate once Plaintiffs entered into mediation. To the contrary, State Street brought these substantive issues to bear throughout the extended mediation process, pressing its contentions on, for example, the individualized nature of Class Members' written agreements and oral communications with State Street; the implicit (and sometimes explicit) awareness and acceptance of indirect FX pricing practices by Class Members and their IMs; cost accounting issues that supported the markups applied to Indirect FX Transactions; and the changing "real" interbank FX rates on a given currency pair at a given point in time. *See also* Marks Decl., Ex. 5, ¶¶ 23-25.

169. Lead Counsel further submits that the fee request is supported by the fact that Plaintiffs' Counsel devoted substantial time to this case while controlling costs and avoiding judicial intervention.

170. As more fully described in Parts C and E above, counsel for ARTRS conducted a substantial pre-filing investigation, prepared detailed complaints, and litigated a substantial

motion to dismiss culminating in a three-hour oral argument before participating in the Court-approved mediation and discovery process.

171. The mediation sessions were protracted and well-informed by, among other things, the review and close analysis of nine million pages of documents and various nonpublic data supplied by State Street. The process was intended to, and did, bring about the best possible result for the Class in light of the risks, costs and duration of continued litigation while avoiding unnecessary expenditure of party, third-party and judicial time and resources—and Plaintiffs' Counsel put a great deal of focused effort into it. *See also* Marks Decl., Ex. 5, ¶ 30.

172. Settling the Class Actions was complicated considerably by the presence of the federal agencies, particularly the SEC and DOL, conducting their own investigations of State Street. Because the financial terms of State Street's separate settlement with DOL will be satisfied by the ERISA Settlement Allocation, Plaintiffs' Counsel had to negotiate and coordinate with DOL with respect to the Settlement Agreement, the Notice, and the Plan of Allocation. Negotiating the Plan of Allocation and other aspects of the Settlement with State Street and DOL simultaneously was a challenging and often complicated task.

173. Further, the requested fee is comparable to the fee awarded in the similar *BNYM FX* class action. As noted above, following the unsealing of several *qui tam* lawsuits, BNYM's custody clients asserted claims for, *inter alia*, unfair and deceptive acts and practices, violations of ERISA, and breach of fiduciary duty premised on a broadly similar alleged practice of excessive concealed markups on indirect FX transactions.

174. In March 2015, the parties in *BNYM FX*, and various government agencies including the DOJ, SEC, DOL, and NYAG, announced settlements totaling $714 million. This omnibus relief included a $335 million payment by BNYM specifically to settle the private

"Customer Class" cases. In September 2015, the plaintiffs' counsel sought, and received, a fee of 25% of the $335 million recovery ($83.75 million) plus expenses. *See* Order Awarding Attorneys' Fees, Service Awards, and Reimbursement of Litigation Expenses, *In re The Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, No. 12-MD-2335 (LAK) (JLC) (S.D.N.Y. Sept. 24, 2015), Exhibit 14 hereto. The percentage fee requested here is slightly lower, on a comparable class settlement amount.

175. The time spent working on the investigation, litigation and settlement of the Class Actions by Plaintiffs' Counsel is set forth in the individual firm declarations annexed hereto as Exhibits 15-23.[6]

176. Included with these declarations are schedules that summarize the lodestar of each respective firm, as well as the expenses incurred by category (the "Fee and Expense Schedules"). The individual firm declarations and the Fee and Expense Schedules indicate the amount of time spent by each attorney and professional support staff on the case, and the lodestar calculations based on their current billing rates. As stated in each of these declarations, they were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which are available at the request of the Court. *See also* Master Chart of Lodestars, Litigation Expenses, and Plaintiffs' Service Awards, Exhibit 24 hereto.

177. In total, from the inception of the Class Actions through September 6, 2016, Plaintiffs' Counsel expended more than 86,000 hours on the investigation, prosecution, and resolution of the claims against Defendants, for an aggregate lodestar of $41,323,895.75. Plaintiffs' Counsel's hourly billing rates here range from $350 to $1,000 for Partners, $455 to

[6] In addition to Labaton Sucharow, TLF, Lieff Cabraser, Keller Rohrback, McTigue Law, and Zuckerman Spaeder, the law firms of Feinberg, Campbell & Zack, P.C.; Beins, Axelrod, P.C.; and Richardson, Patrick, Westbrook & Brickman, LLC have submitted individual firm declarations. Exs. 21-23. These three declarations report modest time spent and expenses incurred in connection with these counsel's appearances in the *Henriquez* and *Andover Companies* Actions.

$1,000 for Of Counsel, and $325 to $725 for other attorneys. *See* Exs. 15-24. Defense firms' billing rates analyzed and gathered by Lead Counsel from bankruptcy court filings in 2015, in many cases exceeded these rates. *See* Exhibit 25 hereto.

178. Overall, the requested attorneys' fee yields a lodestar multiplier of 1.8.

179. ARTRS, and all ERISA Plaintiffs, support the requested fee as reasonable in view of the work performed and results obtained for the benefit of the Class. *See* Hopkins Decl., Ex. 1, ¶ 19; Cohn Decl., Ex. 7, ¶ 10; Henriquez Decl., Ex. 8, ¶ 10; Pehoushek-Stangeland Decl., Ex. 9, ¶¶ 5-6; Sutherland Decl., Ex. 10, ¶ 10; Taylor Decl., Ex. 11, ¶ 10; Wallace Decl., Ex. 12, ¶¶ 6-7.

180. Annexed hereto as Exhibit 26 is a true and correct copy of cited excerpts of the transcript of the June 23, 2016 Status Conference before this Court.

181. Annexed hereto as Exhibit 27 is a true and correct copy of the Order and Final Judgment in *In re CVS Corp. Securities Litigation*, Civ. No. 01-11464 JLT (D. Mass. Sept. 7, 2005).

182. Annexed hereto as Exhibit 28 is a true and correct copy of the Order and Final Judgment in *In re Lernout & Hauspie Securities Litigation*, No. 01-CV-11589 PBS (D. Mass. Dec. 22, 2004).

183. Annexed hereto as Exhibit 29 is a true and correct copy of the Order and Final Judgment in *In re Raytheon Co. Securities Litigation*, Civ. No. 99-12142-PBS (D. Mass. Dec. 6, 2004).

184. Annexed hereto as Exhibit 30 is a true and correct copy of the Declaration of Alan P. Lebowitz, General Counsel to the Comptroller of the State of New York, in *In re Raytheon Co. Securities Litigation*, Civ. No. 99-12142-PBS (D. Mass. Nov. 23, 2004).

185. Annexed hereto as Exhibit 31 is a true and correct copy of Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811 (2010).

186. Annexed hereto as Exhibit 32 is a true and correct copy of the Final Order Approving Class Action Settlement in *In re Reebok Easytone Litigation*, No. 10-CV-11977 FDS (D. Mass. Jan. 19, 2012).

K. Request for Payment of Litigation Expenses

187. Lead Counsel respectfully seeks payment of One Million Two Hundred Fifty Seven Thousand Six Hundred Ninety-Seven and 94/100 Dollars ($1,257,697.94) out of the Class Settlement Fund for Litigation Expenses incurred by Plaintiffs' Counsel in commencing, prosecuting, and resolving the claims asserted in the Class Actions. *See generally* Individual Firm Declarations, Exs. 15-23, and Master Chart, Ex. 24.

188. From the inception of the Class Actions, Plaintiffs' Counsel understood that they might not recover any of the expenses they incurred, and, at a minimum, would not recover any expenses until the actions were successfully resolved. Plaintiffs' Counsel further understood that, even assuming that the Class Actions were ultimately successful, an award of expenses would not compensate counsel for the lost use or opportunity costs of funds advanced to prosecute the claims against Defendants. Plaintiffs' Counsel were motivated to, and did, take steps to minimize expenses where practicable without jeopardizing the zealous and effective prosecution of the Class Actions.

189. Indeed, many of the expenses incurred in the *ARTRS* Action were paid out of a central litigation fund created and maintained by Labaton Sucharow (the "Litigation Fund"). Labaton Sucharow, TLF, and Lieff Cabraser collectively contributed $319,000 to the Litigation Fund. A description of the payments from the Litigation Fund by category is included in the

individual firm declaration submitted on behalf of Labaton Sucharow. *See* Ex. 15, ¶ 10 & Ex. C thereto.

190. Plaintiffs' Counsel's expenses include charges for, among other things, (i) experts and consultants; (ii) housing approximately nine million pages of documents produced by State Street; (iii) online factual and legal research; (iv) mediation; (v) travel; and (vi) document reproduction.

191. In particular, the cost of experts and consultants, totaling approximately $200,000, represents one of the largest components of Plaintiffs' Counsel's expenses, representing approximately 16% of their total expenses. Experts were utilized principally to consult with respect to the FX market and industry and to analyze ARTRS's and other institutional investors' indirect and direct FX trades.

192. Another large component of Plaintiffs' Counsel's expenses relates to electronic discovery, totaling approximately $445,000 or 35% of total expenses.

193. Plaintiffs' Counsel's expenses also include the costs of online and electronic research in the amount of approximately $70,000. This amount represents charges for computerized research services such as LexisNexis, Westlaw, Courtlink, Thomson Financial, Bloomberg and PACER. It is now standard practice for attorneys to use online services to assist them in researching legal and factual issues, and indeed, courts recognize that these tools create efficiencies in litigation and ultimately save money for clients and the class.

194. Plaintiffs' Counsel were also required to travel in connection with the claims against State Street, particularly with regard to the 16 mediation sessions, and to work after normal business hours, and thus incurred the related costs of rail and airline tickets, late-night transportation, meals, and lodging. Any first-class airfare has been reduced to economy rates.

Included in Plaintiffs' Counsel's total expense request is approximately $360,000 for these expenses (approximately 28% of total expenses).

195. Further, Plaintiffs' Counsel paid approximately $130,000 for Plaintiffs' share of the mediator's fees and costs.

196. The other expenses for which Plaintiffs' Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, process servers, document-reproduction costs, long-distance telephone and facsimile charges, and postage and delivery expenses.

197. All Plaintiffs support the requested Litigation Expenses. *See* Hopkins Decl., Ex. 1, ¶ 20; Cohn Decl., Ex. 7, ¶ 10; Henriquez Decl., Ex. 8, ¶ 10; Pehoushek-Stangeland Decl., Ex. 9, ¶ 6; Sutherland Decl., Ex. 10, ¶ 10; Taylor Decl., Ex. 11, ¶ 10; Wallace Decl., Ex. 12, ¶ 7.

198. Courts have generally found that these kinds of expenses are payable from a fund recovered by counsel for the benefit of a class. Lead Counsel submits that the requested Litigation Expenses were reasonably and necessarily incurred and should be approved.

L. Request for Service Awards to Plaintiffs

199. Lead Counsel respectfully requests that the Court approve Service Awards of Twenty-Five Thousand Dollars ($25,000.00) to Plaintiff ARTRS and Ten Thousand Dollars ($10,000.00) to each of Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employee Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, in consideration of their successful service as class representatives in these Class Actions.

200. All Plaintiffs diligently discharged their core responsibilities by monitoring the litigations, conferring with Plaintiffs' counsel, and reviewing significant pleadings and documents.

201. Plaintiff ARTRS, after conducting appropriate due diligence, stepped forward and took a risk to sue its custody bank, and consistently worked thereafter to support the prosecution of this case and the mediation process. ARTRS's Executive Director, for example, attended the hearing on State Street's motion to dismiss and subsequent lobby conference as well as multiple mediation sessions in Boston and elsewhere. ARTRS also made a complete document production in response to State Street's requests. *See also* Hopkins Decl., Ex. 1, ¶¶ 11-16.

202. Service Awards to the ERISA Plaintiffs are also justified. The ERISA Plaintiffs effectively represented a key constituency of the Class and collectively produced thousands of pages of documents to State Street in response to State Street's requests. *See* Cohn Decl., Ex. 7, ¶¶ 3-6, 9-10; Henriquez Decl., Ex. 8, ¶¶ 3-6, 9-10; Pehoushek-Stangeland Decl., Ex. 9, ¶¶ 3-4, 6; Sutherland Decl., Ex. 10, ¶¶ 3-6, 9-10; Taylor Decl., Ex. 11, ¶¶ 3-6, 9-10; Wallace Decl., Ex. 12, ¶¶ 3-4, 7.

203. The $85,000.00 in requested Service Awards equal only 0.028% of the Class Settlement Fund, and were disclosed in the Notice. Lead Counsel submits that the Service Awards are reasonable and should be approved.

M. Summary of Relief Sought

204. In view of the significant recovery to the Settlement Class against the risks, costs and duration of continued litigation, as described herein and the accompanying brief in support of final approval of the Settlement, I respectfully submit that the proposed $300 million Class Settlement should be approved as fair, reasonable, and adequate.

205. Further, I respectfully submit that the proposed Plan of Allocation of the Net Class Settlement Fund is an appropriate method of apportionment of the settlement proceeds among the members of the Settlement Class as a whole, and should be approved as fair and reasonable.

206. Further, I respectfully submit that Court should reaffirm as final its findings in Paragraphs 2-4 of the Preliminary Approval Order with regard to certification of the Settlement Class for settlement purposes.

207. Finally, in view of the skilled, efficient, and focused efforts of Plaintiffs' Counsel in bringing about the Class Settlement in the face of substantial litigation risk and practical obstacles and complexities, as described herein and the accompanying brief in support of fees and expenses, I respectfully request that the Court:

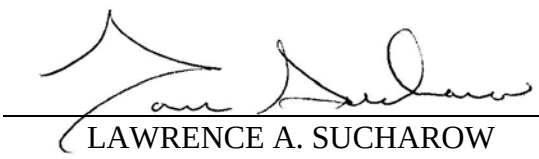
(a) award an attorneys' fee to Lead Counsel in the amount of $74,541,250.00, or approximately 24.85% of the Class Settlement Fund;

(b) approve payment of Litigation Expenses in the total amount of $1,257,697.94;

(c) approve payment of a Service Award to Plaintiff ARTRS in the amount of $25,000.00; and

(d) approve payment of Service Awards to Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employee Savings and Profit Sharing Plan, and James Pehoushek-Stangeland in the amount of $10,000.00 each.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 15, 2016.



LAWRENCE A. SUCHAROW

EX. 4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Case No. 11-cv-10230 MLW

- -x

ARKANSAS TEACHER RETIREMENT SYSTEM, et al.,

Plaintiffs,

-against-

STATE STREET BANK AND TRUST COMPANY,

Defendant.

- -x

JAMS
Reference No. 1345000011

- -x

In Re: STATE STREET ATTORNEYS' FEES

- -x

June 14, 2017
9:59 a.m.

B e f o r e :

SPECIAL MASTER HON. GERALD ROSEN
United States District Court (Retired)

Deposition of GEORGE HOPKINS, taken by Counsel to the Special Master, held at the offices of JAMS, 620 Eighth Avenue, New York, New York, before Helen Mitchell, a Registered Professional Reporter and Notary Public.

Hopkins

did after law school.

A Well, I might want to start in the middle of law school.

When I was in my second year of law school, I dropped out of law school in my third -- in my fourth semester of law school to run for State Senate. I was elected, so I finished out law school as an Arkansas state senator. And then I continued being a state senator for 14 years, and simultaneously, after I passed the bar in July of 1987, I practiced law and was a state senator.

After I was term limited and left the State Senate in December of 2000, I just continued practicing law for eight years, and after -- at the conclusion of those eight years, in December of 2008, the Arkansas Teacher Retirement System Board hired me as the executive director, and I've been executive director since December 29th, 2008.

Q All right. Thank you, sir.

And, sir, could you tell us something about the ARTRS --

JUDGE ROSEN: Bill, before we

Hopkins

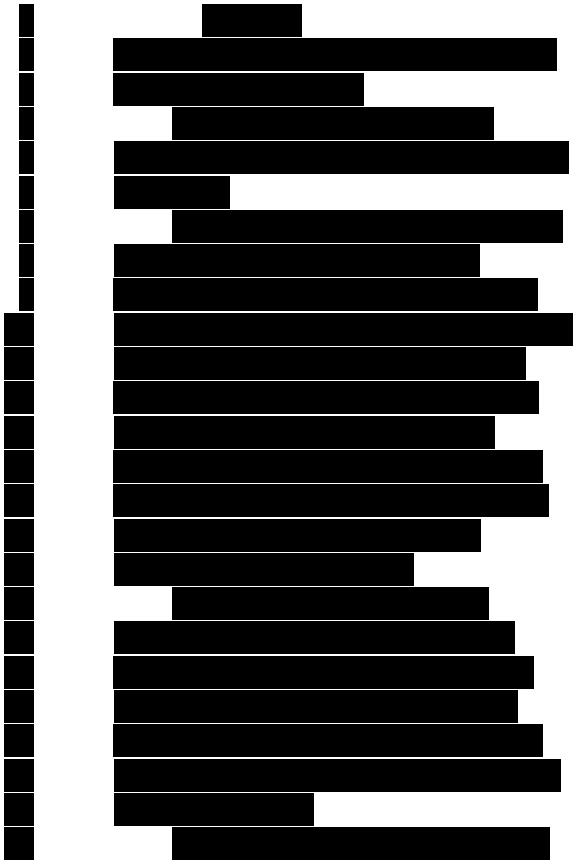
get to that --

MR. SINNOTT: Sure.

JUDGE ROSEN: -- you've had some -- I remember from our interview, you had some relevant background during your service as a state senator. You worked on the retirement committee, and then you were chair of that committee?

THE WITNESS: Yes. I was on -- I was on the retirement committee I think ten of the 14 years I was in the State Senate. For six of those years, I was the Senate co-chair.

That committee's a joint committee, has a Senate and a House co-chair, and during that six years I was the Senate co-chair, I had three different House co-chairs, and a lot of the responsibility for ensuring that retirement benefit legislation was properly drafted and went through appropriate study fell on me. I think in my last session, I probably handled 55 bills, which is a pretty major load,



Hopkins

just wanted to get that relevant history and background on the record.

MR. SINNOTT: Thank you, Judge.

BY MR. SINNOTT:

Q And, sir, you were appointed as executive director of the Arkansas Teacher Retirement System in 2009?

A December -- almost 2009. December 29th, 2008.

Q And could you tell us something about the Arkansas Teacher Retirement System, as far as the number of members, the portfolio, and the average monthly benefit, anything like that that you can tell us.

A The Arkansas Teacher Retirement System was created in 1937, it's 80 years old. It currently has 45,000 retirees. We're paying out about $85 million per month. That number's probably about to be -- when we get to July will turn to probably 87 or $88 million per month.

Our average benefit is just under $23,000 per year for those 45,000 retirees, that we continue to pay a lump sum death benefit to. Out of those 45,000, probably

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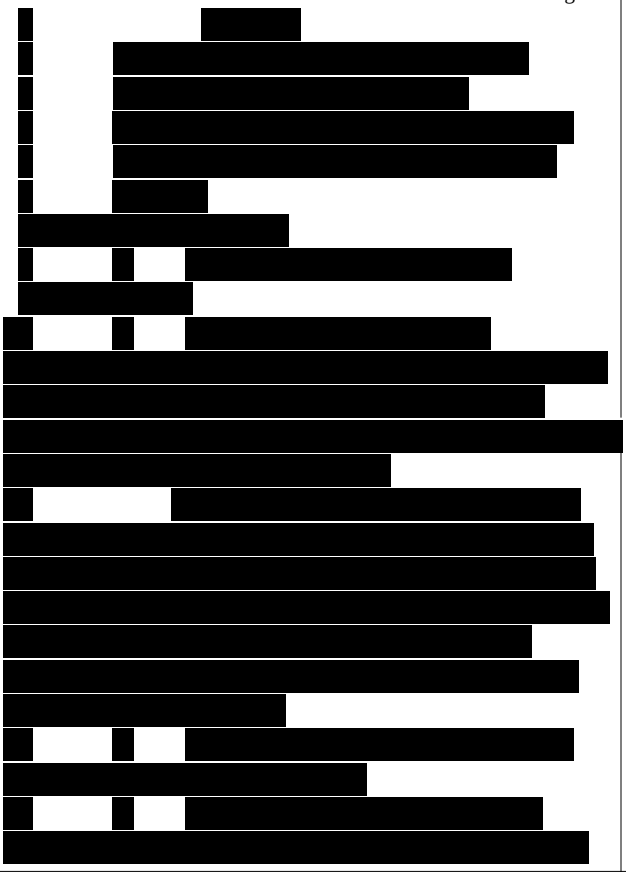

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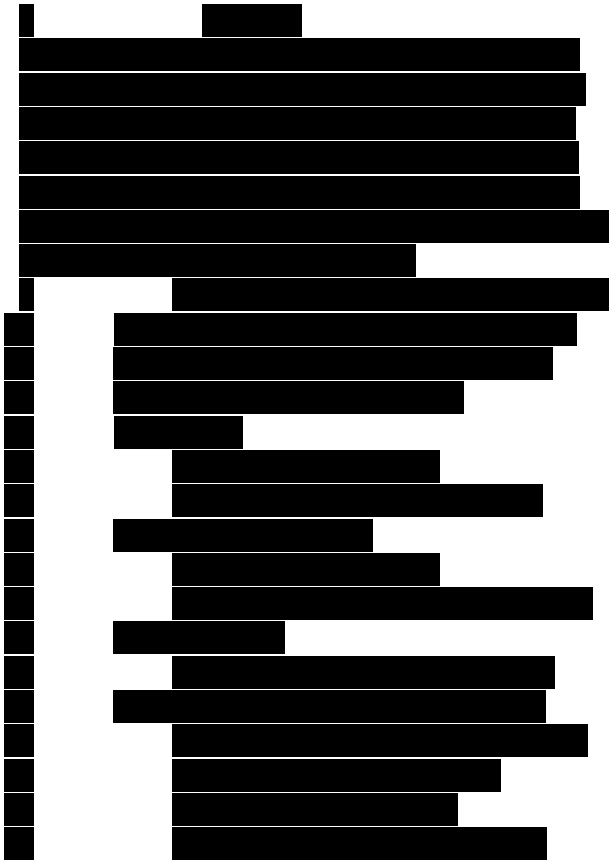

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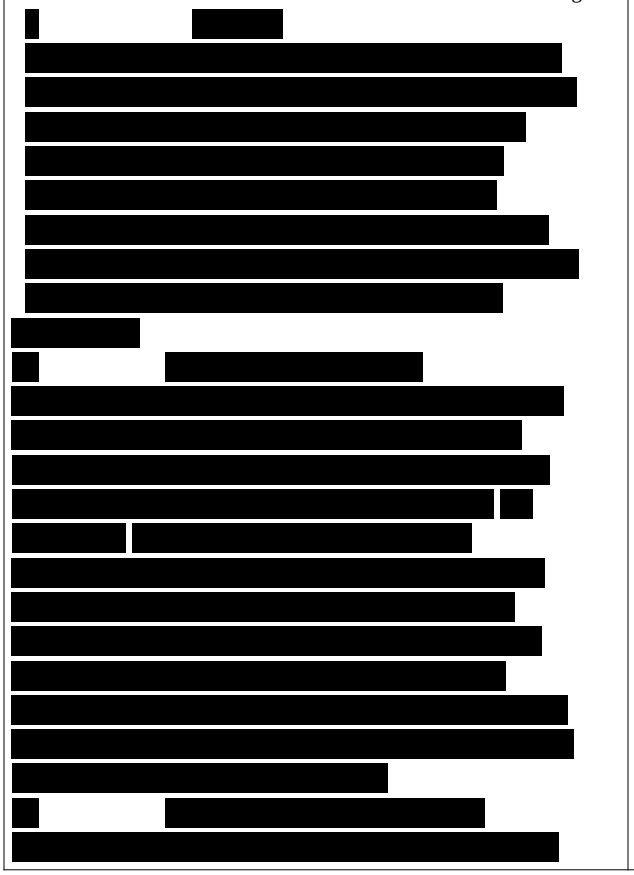

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Hopkins

we had four firms that I will call on monitoring agreement retainer that looks at our entire portfolio -- all of our stocks, all of our bonds, all -- all the things that we were invested in, which, you know, there might be national news.

So what we expect them to do, and our agreement with them is, they will monitor our trust fund investments, and if they see an issue where we have a loss, or an issue that they see within our holdings in which they think that there may be a case that we need representation on in order to recover losses, or lack of gains that we should have gotten, however you want to phrase that, we have a monetary difference of what we have now versus what we should have had, then they will contact us.

They also give a weekly report of, like, new cases that are filed, whether we have a loss in those cases

Hopkins

or not.

We have -- after I got there, we added a fifth firm, so we have five firms doing that.

BY MR. SINNOTT:

Q And who are those five firms?

A The first is Labaton, the firm I'm here with today; Bernstein Litowitz, a firm based here in New York; we have Kaplan Fox -- with a K, Kaplan Fox -- based here in New York; we have Kessler Topaz, T-o-p-a-z, based in -- I'll just say Philadelphia -- they may be in a suburb of Philadelphia -- and then we have Nix Patterson out of Texas. I think they have three or four Texas offices.

I hope that was five.

Q I think it was.

And you do not pay a retainer to those firms?

A We never pay these firms anything.

Q Do you have to secure approval, as you do with the local firms, or the retirement-based firms that you were describing

Hopkins

There was a great deal of pressure on us to do another -- what we call an RFP, because a firm that got looked over accidentally wasn't sent notice that we were doing the RFP, the legislature really wanted us to do another one, and we did, and that's how we added a fifth firm, which was Kessler Topaz.

Q Now, since you became executive director in late 2008-early 2009, in how many cases has ARTRS acted as a class representative?

A I haven't added that up. I would probably say 30.

Q And typically the work has been among those five firms?

A Yes. There's only five firms that we have doing that.

Q How many of those cases have involved foreign exchange transactions?

A One.

Q What was that case?

A Arkansas Teacher Retirement versus State Street.

Q And we'll talk about that in just a moment, but was there also a case

Hopkins

Q What's the nature of that case, and then ARTRS's role in it?

A That's a currently active case in which I think we have a mediation coming up in August.

Q And where is that case?

A I believe that's in front of Judge Wolf.

Q In the District of Massachusetts?

A Right.

These cases are typically tied based upon the home location of the corporate headquarters of these entities.

Q And is your system the lead plaintiff in this matter?

A Yes.

Q Now, in addition to your experience as executive director in class actions, have you had professional experience as a practitioner?

A I was a practicing attorney in an office in Malvern, Arkansas for over 20 years, yes.

Hopkins

Q And could you just briefly describe your experience in class action matters?

A Well, for whatever reason, in our area of Arkansas, there were a lot of class actions filed, and the outside firms and firms that weren't really familiar with the judges would often, you know, come and hire local attorneys to be just that, local attorneys, to sort of -- if something had to be -- back in the day, before electronic filing, which is a fairly new advent, there would be documents delivered, had to be made sure filed in court on a certain day, that kind of thing, and just what I'll call -- more of an administrative attorney than, you know, the guts and doing all the research.

It wasn't uncommon that I would be hired as an attorney to work in those cases.

Examples of those cases was a case -- and I don't remember the name of it -- concerning animal -- animal vitamins, and overcharges on that. I was -- I represented, as local counsel, the Bridgestone Tire in the Bronco rollover that had an issue filed there

Hopkins

about, you know, the cost of people having to wait to get their cars fixed and that kind of thing, but over time I was probably involved in four or five class action lawsuits, and actually I represented some attorneys who got in a fee dispute over a class action lawsuit over these check cashing places.

Q Do you think that your experience professionally as a legal practitioner has been an advantage to you in your current role?

A I will say this: Yes, absolutely.

Q How so?

A Well, first of all, I sort of saw how these cases were, you know, brought from the ground up, all the interactions of the attorneys, you know -- and having been in court -- you know, I tried capital murder cases; whatever you name, I tried. I tried jury trials, I did a little bit of everything, and doing all those cases, and especially the securities cases, you sort of see what's puffery, what's real, what's not real, what

Hopkins

attorneys are ready to go to trial, what attorneys are desperate to settle because they could never go to trial because they'd never be ready. To an extent, doing what I did, you can separate the wheat from the chaff.

Q Thank you.

Let's talk about the State Street case.

A Okay.

Q And tell us, Mr. Hopkins, how you first got involved in this matter.

A Well, just like I got up about 5 o'clock this morning, and I started looking at all the financial markets and news, and somewhere in -- you could probably look about the time, and I don't know exactly what time that was where the State of California's qui tam cases against State Street were unsealed about the State of California planning to file a lawsuit, or had a lawsuit filed claiming that State Street had -- that State Street, you know, had overcharged California pension plans on FX charges.

I noted that lawsuit, and got a

Hopkins

little curious, but I thought -- you know, I'm not saying anything against California people, but sometimes they think about things differently than some of the rest of us do, so I didn't get two excited.

Then it wasn't long thereafter I saw that the State of Washington had settled a multi-million dollar claim with State Street over FX charges.

And, you know, once may be an anomaly. When you have two, I started looking.

So I had -- we had entered into a custodial -- State Street's been our custodial bank a long time. But remember that seven-year rule? Right at the time I got there, they had already done an RFP, so State Street, right -- you know, probably in early 2009, that contract with State Street was started for another seven-year run, and I was just doing good trying to find where all the bathrooms were and trying to deal with all the issues I had just to learn about a system that had all those bells and whistles on it, and focus on a custodial contract really wasn't my focus. So I really

Hopkins

hadn't -- I read over it, but I really didn't even know what some of the things they did for us were at the time when I first got started.

But I pulled the contract back out and read it with great interest, especially in the FX area, and then I started asking, you know, staff that had been there for a while, "What do we do on FX," and they really didn't know either. Because we really don't trade -- Arkansas Teacher Retirement, we do not have a trading desk, we do not trade stocks or bonds. We have outside managers do that, we do not do it internally. So we really don't focus on that. We hire good managers we expect to focus on it. But my focus was there, and so reading that contract, it seemed to me that I didn't see where they could charge us for FX, except in certain very limited positions.

So I -- as I had done a few times before, I started contacting the outside attorneys to say, "Do you know anything about these cases? Do you know anything about FX?"

And I really don't call Nix Patterson because they're a Texas law firm and

Hopkins

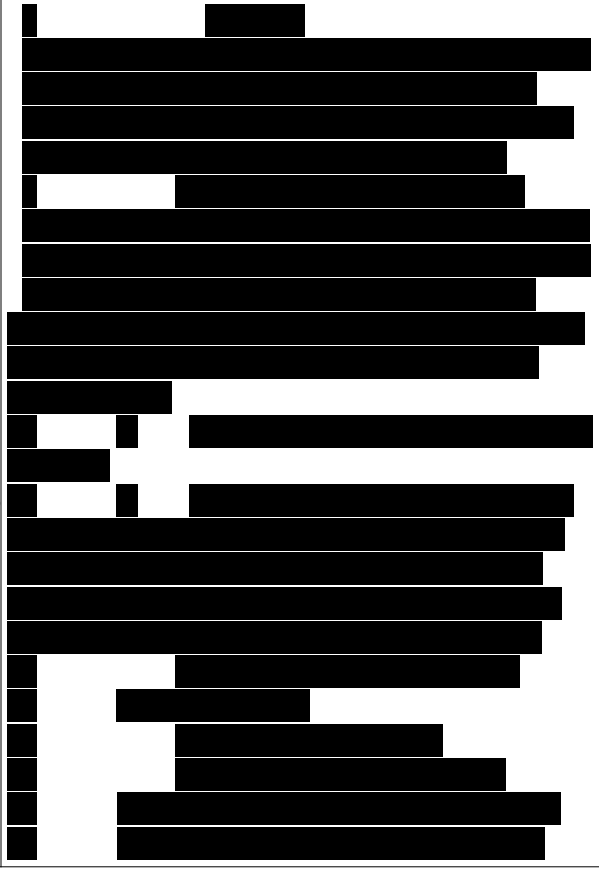
they do what they do. I did not call Kaplan Fox, because they're smaller, and I knew that would not be an area that they would have focused on. But I talked to Bernstein Litowitz and I talked to Labaton, and Labaton quickly said, "Hey, if you think there's an issue there, we'll look at it."

So I said -- so I sent them our contract. And by then I'd also tried -- I had gotten from some of our managers what I call the trading sheets, you know, for the repatriation of FX, because -- and I sent that to Labaton, and very quickly learned that Labaton had hired an outside group that had -- they had concerns about whether we were -- whether what we were being charged was proper.

Q In addition to Labaton, did you consult with any economic consulting firms, non-lawyers?

A Not at -- not at -- well, I probably...

With our general financial consultant, which at the time was Ennis Kannup, that is now Aon Hewitt, our contact there, PJ



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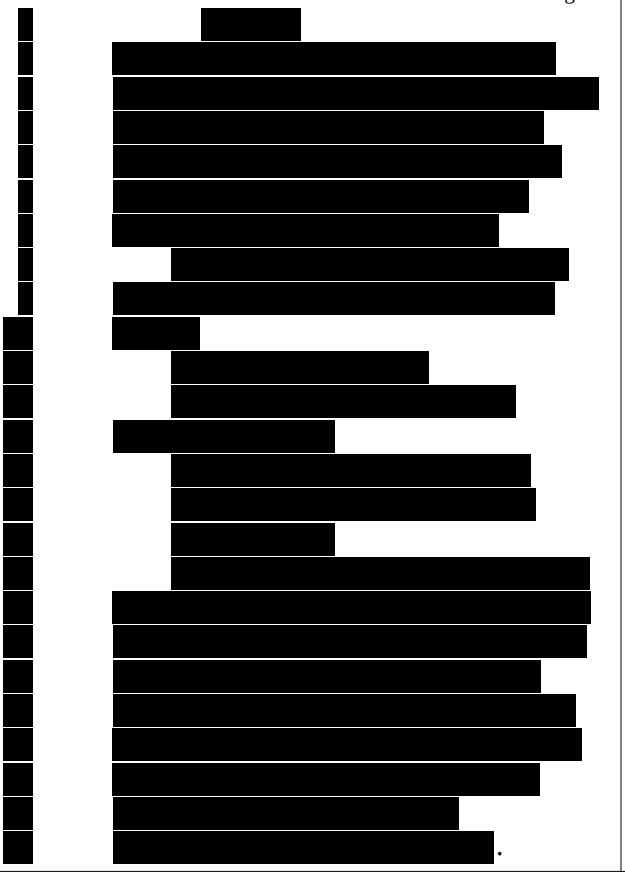

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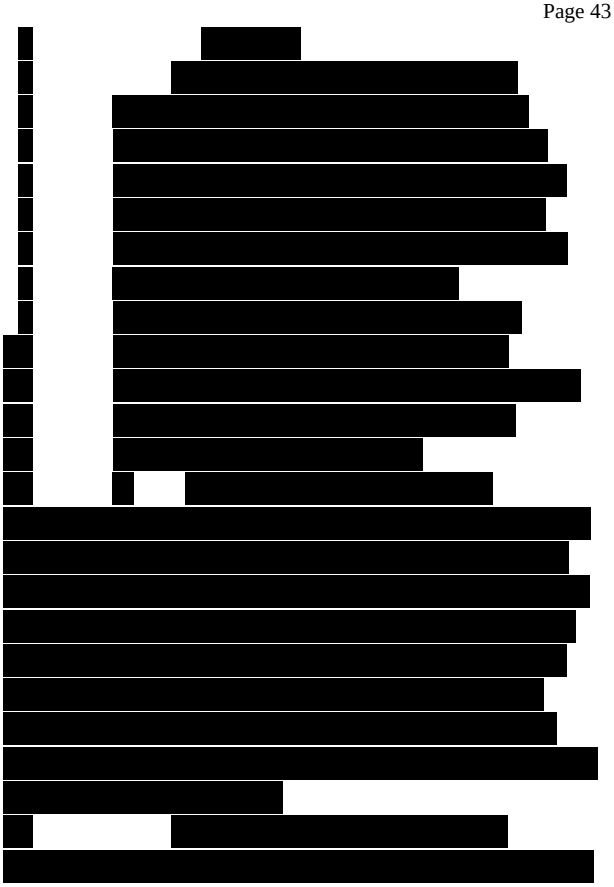

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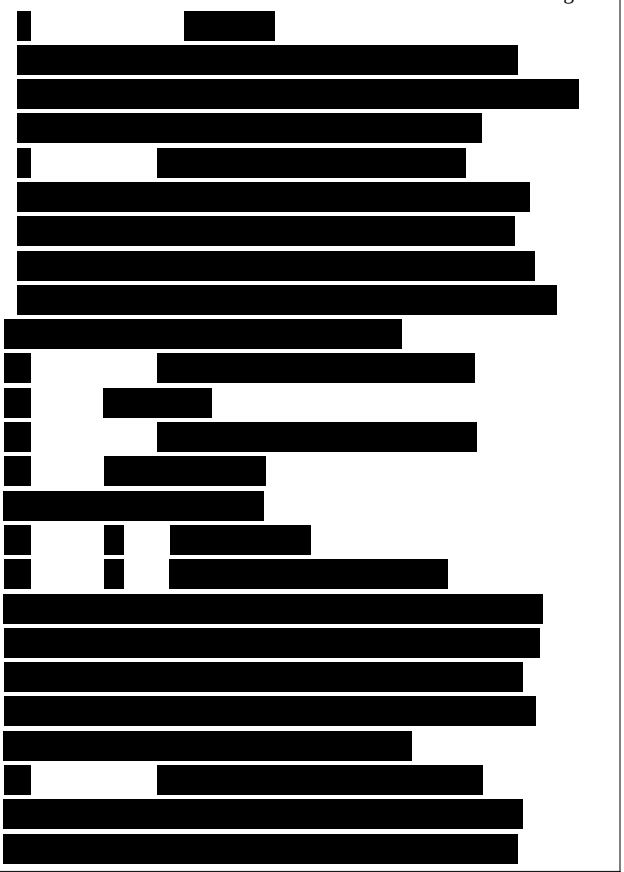

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with State Street through their index fund process, securities lending programs, a lot of --
JUDGE ROSEN: So is State Street still your custodial bank?
THE WITNESS: State Street is our custodial bank.
Q So what did FX Transparencies and Labaton, and I guess your consulting firm, even though they cautioned against it, what did they tell you was going on, or what did you come to learn was happening with State Street foreign exchanges?
A That -- you know, that -- that often our trades were never -- you know, you would think on average, if you're sitting there flipping a quarter, on average you're going to get about half heads, half tails; you know, sometimes you have a bad trade, sometimes you have a good. We were always on the wrong side, and sometimes we were outside what's called the range of the day on trades. Meaning that if you have -- and FX is different from stock, but I'll give a stock example.

Hopkins

our custodial bank, so I went back and got authorized from them to file this lawsuit.

Q And tell us about the filing of the lawsuit, what your participation was in it.

A Well, I had already learned a lot about what was happening, but I've always been a curious person, and I've -- if I have a responsibility, I like to take it, so we -- I started looking at drafts of the complaint, and, you know, saying "What about this? What about that?"

So I won't say I helped draft the complaint. I helped -- what would you say -- tweak it occasionally.

And then, after the complaint was filed, of course there was a motion to dismiss filed by State Street, and then there was a response to the motion to dismiss.

I went to the -- I felt like -- I wanted to see how State Street treated this in court, and so I went to the motion to dismiss hearing and listened to all the arguments.

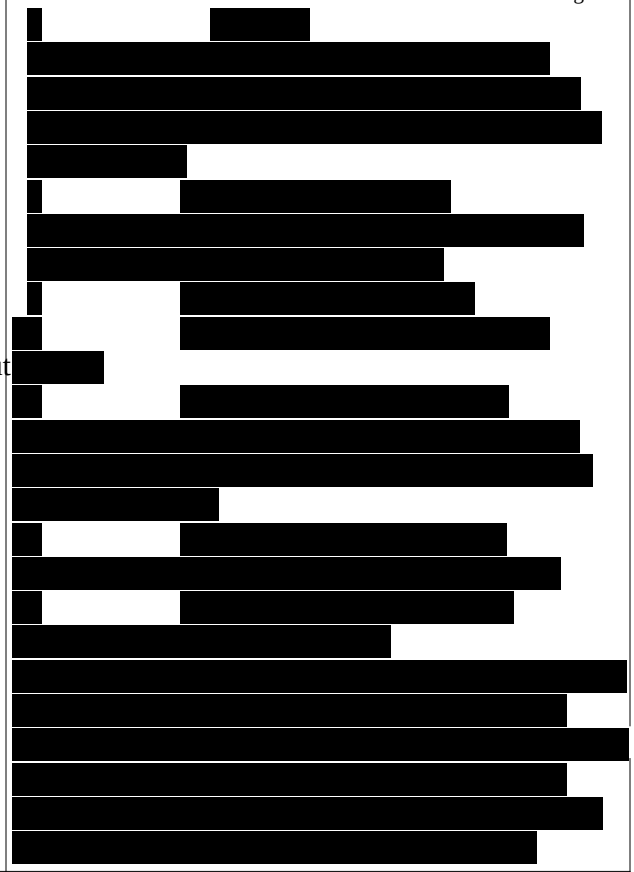
Judge Wolf at the conclusion of it essentially indicated he was going to let it

Hopkins

go forward, but then he asked the parties to come back into his chamber area. And at that point Judge Wolf suggested that, you know, this might be a good case to settle early, and wanted to know if I was willing to settle with State Street. I said "Sure, I am."

Of course, you know -- I didn't even ask Labaton. Of course, by then I know they had already spent a lot of money and time and effort trying to put together this case, and had already started putting together information from us, had already hired experts, but at that -- you know what, that's what they sign on for when they sign on with us; sometimes they may spend a lot of money -- we don't -- we don't pay it, so we sit down, and I told them I wanted -- I didn't even ask them, I just said I wanted to try to settle with State Street. And so I think the judge gave us two or three months to come back and report whether we had had any success.

We -- the State Street, by the time we had that meeting, just really didn't show much indication they wanted to settle



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were our custodial bank, we still had to have lines of communication, I didn't want to be going through a law firm, so we had a very informal discovery process. And we continued telling Judge Wolf that -- you know, that we continued trying to find middle ground.

We did informal discovery, very massive discovery, but not more of that in-your-face kind of stuff that Judge Rosen as a judge had to mediate that -- you know, the people acting like third graders, you know, fighting over a toy.

And it was done very professionally on both sides, but very aggressively, and we continued going to mediation.

I don't know how many mediations I went to, but I'd say it was at least half a dozen; some here, some in Boston. I didn't suggest one in Little Rock -- they probably wouldn't have come anyway.

But I continued to read things, and since I -- and honestly, you know, there were arguments they were making about whether

Hopkins

they were fiduciaries, you know.

And, of course, even Judge Wolf at one of those hearings said, "Well, why -- if you have all these problems with them, why are they still your custodial bank?" And the fair answer to that on the record is, "You know, after seeing -- after talking to my financial consultants and reading all I had, you know, I think all these banks, all this is a money center that nobody's paying attention to, it's sort of gouged, and State Street was probably not as bad, you know, as some of the rest of them."

I mean, it's just a question of -- they had all -- they had all acted inappropriately, in my mind, but during this process I realized that there's probably a culture at State Street that probably internally frowned on this once it was uncovered. And I like State Street, you know.

Mr. Carp, that I ended up having a lot of one-on-one dealings with --

JUDGE ROSEN: Was he the one you had the first meeting with?

Hopkins

THE WITNESS: No. No, he was not.

For whatever reason, I don't think that guy showed up after that first mediation.

A But Mr. Carp was an internal attorney, and he and I actually started having discussions, at my request, at these mediations.

Q And that's Jeffrey Karp, K-a-r-p?

MS. LUKEY: C-a-r-p.

A [redacted]

He was a good man, and I got the clear idea that they wanted to do right by us, and those others, and at the same time they weren't going to pay us a penny more than what they thought they had to.

Q But you felt like you and

Hopkins

Mr. Carp had a rapport?

A We did.

JUDGE ROSEN: Could I ask, there had been a previous settlement with Washington State. Did that provide any kind of a template or model for the parties to work off of in settling this case?

THE WITNESS: Not at all. And I'll tell you why. First of all, it was a one-off settlement. And apparently -- ultimately, Mr. Paine, he wasn't -- he was at, I think, all of them -- he became lead later.

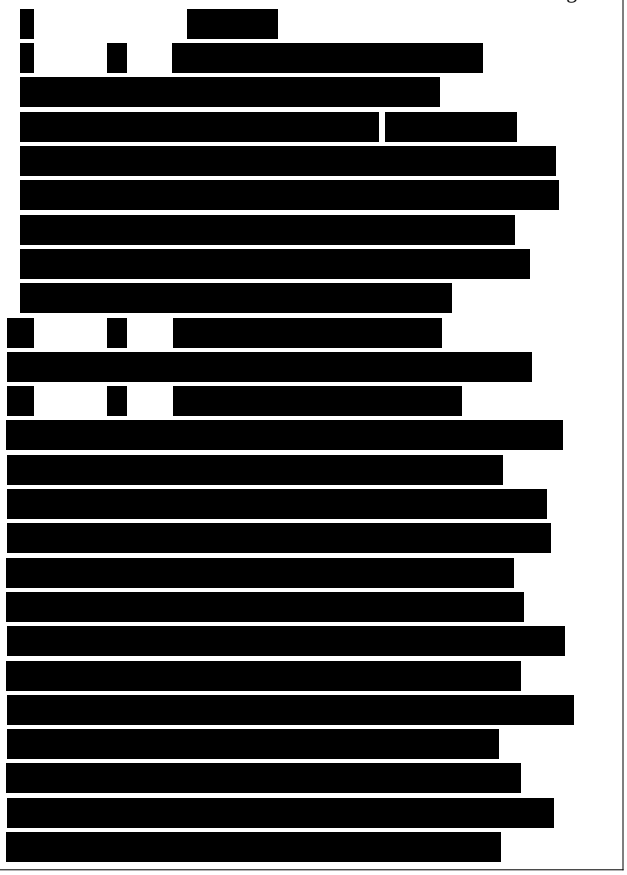
I'm trying to think of the older attorney who's the scholar.

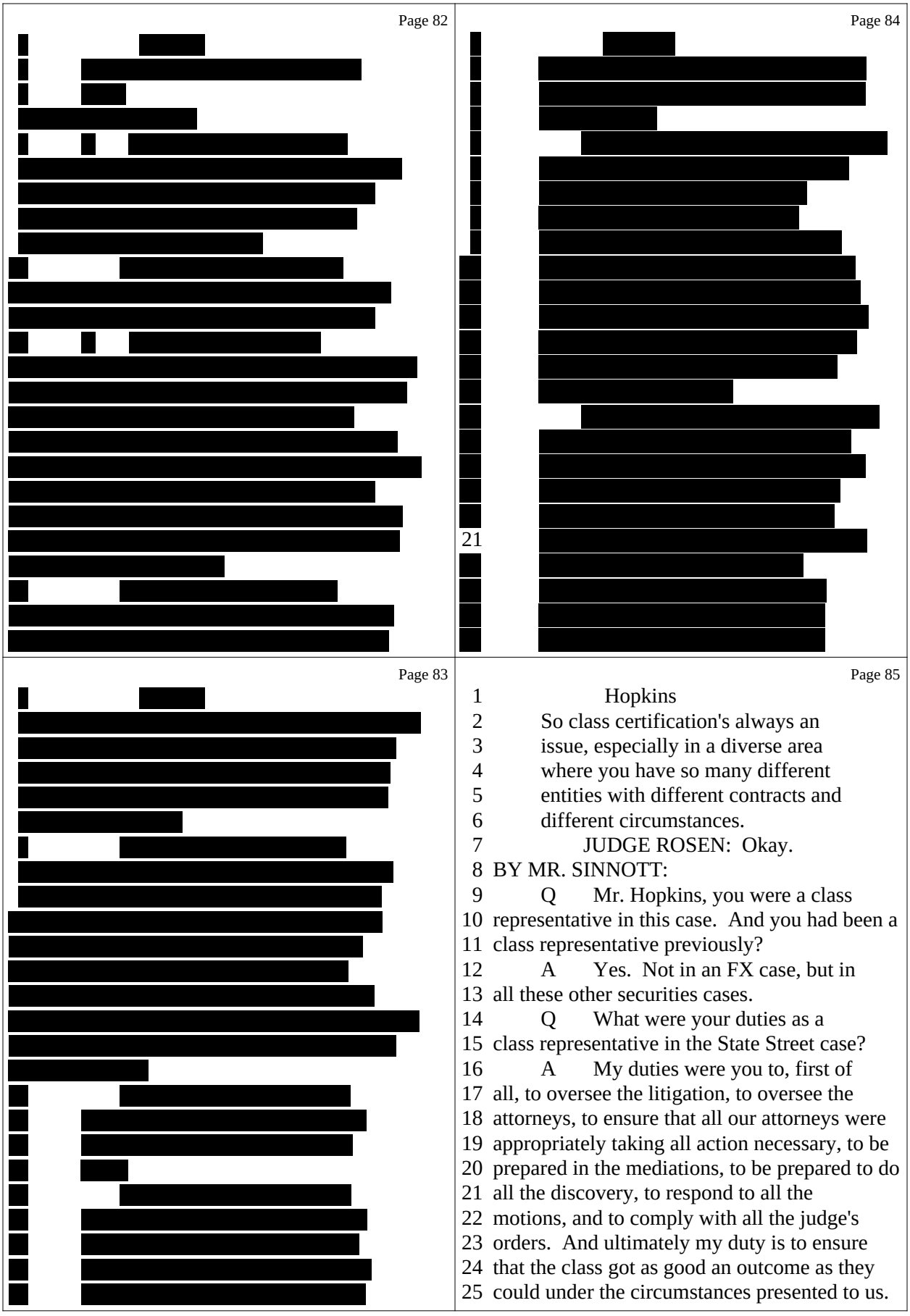
Q Mr. Rudman?

A Mr. Rudman.

I could tell I was outclassed when I said two sentences of a Rudyard Kipling quote and then he went off for five minutes finishing the whole rest of the chapter without looking down.

JUDGE ROSEN: Gunga Din.





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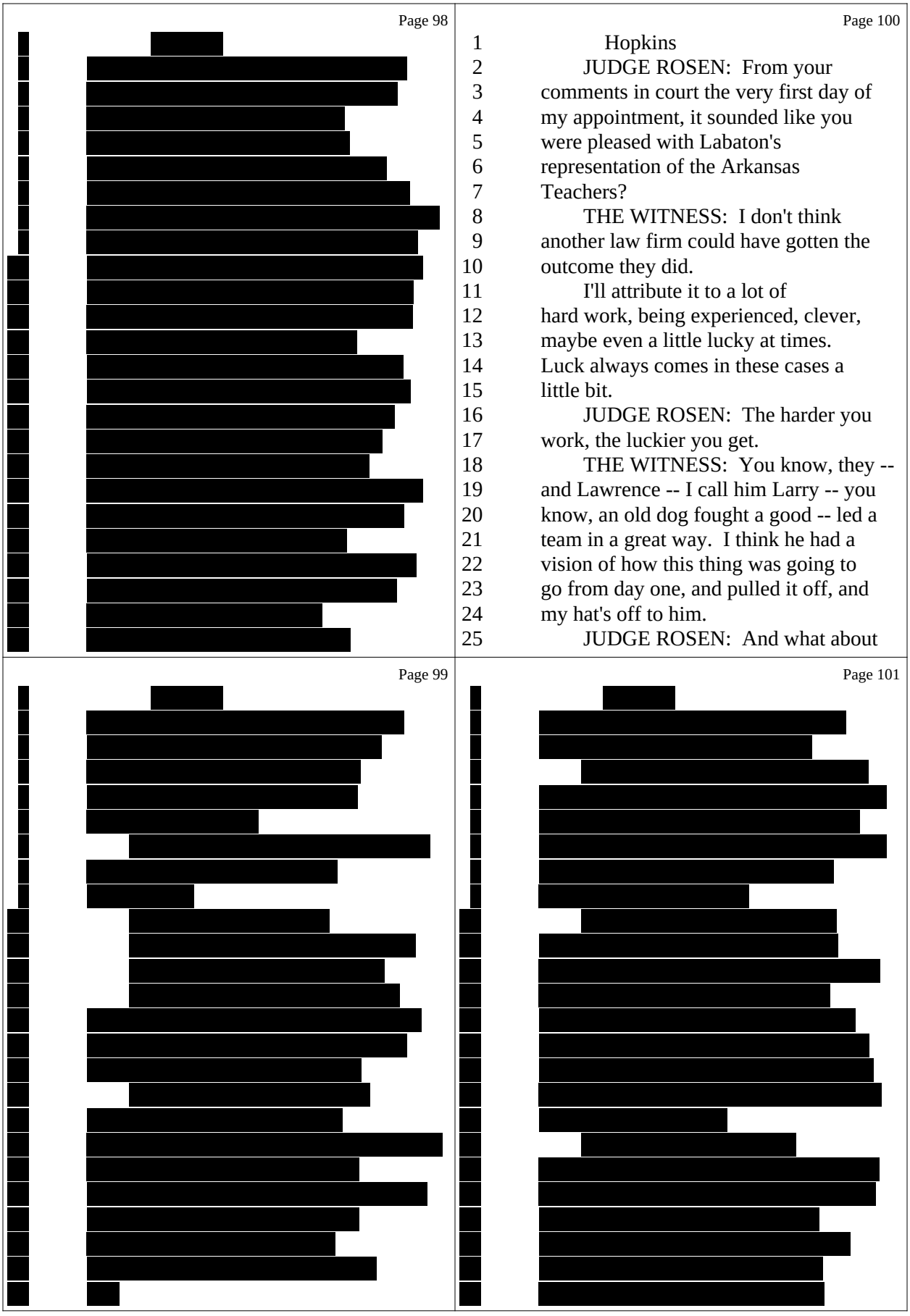
So class certification's always an issue, especially in a diverse area where you have so many different entities with different contracts and different circumstances.
JUDGE ROSEN: Okay.
BY MR. SINNOTT:
Q Mr. Hopkins, you were a class representative in this case. And you had been a class representative previously?
A Yes. Not in an FX case, but in all these other securities cases.
Q What were your duties as a class representative in the State Street case?
A My duties were you to, first of all, to oversee the litigation, to oversee the attorneys, to ensure that all our attorneys were appropriately taking all action necessary, to be prepared in the mediations, to be prepared to do all the discovery, to respond to all the motions, and to comply with all the judge's orders. And ultimately my duty is to ensure that the class got as good an outcome as they could under the circumstances presented to us.



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JUDGE ROSEN: From your comments in court the very first day of my appointment, it sounded like you were pleased with Labaton's representation of the Arkansas Teachers?

THE WITNESS: I don't think another law firm could have gotten the outcome they did.

I'll attribute it to a lot of hard work, being experienced, clever, maybe even a little lucky at times. Luck always comes in these cases a little bit.

JUDGE ROSEN: The harder you work, the luckier you get.

THE WITNESS: You know, they -- and Lawrence -- I call him Larry -- you know, an old dog fought a good -- led a team in a great way. I think he had a vision of how this thing was going to go from day one, and pulled it off, and my hat's off to him.

JUDGE ROSEN: And what about

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Fierce, but also timely.

JUDGE ROSEN: And speaking of work and hours spent, are you able to estimate how much time you put into it personally?

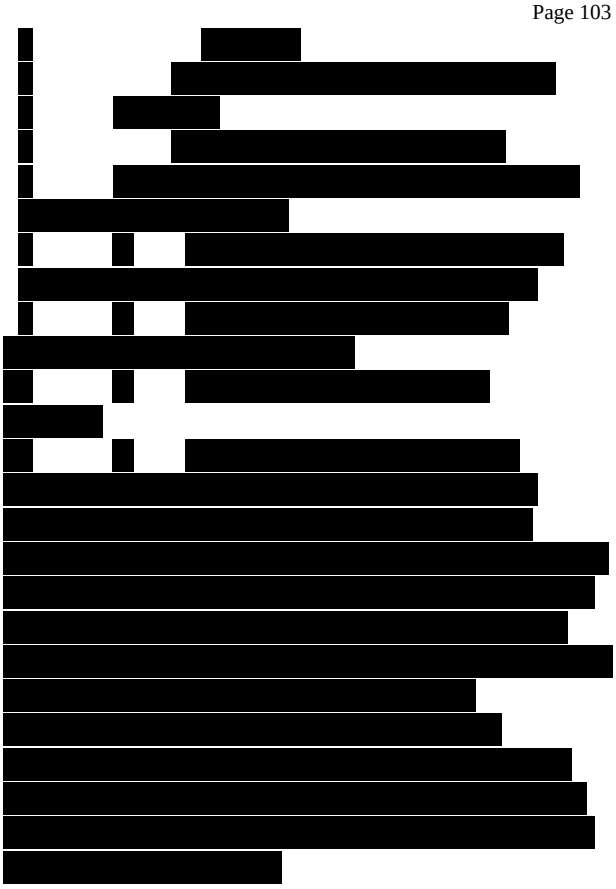
THE WITNESS: A lot.

You know, when -- when I -- when they asked me to prepare the documents for the service fee, I tried to be conservative. In terms of the -- I'm trying to think in terms of the hours.

I'd have to say, when you really got down to it, and sometimes the calls at night and meetings, and the mediations, and not necessarily including just think time, but several hundred hours.

JUDGE ROSEN: Just guessing, on these calls my guess is most of them were not short, brief calls?

THE WITNESS: I can't be short, if you've already figured that out, Your Honor. My attorney --



Hopkins

Q And you felt that was fair and reasonable?

A Right.

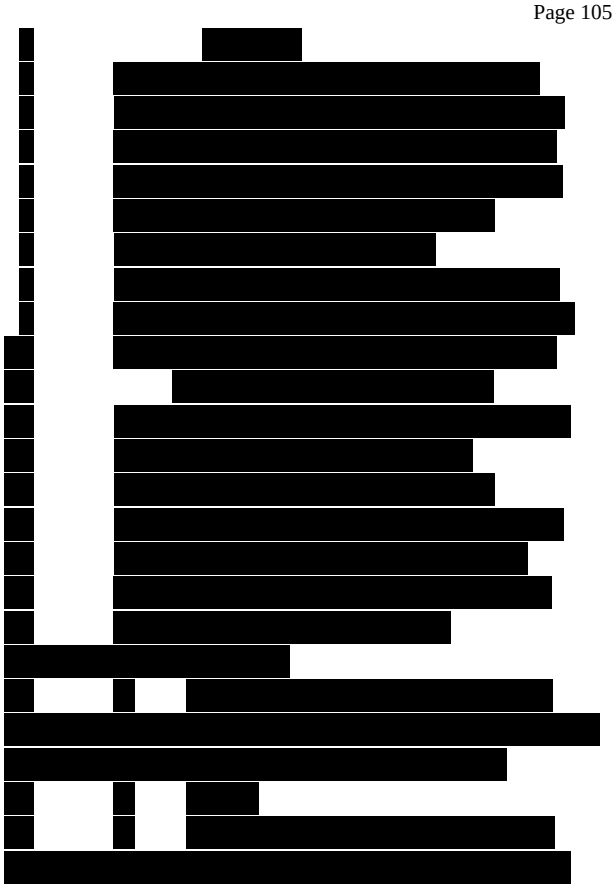
Let me go back to service fee for one second.

I wasn't the only one at ATRS who was involved in this case. We hired a temporary person, who sat there for several months in front of a scanner, scanning in all these documents. Also had other -- you know, we had IT staff preparing all the electronic things, and I have people I regularly involve, like Rod Graves, who helps me think through and talk about this and review documents.

So when the service fee -- by the way, that service fee was not a George Hopkins service fee, I did not get a penny of that. It all -- that $25,000 went into our trust fund to pay member benefits.

JUDGE ROSEN: How did you find out that there was the possibility of a service fee, that that was going to be proposed to Judge Wolf?

THE WITNESS: Well, you know,



EX. 5

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-10230 MLW
ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, STATE STREET GLOBAL MARKETS, LLC and DOES 1-20, Defendants.	No. 11-cv-12049 MLW
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on behalf of itself, and JAMES PEHOUSHEK-STANGELAND, and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

DECLARATION OF GEORGE HOPKINS IN SUPPORT OF FINAL APPROVAL OF CLASS SETTLEMENT, AWARD OF ATTORNEYS' FEES, PAYMENT OF LITIGATION EXPENSES, AND PAYMENT OF SERVICE AWARD TO ARTRS

I, GEORGE HOPKINS, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am the Executive Director of the Arkansas Teacher Retirement System ("ARTRS"), one of the Plaintiffs and Settlement Class representatives in the above-captioned Class Actions (collectively, the "Action").[1]

2. ARTRS, established in March 1937, offers a government-sponsored, defined benefit retirement plan for the current and former employees of Arkansas public schools and educationally related agencies. ARTRS is based in Little Rock, Arkansas and manages more than $14 billion in assets on behalf of approximately 100,000 employees.

3. I respectfully submit this declaration in support of Plaintiffs' motion for final approval of the proposed Class Settlement and Lead Counsel's motion for an award of attorneys' fees, payment of Litigation Expenses, and payment of a Service Award to ARTRS in the amount of $25,000.00. I have personal knowledge of the matters set forth herein based on my active supervision and participation in the prosecution and settlement of this Action.

4. ARTRS is a large, sophisticated institutional investor that has served as a plaintiff and class representative in many securities and shareholder litigations. In particular, ARTRS has been appointed as a lead plaintiff in numerous securities class actions pursuant to the Private Securities Litigation Reform Act of 1995. In March 2016, this Court appointed ARTRS as a lead plaintiff in the *Insulet* securities class action, C.A. No. 15-12345-MLW (D. Mass.).

5. As an experienced litigant, ARTRS, and I personally, have an understanding of ARTRS's fiduciary responsibility to serve the interests of the Class by, among other things, overseeing and participating in the prosecution and management of the Action and committing itself to achieving the best possible result.

---

[1] Capitalized terms used herein have the same meanings set forth in the Stipulation and Agreement of Settlement, dated as of July 26, 2016 (the "Settlement Agreement," ECF No. 89).

6. State Street Bank & Trust Company ("State Street") has been ARTRS's custodian since September 1998. In late 2009, I learned that the Attorney General of California had become involved in a whistleblower litigation that had been filed against State Street concerning FX, and that the allegations of the whistleblower lawsuit and the California Attorney General's allegations were now public.

7. I asked Labaton Sucharow LLP ("Labaton Sucharow"), which has been one of ARTRS's outside counsel for many years, to investigate what class and individual claims ARTRS may have against State Street.

8. Later, I approved Labaton Sucharow's decision to associate with the Thornton Law Firm ("TLF") and Lieff Cabraser Heimann & Bernstein LLP in view of their unique knowledge arising from their involvement in the whistleblower lawsuit.

9. Ennis Knupp & Associates ("Ennis Knupp") was a consultant engaged by ARTRS to oversee its investment managers and the performance of its investment portfolios. In consultation with Labaton Sucharow, I decided to seek Ennis Knupp's views on FX issues and potential claims against State Street from its perspective. On September 9, 2010, Labaton Sucharow, TLF, and I met in Chicago with representatives of Ennis Knupp. The discussion during the meeting generally supported the belief that ARTRS had claims against State Street concerning FX.

10. Because filing an action against ARTRS's current custodian bank would be a substantial step (even for an institutional investor accustomed to litigation), I decided to meet with State Street in advance of authorizing Labaton Sucharow to file suit. On December 20, 2010, Labaton Sucharow, TLF, and I met in Boston with in-house legal and business

representatives of State Street, State Street's outside counsel. The meeting was unproductive, and I authorized counsel to file a complaint.

11. Since the Action was commenced, I have been the primary person overseeing the Action on behalf of ARTRS. I have monitored and been engaged in all material aspects of the prosecution and resolution of this litigation, and I regularly update the Board of Trustees regarding the status of the Action.

12. During the course of this Action, I conferred with Labaton Sucharow in person, by telephone, and by e-mail on innumerable occasions concerning litigation and settlement developments, and strategy. These discussions included understanding Labaton Sucharow's views concerning the reasonableness of the proposed Settlement against the risks, costs and duration of continued litigation, and also an understanding of how the Settlement worked in terms of the involvement of the government agencies. I reviewed material court papers, including the initial Complaint, Amended Complaint, Memorandum of Law in Opposition to Defendants' Motion to Dismiss, and various settlement documents, in advance of their being filed with the Court.

13. I personally attended the Court's May 8, 2012 hearing on Defendants' motion to dismiss and lobby conference thereafter.

14. I also personally attended and participated in the mediation sessions on June 22, 2012 (in Boston); October 23-24, 2012 (in Boston); May 9, 2014 (in New York City); February 4, 2015 (in Boston); February 26, 2015 (in New York City); and June 26, 2015 (in Boston). During certain of these sessions, when the lawyers for the parties appeared to be at loggerheads, I met privately, one-on-one, with State Street's Chief Legal Officer in an effort to move the negotiations forward.

15. Rodney Graves, Senior Investment Manager for ARTRS, and Chris Ausbrooks, IT Manager, working under my direction and supervision, assisted Labaton Sucharow in responding to requests for information from State Street and producing documents and other materials. ARTRS produced approximately 73,000 pages of documents concerning the full scope of its custodial relationship with State Street.

16. The substantial amount of time (including travel time) that I dedicated to this litigation in furtherance of ARTRS's obligations as a plaintiff and class representative was time spent away from my usual duties and responsibilities as Executive Director of ARTRS. The same is true for Mr. Graves and Mr. Ausbrooks as well.

17. Based on its close involvement in the prosecution and protracted mediation and settlement process of this Action, and general experience as a class representative in other class actions, ARTRS believes the proposed Settlement is fair, adequate and reasonable to ARTRS and the Settlement Class in view of the risks, costs, and duration of ongoing litigation, and should be approved by the Court.

18. ARTRS wishes to commend Labaton Sucharow, and all Plaintiffs' Counsel, for obtaining an excellent result here through an innovative mediation and discovery process that saved the Parties substantial litigation costs and avoided unnecessary judicial intervention.

19. Based on its close involvement in the prosecution and protracted mediation and settlement process of this Action, and general experience as a class representative in other class actions, ARTRS believes that the requested attorneys' fee of $74,541,250.00 (plus accrued interest, if any) is reasonable and should be awarded. ARTRS has evaluated the requested fee in view of the range of percentage fees awarded by courts within the First Circuit generally and in comparable-size settlements, the substantial recovery obtained for the Settlement Class, the risks

and challenges of the Action, and the time spent and quality of work performed. ARTRS is also aware that Labaton Sucharow will devote additional time going forward to administering the Settlement and distributing the Net Class Settlement Fund, without seeking additional fees.

20. ARTRS further believes that the Litigation Expenses for which Labaton Sucharow and other Plaintiffs' Counsel request reimbursement, totaling no more than $1.75 million, are typical and reasonable, and represent the costs and expenses that were necessary for the successful prosecution and resolution of this Action.

21. Accordingly, ARTRS respectfully requests that the Court approve the Settlement, award the requested attorneys' fee, award the requested Litigation Expenses, and approve a Service Award to ARTRS of $25,000.00.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 14th, 2016.

GEORGE HOPKINS

EX. 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on Behalf of Itself and All Others Similarly Situated, Plaintiffs, -against- STATE STREET CORPORATION, STATE STREET BANK AND TRUST COMPANY, and STATE STREET GLOBAL MARKETS, LLC, Defendants.	**CIVIL ACTION NO. _____** **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Arkansas Teacher Retirement System ("ARTRS"), individually and on behalf of all other persons similarly situated, by its undersigned attorneys, makes the following allegations against Defendants State Street Corporation, State Street Bank and Trust Company ("State Street Bank" or the "Bank"), and State Street Global Markets, LLC ("State Street Global") (collectively, "State Street", or "Defendants") based upon the investigation of counsel, except as to the allegations pertaining specifically to Plaintiff that are based on personal knowledge.

I. INTRODUCTION

1. State Street Bank, through its headquarters in Boston, Massachusetts, serves as the custodian for over 40% of public pension funds in the United States. State Street Bank is the largest such custodian in the country, and had $4.4 trillion in pension assets under custody globally as of March 31, 2010. State Street Bank also serves as the custodian for many non-public investment funds and other investors. As custodian, State Street Bank is responsible, *inter alia*, for undertaking (through affiliates such as State Street Global) the foreign currency

exchange ("FX") transactions necessary to facilitate a custodial customer's purchases or sales of foreign assets or the repatriation other foreign funds.

2. For over a decade, State Street, in violation of Massachusetts law, has maintained an unfair and deceptive practice whereby FX transactions are conducted so as to maximize profits to State Street (stemming from volatility in FX rates) at the expense of a substantial segment of its custodial customers. In sum, Defendants have charged many of their custodial customers (a) inflated FX rates when buying foreign currency for those customers, and (b) deflated FX rates when selling foreign currency for those customers, and pocketed the difference between the actual and reported rates.

3. Defendants' unfair and deceptive practices remained unknown to Plaintiff and the Class because, *inter alia,* the account statements Defendants provided to the affected custodial customers reported the FX transactions as having taken place at unspecified times during a 12 or 24-hour period, and as using FX rates falling within the "high-low" range of that period. However, the FX rates that State Street reported and applied to the transactions for these custodial customers were incorrect. State Street arrived at the reported FX rates "after the fact," often hours after performing the relevant FX transactions for the custodial customers.

4. Defendants' unfair and deceptive FX practice has generated as much as $500 million in profits annually for State Street, or roughly half of State Street's FX profits for the last ten years. This is money taken directly out of the pockets of State Street's custodial customers.

5. ARTRS brings this suit as a class action on behalf of all similarly affected custodial customers of State Street, except those government pension funds that are covered by independent qui tam actions that have been unsealed, or that become unsealed during the

pendency of this action (the "Class"), in order to recover the proceeds unlawfully obtained through State Street's FX activities, and for injunctive relief.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over the claims pursuant to the Court's diversity jurisdiction. 28 U.S.C. § 1332(a), and 28 U.S.C. § 1331 because Count Three arises under federal law.

7. This Court also has jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d)(2)(A) and (C). With respect to CAFA, (i) the amount in controversy exceeds the jurisdictional amount, (ii) the Class consists of hundreds, and perhaps thousands, of injured parties, and (iii) some members of the Class are citizens of States other than those of Defendants.

8. Venue in this judicial District is proper under 28 U.S.C. § 1391(b)(1) and (2). A substantial part of the events or omissions giving rise to the claims occurred within this District. Defendants reside in and transact business in this District. Defendants are citizens of the Commonwealth of Massachusetts and are headquartered in this District.

III. PARTIES

9. Since 2001, and at all times relevant hereto, Defendants and their subsidiaries, have served as the domestic and international custodial bank for the ARTRS' pension fund.[1] Since at least July 1, 2001, Defendants, as custodian for the ARTRS pension fund, have been responsible for executing the purchase, sale and pricing of FX contracts for the accounts of ARTRS.

[1] State Street Bank and Trust also serves as the securities lending agent for the fund.

10. ARTRS is a cost-sharing, multiple-employer defined benefit pension plan that covers any person employed by an employer covered by ARTRS. ARTRS employers include any public school, public educational agency, or other eligible employer participating in ARTRS.

11. As of June 30, 2009, ARTRS included 343 participating employers and more than 115,000 members. Since 2001, ARTRS employers have made actual contributions to ARTRS of $2,436,510,000.

12. As of June 30, 2009, ARTRS possessed net pension assets of approximately $8,802,987,225. As of the same date, ARTRS's net assets represented a funding ratio of 75.7% funded, reflecting an amortized funding horizon of 45.4 years.

13. As of June 30, 2009, ARTRS maintained a "Global Equity" asset class target percentage of 30% of ARTRS assets. As of the last annual report, ARTRS maintained an actual Global Equity investment percentage of 28.9%, reflecting a total international investment of $2,542,601,000. ARTRS's Global Equity investments are the single largest asset class investment for ARTRS.

14. ARTRS paid Defendants $851,413 for custodial fees in fiscal year 2009. The annual fees paid to Defendants by ARTRS do not include the Defendants' hidden FX charges.

15. Defendant State Street Corporation is a Massachusetts corporation headquartered in Suffolk County in Boston, Massachusetts with an address of State Street Financial Center, One Lincoln Street, Boston, MA 02111. State Street provides (or has provided) custodial banking services and FX services to ARTRS and the proposed Class through State Street, State Street Bank and Trust, and their subsidiaries, agents, employees and co-conspirators. State Street's FX trading desk is located in Boston, Massachusetts. State Street Corporation touts

itself and its subsidiaries as the "No. 1 servicer of U.S. pension plans," and as of March 31, 2010, had $4.4 trillion in pension assets under custody globally.

16. Defendant State Street Bank is headquartered in Boston, Massachusetts and has offices in various other states. State Street Bank currently provides (or has provided) custodial banking services and FX services to ARTRS and the proposed Class. State Street Bank is a wholly-owned subsidiary of State Street Corporation.

17. Defendant State Street Global Markets, formerly known as State Street Capital Markets, is headquartered in Boston, Massachusetts and has offices in various other states. State Street Global Markets currently provides (or has provided) custodial banking services and FX services to ARTRS and the proposed Class. In particular, State Street Global Markets provides specialized investment research and trading in foreign exchange, equities, fixed income and derivatives for State Street's custodial customers. State Street Global Markets is a wholly-owned subsidiary of State Street Corporation.

18. At all relevant times, each of the Defendants was and is the agent, employee, employer, joint venturer, representative, alter ego, subsidiary and/or partner of one or more of the other Defendants, and was, in performing the acts complained of herein, acting within the scope of such agency, employment, joint venture, or partnership authority, and/or is in some other way responsible for the acts of one or more of the other Defendants.

IV. CLASS ACTION ALLEGATIONS

19. This action is brought and may properly be maintained as a class action pursuant to Rules 23(a)(1)-(4), and 23(b)(2) and (3) of the Federal Rules of Civil Procedure and Mass. Gen. Laws c. 93A, § 11. This action satisfies the procedural requirements set forth by Rule 23 and c. 93A, § 11.

20. This suit is a class action brought on behalf of a Class defined as all public and private pension funds, mutual funds, endowment funds, investment manager funds, and any other funds for whom State Street Bank served as the custodial bank and executed FX trades on an "indirect" or "custody" basis since 1998, except those government pension funds that are covered by independent qui tam actions that have been unsealed, or that become unsealed during the pendency of this action, and which have suffered damages as a result of the conduct alleged herein. It is brought pursuant to Rule 23(b)(2) for injunctive or declaratory relief, and Rule 23(b)(3) for money damages.

21. Also excluded from the Class are Defendants, any entity in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or assigns of any such individual or entity.

22. The members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impracticable.

23. There are questions of law and fact common to the Class, including:

(a) Did Defendants engage in unfair and deceptive acts and practices in connection with FX transactions so as to maximize profits to Defendants at the expense of their custodial customers?

(b) Did Defendants charge their custodial customers incorrect FX rates, and pocket the difference between the actual and incorrect rates?

(c) Did Defendants provide account statements to their custodial customers that reported incorrect FX rates?

(d) Did the Defendant's actions with respect to the Class violate the Massachusetts Consumer Protection Act, Mass. Gen. Laws c. 93A, and Massachusetts common law?

(e) Did Plaintiff and Class members suffer monetary damages as a result of the Defendant's actions and if so, what is the proper measure of those damages?

(f) Is the Class entitled to injunctive relief?

24. Plaintiff's claims are typical of the claims of the members of the Class and the named Plaintiff is a member of the Class described herein.

25. The named Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiff will fairly and adequately protect the interests of the Class and has no interests adverse to or which directly and irrevocably conflict with the interests of other members of the class.

26. The interests of the named Plaintiff are co-extensive with, and not antagonistic to, those of the absent Class members. The named Plaintiff will undertake to represent and protect the interests of absent Class members.

27. The named Plaintiff has engaged the services of the undersigned counsel. These counsel are experienced in complex class action litigation, will adequately prosecute this action, and will assert and protect the rights of, and otherwise represent, the named Plaintiff and absent Class members.

28. The questions of law and fact common to the Class, as summarized in ¶ 23 above, predominate over any questions affecting only individual members, in satisfaction of Rule 23(b)(3), and each such common question warrants class certification under Rule 23(c)(4).

29. A class action is superior to other available methods for the adjudication of this controversy. Individualized litigation increases the delay and expense to all parties and the court system given the complex legal and factual issues of the case, and judicial determination of the common legal and factual issues essential to this case would be far more fair, efficient and economical as a class action maintained in this forum than in piecemeal individual determinations.

30. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. Compared to individualized actions, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

31. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the Class.

32. In the alternative, the above-referenced Class may be certified under Rule 23(b)(1) because:

(a) The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class members' claims which would establish incompatible standards of conduct for Defendants; and

(b) The prosecution of separate actions by individual members of the Class would create a risk of adjudications which would as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or which would substantially impair or impede the ability of other Class members to protect their interests.

V. DEFENDANTS' FX PRICING PRACTICES

A. Background On Defendants' Relationship With Custodial Customers

33. State Street holds itself out on its website as the "No. 1 servicer of U.S. pension plans" and the "leading custodian worldwide." In its Annual Report on Form 10-K for fiscal year end December 31, 2007, State Street reported that it had $15.3 trillion in assets under custody and $1.98 trillion in assets under management as of December 31, 2007. Assets under custody grew at a compound annual rate of 13% between 2004 and 2007, according to the 2007 10-K. In the 2007 Annual Report to Shareholders, Ronald Logue, State Street's Chief Executive Officer, stated that State Street had achieved 30 consecutive years of growth in operating earnings per share.

34. For 2008, notwithstanding the troubled economic climate, State Street continued to report positive growth in operating earnings per share.

35. According to State Street's 2007 Form 10-K, "fee revenue" from "trading services," which includes FX revenue, grew from $862 million in 2006 to $1.152 billion in 2007, an increase of 34%. State Street further reported in its Annual Reports filed with the S.E.C., foreign exchange trading revenues increased from $468 million in 2005 to $611 million in 2006, to $802 million to 2007, and to $1.08 billion in 2008, or an annual increase of 31% in 2006 and 2007 and 35% in 2007 and 2008. Over the past ten years State Street has reported foreign exchange trading revenues of more than $4 billion. Approximately one-half of these revenues were derived from the FX pricing practices alleged herein.

36. State Street reported on its website on January 31, 2008 that it "currently services more than 40 percent of the public fund business in the United States through its dedicated public fund team, with customers in 33 states and the District of Columbia, Puerto Rico and the U.S. Virgin Islands."

37. Neither ARTRS nor the Class authorized Defendants to charge FX rates other than those in effect at the time of the foreign currency trades. Nor have ARTRS or the Class ever approved the retention by Defendants of the difference between the actual FX cost and the incorrect amounts charged by Defendants. Nonetheless, Defendants charged ARTRS and the Class FX rates that were not the actual charges incurred. Defendants then made unfair and deceptive claims and statements regarding higher FX rates than were actually paid by Defendants in connection with purchases of foreign currencies on behalf of ARTRS and the Class, and lower FX rates than were credited to Defendants in connection with sales of foreign currencies on behalf of ARTRS and the Class. Defendants kept the excess of these two rates for themselves. Defendants had no right to retain such monies as "profit" on these FX transactions.

38. When such funds were wrongly kept by Defendants, ARTRS and the Class suffered monetary damages.

39. Upon information and belief, Defendants carried out these unfair or deceptive acts and practices by executing FX transactions requested by the Plaintiff and proposed Class as follows. Upon receipt of a request requiring a FX transaction, Defendants would execute a trade to fill the request at the FX rate at some point thereafter in the trading day.

40. Regardless of the price paid by Defendants for the FX transaction necessitated by the Plaintiff and proposed Class' FX trade, Defendants thereafter charged Plaintiff and proposed Class, a different, less favorable rate than the one at which Defendants actually settled the FX transaction on the interbank market.

41. Regardless of the rate for the FX trade by the Defendants, the Plaintiff and proposed Class would receive a less favorable exchange rate, the extremes of which would only be controlled by the volatility of the market, *i.e.* "range of the day" pricing.

42. By substituting a different FX rate and price for the foreign currency trades of the Plaintiff and proposed Class, Defendants' unfairly and deceptively claimed to have paid a different rate than Defendants had actually paid to settle the trade.

43. By engaging in this practice Defendants unfairly and deceptively collected money directly from, and at the expense of, their custodial clients.

44. Because any reports that the Plaintiff and proposed Class would have received from Defendants would have indicated that each FX transaction was completed at a rate within the range of FX rates prevailing during that day, the Plaintiff and proposed Class were unable to discover this conduct.

45. FX transactions on behalf of the Plaintiff and proposed Class would be initiated by sending a transaction request, usually by electronic means, to the custody side of the Bank, called the Securities Processing Unit. The request would then be sent electronically by custody to the Bank's trading desk, where it would appear on software used by the FX traders, called the Money Order Management System (sometimes also referred to as the "Market Order Management System" or "MOMS").

46. Upon the transaction request appearing in MOMS, the FX trader would check the status of the two currencies involved, set a price, and then execute the FX transaction. The transaction would be executed or "settled" in most cases by the bank trader making a transaction on the interbank FX market – usually through another bank. If the trader did the trade through another bank, a record of the trade would be entered into that other bank's system, and that bank would then send a confirmation of the trade to Defendants.

47. Defendants then confirmed the transaction through a separate software system, called Wall Street Systems[2], which memorialized it. At that point, the unfair and deceptive FX rate, or "spread," was determined and added to the custodial clients' costs. That is, Defendants' FX traders executed the trade at an interbank rate and then the additional cost (for purchases) or remitted a lesser payment (for sales) was added for transmission or charge to the custodial clients, such as the Plaintiff and proposed Class.

48. The FX price actually paid by the Defendants would also be noted by the trader in his or her "blotter," an informal running log or notebook of the trader's currency positions through the day. The Defendants maintain all relevant records of these transactions.

49. By pricing the Bank's custodial FX trades later in the day, the Bank obtained the widest possible "range of the day." Typically, there is at least some FX rate volatility every day, often occurring at times when key financial indices are reported, such as interest rate announcements in major countries. The bigger the range of the day, the bigger the Bank's profits on each custodial FX trade.

51. The difference between actual and charged rates to the Plaintiff and proposed Class can be very large. For example, if a pension fund placed a request to purchase 10 million Euro and the FX rate for EUR is 1.5355 at 10:00 a.m., but then the FX rate goes to 1.5475 at 3:30 p.m., a difference of .0120, the potential "profit" to State Street from their FX practices would be $120,000 (.0120 x 10,000,000 = $120,000).

52. When State Street traded FX, it always did so at the interbank rate. Through the conduct alleged herein, State Street's custodial FX clients never received the interbank rate for their trades.

[2] Prior to Wall Street Systems, Defendants utilized another program that served the same function. That program was known as "IBIS" or "IBS."

53. Damages to the Plaintiff and the proposed Class, however, would be even greater than the amount added to or subtracted from the interbank trade, because by paying the higher rate, proposed Class members would have lost the opportunity for those monies to appreciate. Over a ten or eleven year period, due to compounding and lost investment opportunities, a charge of 1% of the assets of the Plaintiff and proposed Class would grow to damages of approximately 3%. In other words, whatever the size of the overcharge or undercharge for a particular buy or sell transaction, the size of the damages would increase by threefold over 10 to 11 years.

B. All Trades Executed by the Defendants Are Equally Affected

54. The conduct described herein affects the Plaintiff and proposed Class each time Defendants executed a FX trade for the Plaintiff or proposed Class. Although Defendants may not execute all of the Plaintiff's and the proposed Class' FX trades, the ones they do execute, often known as "indirect," "custody," "non-negotiated" or "standing instruction" trades, always suffer the Defendants' pricing practices, as described herein.

55. Defendants, as the custodial bank for the Plaintiff and proposed Class, transacted the following FX trades for the Plaintiff and proposed Class: income repatriation trades; dividend payment and repatriation trades; emerging market trades; portfolio and foreign asset-based FX trades; all other non-negotiated and/or standing instruction trades, including spot, forward, and swap trades.

56. When the Defendants executed these FX trades for Plaintiff and the proposed Class, they unfairly and deceptively priced these trades to their benefit and to the detriment of the Plaintiff and the proposed Class. This conduct was possible because Plaintiff and proposed Class believed that the Defendants maintained a duty with respect to them and because the

Defendants never informed the Plaintiff and proposed Class of their practice of charging higher or lower FX rates on FX trades executed by the Defendants.

58. Defendants' unfair practices affected all State Street custodial clients whose FX trades were executed by State Street. State Street treated all custodial FX clients equally when over-pricing or under-pricing the FX fees they paid. Without any regard to their respective custodial contracts, State Street treated all custodial client FX trades exactly the same, for each currency, for each trade.

C. The California Attorney General Action

67. Plaintiff is aware of at least one ongoing governmental action against Defendants arising out of similar conduct alleged in this Complaint. The California Attorney General, on behalf of the people of the State of California, filed a Complaint in Intervention for violation of the California False Claims Act, Cal. Gov. Code, § 12651, against State Street and State Street California, Inc. charging the defendants with misappropriating over $56 million from the accounts of California's two largest pension plans – the California Public Employees' Retirement System ("CalPERS"), and the California State Teachers' Retirement System ("CalSTRS") – over a multi-year period in connection with the same FX practices pled in this Complaint. State Street acted as custodian for CalPERS and CalSTRS during that time.

68. The California Attorney General alleges that State Street inflated FX rates when buying foreign securities for CalPERS and CalSTRS, deflated FX rates when selling foreign securities, and pocketed the difference. The Attorney General further alleges that State Street hid its wrongful conduct by entering incorrect FX exchange rates into State Street's FX trading computer programs, and providing false records to CalPERS and CalSTRS.

69. The California Attorney General action is the only qui tam action against State Street that has been unsealed to date.

FIRST CLAIM FOR RELIEF

Violation of the Massachusetts Consumer Protection Act, M.G.L. c. 93A

70. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs and further allege:

71. At all relevant times hereto the Defendants were engaged in trade or commerce.

72. While engaged in trade or commerce, Defendants engaged in unfair and deceptive acts and practices, as alleged in this complaint, in violation of the Massachusetts Consumer Protection Act, Mass. Gen. L. ch. 93A, §§ 2, 11, including, without limitation:

(a) Unfairly and deceptively charging FX transactions so as to maximize profits to Defendants at the expense of their custodial customers;

(b) Unfairly and deceptively charging their custodial customers incorrect FX rates, and pocketing the difference between the actual and incorrect rates;

(c) Unfairly and deceptively providing account statements to their custodial customers that reported incorrect FX rates;

(d) Unfairly and deceptively engaged in custodial FX services that failed to conform to Defendants' representations and/or descriptions of their services; and

(e) Violating Attorney General Regulations, including 940 CMR §§ 3.16(1-2).

73. These acts or practices violated sections 2 and 11 of the Massachusetts Consumer Protection Act, Mass. Gen. L. ch. 93A.

74. As a result of the unfair and deceptive conduct of Defendants, Plaintiff ARTRS sustained damages including but not limited to the damages detailed above, incorporated herein.

SECOND CLAIM FOR RELIEF

Breach of Agent's Duty of Loyalty

76. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs.

77. Plaintiff and the Class requested Defendants to act on their behalf to execute the FX transactions necessary to facilitate their purchases and sales of foreign securities.

78. Defendants entered into an agency relationship with Plaintiff and each of the Class members.

79. Defendants, by virtue of their capacity as agents for Plaintiff and the Class, and Defendants' superior knowledge and position of control as well as the confidence and trust placed in them by Plaintiff and the Class, owed the duty of loyalty to Plaintiff while executing FX transactions.

80. Defendants breached their duty of loyalty to Plaintiff and each of the Class members by: (a) over or under stating FX rates so as to maximize profits to Defendants at the expense of their custodial customers; (b) charging their custodial customers incorrect FX rates, and pocketing the difference between the actual and incorrect rates; (c) provided account statements to their custodial customers that reported incorrect FX rates; and (d) failing to conform their FX services to Defendants' representations and/or descriptions of their services.

81. As a result of Defendants' breach, Plaintiff and the Class sustained damages, including, but not limited to, the damages detailed above. Accordingly, Plaintiff and the Class are entitled to an award of monetary damages in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

Request for Declaratory Relief Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.

82. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs.

83. As set forth above, Plaintiff contends that Defendants engaged in unfair and deceptive FX trading activities, whereas Defendants maintain their conduct in connection with FX trading is and has been proper.

84. As such, an actual controversy exists between Plaintiff and the Class and Defendants concerning the parties' rights and duties with respect to Defendants' FX trading activities.

85. The parties require this Court's declaration as to their respective rights, duties and any other relevant legal relations, whether or not the parties could seek or are otherwise entitled to further relief.

PRAYER FOR RELIEF

WHEREFORE Plaintiff demands judgment for itself and other members of the proposed Class as follows:

1) With regard to the First Claim for Relief, that the Court certify this action as a class action and enter judgment against Defendants in an amount equal to three times the amount of damages that Plaintiff and the Class have sustained as a result of Defendants' actions;

2) With regard to the Second Claim for Relief, that the Court certify this action as a class action and find the Defendants breached their duties of loyalty to Plaintiff and the Class, and award damages appropriate to compensate Plaintiff and the Class;

3) With regard to the Third Claim for Relief, that the Court certify this action as a class action and enter an order in favor of Plaintiff and the Class declaring that Defendants engaged in unfair and deceptive conduct in connection with FX transactions entered into on behalf of Plaintiff and the Class;

4) That Plaintiff and the Class be awarded all costs and expenses of this action, including attorneys' fees; and

5) That Plaintiff and the Class be awarded all such other relief as the Court deems just, equitable and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: February 10, 2011

Respectfully submitted,

THORNTON & NAUMES LLP

By: __/s/ Garrett J. Bradley_____

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EX. 7

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, - against - STATE STREET CORPORATION, STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS, LLC, Defendants.	No. 11-CV-10230 (MLW) **AMENDED CLASS ACTION COMPLAINT** Jury Trial Demanded

Plaintiff Arkansas Teacher Retirement System ("ARTRS"), individually and on behalf of all other similarly situated entities, by its undersigned attorneys, for its Amended Class Action Complaint against Defendants State Street Corporation, State Street Bank and Trust Company ("State Street Bank"), and State Street Global Markets, LLC (collectively, "State Street" or "Defendants"), alleges the following upon personal knowledge as to itself and its own acts, and upon information and belief as to all other matters.

I. INTRODUCTION

1. State Street was the custodian bank for ARTRS and the other institutional investors that constitute the Class. A custodian bank is an institution that holds securities on behalf of investors. The responsibilities entrusted to a custodian include the guarding and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities. Custodians may also perform ancillary services for their clients. Custodians are typically used by institutional investors who do not

wish to leave securities on deposit with their broker-dealers or investment managers. By separating these duties, the use of custodians—at least in theory—reduces the risk of fraud or other misconduct. An independent custodian ensures that the investor has unencumbered ownership of the securities other agents represent to have purchased on its behalf.

2. State Street Bank is the nation's second-largest custodian bank, with $21.5 trillion in assets, including $4.7 trillion in pension assets, under custody and administration as of December 31, 2010. State Street charged ARTRS and its other custodial clients hundreds of millions of dollars a year in fees for custodial services.

3. As part of its array of ancillary custodial services, State Street executed foreign currency exchange ("FX") transactions on behalf of its clients in order to facilitate clients' purchases or sales of foreign securities or the repatriation of foreign currency into U.S. dollars. During the past decade, pension funds and other institutional investors have increasingly looked to overseas companies and securities markets in order to diversify their holdings and maximize investment returns. The necessity for pension funds, in particular, to invest in foreign securities in order to properly diversify and meet their funding requirements is well-known to and appreciated by custodians such as State Street, as pension funds' investment guidelines are publicly and readily available.

4. Because foreign investments are bought and sold in the foreign currencies of the nations in which they are issued, U.S.-based investors necessarily must purchase and sell those foreign currencies in order to complete the transactions.

5. ARTRS and the members of the Class reposed a high degree of trust in State Street. ARTRS and Class members authorized State Street to execute FX transactions under conditions in which State Street controlled all aspects of FX trades, including the cost. ARTRS

and Class members depended upon State Street not only to execute FX trades honestly, but also to accurately report the FX rate and generally carry out the trades in a manner consistent with their custodial services contracts ("Custodian Contracts") and State Street's other written representations.

6. ARTRS's Custodian Contracts expressly provided that State Street would execute FX transactions for no additional fees above the substantial annual flat fee ARTRS paid for custodial services. Indeed, while ARTRS's Custodian Contracts with State Street authorized State Street to charge ARTRS for additional fees for certain ancillary services, they did not authorize additional fees for executing FX transactions.

7. In successive "Investment Manager Guides" made available to its custodial clients and their outside investment managers, State Street explained that the pricing of FX trades is ***"based on the market rates at the time the trade is executed."*** Thus, State Street assured its custodial clients, including ARTRS and the Class, that FX rates would reflect only the execution price, without additional fees or mark-ups.

8. Despite these express provisions in the Investment Manager Guides and Custodian Contracts, in addition to the annual flat fees it charged its custodial clients, State Street has undertaken an unfair and deceptive practice since at least 1998 whereby FX transactions were conducted so as to maximize exorbitant and undisclosed profits to State Street at the direct expense of ARTRS and Class members. State Street charged its custodial clients inflated FX rates when buying foreign currency for them, reported deflated FX rates when selling foreign currency for them, and in both cases pocketed the difference between the actual and reported rates. In this regard, State Street charged ARTRS and the Class incorrect and often

fictitious FX rates unrelated to the market-based rates State Street actually paid or received in executing the FX trades.

9. ARTRS and other Class members could not reasonably have detected State Street's deception. Nothing in the FX rates State Street actually reported to its clients indicated that those rates included hidden and unauthorized mark-ups (or mark-downs).

10. State Street's unfair and deceptive FX trading practices, perpetrated on ARTRS and the Class, generated hundreds of millions of dollars in profits annually for State Street. This money was taken directly from the pockets of ARTRS and Class members.

11. ARTRS brings this action as a class action on behalf of all similarly affected custodial clients of State Street during the Class Period defined below, except for those covered by independent *qui tam* actions that have been or that become unsealed during the pendency of this action, in order to recover the proceeds State Street reaped from Class members through its unfair and deceptive FX trading practices.

II. JURISDICTION AND VENUE

12. This Court has subject-matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), because this is a class action filed under Rule 23 of the Federal Rules of Civil Procedure; there are hundreds, if not thousands, of proposed Class members; the aggregate amount in controversy exceeds the jurisdictional amount; and many members of the proposed Class, including Plaintiff, are citizens of States other than Massachusetts. This Court also has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because the action is between citizens of different States and the matter in controversy with respect to the claims of the named Plaintiff exceeds the jurisdictional amount, and pursuant to 28 U.S.C. § 1367(a).

13. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2). A substantial part of the acts or omissions giving rise to Plaintiff's claims occurred within this judicial district. Defendants are citizens of the Commonwealth of Massachusetts, and are headquartered in and conduct substantial operations within this judicial district.

III. PARTIES

A. Plaintiff ARTRS

14. ARTRS, based in Little Rock, Arkansas, is a cost-sharing, multiple-employer defined benefit pension plan that provides retirement benefits to public school and other public education-related employees in the State of Arkansas. ARTRS was established by Act 266 of 1937, as an Office of Arkansas State government, for the purpose of providing retirement benefits for employees of any school or other educational agency participating in the system. As of June 30, 2009, ARTRS included 343 participating employers and more than 115,000 members, and had net assets held in trust for pension benefits exceeding $8.8 billion.

15. Like many institutional investors, ARTRS invests some of its net pension assets in foreign securities, referred to by ARTRS as "Global Equity" securities. Global Equity investments are ARTRS's single largest investment asset class. As of September 30, 2009, and consistent with its investment guidelines, ARTRS's Global Equity investments constituted approximately 33% of its net pension assets, worth more than $3.2 billion. That percentage remained consistent through the end of 2010.

16. State Street has been ARTRS's exclusive custodian bank since 1998. ARTRS paid State Street $851,412.83 for disclosed and agreed-upon custodial fees for fiscal year 2009 (July 1, 2008-June 30, 2009). Such fees did not include State Street's hidden and unauthorized FX trading charges.

B. Defendants

17. Defendant State Street Corporation is a Massachusetts corporation headquartered at State Street Financial Center, One Lincoln Street, Boston, Massachusetts 02111.

18. During the Class Period, State Street Corporation provided custodial banking and FX services to ARTRS and other members of the Class through State Street Bank and Trust, and its subsidiaries, agents, employees and co-conspirators. At all relevant times, State Street's FX trading desk was located in Boston.

19. Defendant State Street Bank is a wholly owned subsidiary of State Street Corporation and is similarly headquartered in Boston. During the Class Period, State Street Bank provided custodial banking and FX services to ARTRS and members of the Class.

20. Defendant State Street Global Markets, formerly known as State Street Capital Markets, is a wholly owned subsidiary of State Street Corporation and is similarly headquartered in Boston. During the Class Period, State Street Global Markets provided custodial banking and FX services to ARTRS and members of the Class. In particular, State Street Global Markets provides specialized investment research and trading in foreign exchange, equities, fixed income, and derivatives for State Street's custodial clients.

IV. CLASS ACTION ALLEGATIONS

21. This action is brought and may properly be maintained as a class action pursuant to Rules 23(a)(1)-(4) and 23(b)(3) of the Federal Rules of Civil Procedure and Massachusetts General Laws ch. 93A, §§ 9 and 11. This action satisfies the procedural requirements set forth by Rule 23 and ch. 93A, §§ 9 and 11.

22. This suit is a class action brought for money damages on behalf of a Class defined as all institutional investors in foreign securities, including but not limited to public and private pension funds, mutual funds, endowment funds and investment manager funds, for which State

Street served as the custodial bank and executed FX trades on a "standing-instruction" or "non-negotiated" basis between January 2, 1998 and December 31, 2009, inclusive (the "Class Period"), and which suffered damages as a result of the deceptive acts and practices and other misconduct alleged herein. Excluded from the Class are custodial clients of State Street that are covered by independent *qui tam* actions that have been unsealed or that are unsealed during the pendency of this action. Also excluded from the Class are Defendants, any entity in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or assigns of any such entity.

23. The members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impracticable.

24. There are questions of law and fact common to the Class, including whether:

(a) State Street engaged in unfair and deceptive acts and practices in connection with FX transactions, so as to maximize its own profits at the expense of its custodial clients;

(b) State Street charged and reported to its custodial customers FX rates that did not reflect the actual cost of the FX transaction to State Street, and instead included hidden and unauthorized mark-ups (or mark-downs);

(c) State Street pocketed the difference between the actual, market-based FX rates and the false FX rates reported and charged to its custodial clients;

(d) State Street's acts and omissions with respect to ARTRS and the Class violated the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A;

(e) State Street's acts and omissions with respect to ARTRS and the Class violated Massachusetts state and common law; and

(f) State Street's acts and omissions caused ARTRS and the Class to suffer money damages and, if so, the proper measure of those damages.

25. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff is a member of the Class described herein.

26. Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiff will fairly and adequately protect the interests of the Class and has no interests adverse to or which directly and irrevocably conflict with the interests of other members of the class.

27. The interests of the Plaintiff are co-extensive with, and not antagonistic to, those of the absent Class members. Plaintiff will undertake to represent and protect the interests of absent Class members.

28. The undersigned counsel for Plaintiff and the Class are experienced in complex class action litigation, will adequately prosecute this action, and will assert and protect the rights of and otherwise represent Plaintiff and absent Class members.

29. The questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class.

30. A class action is superior to other available methods for the adjudication of this controversy. Individual litigation by all Class members would increase the delay and expense to the parties and the Court given the complex legal and factual issues of the case, and judicial determination of the common legal and factual issues essential to this case would be more fair,

efficient and economical as a class action maintained in this forum than in piecemeal individual determinations.

31. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. Compared to individual actions by each Class member, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

V. SUBSTANTIVE ALLEGATIONS

A. The Nature of FX Trading

1. The Increasing Necessity of FX Trading in a Global Investment Portfolio

32. During the past decade, in order to meet their investment and funding objectives, U.S.-based institutional investors have found it increasingly necessary to enter the overseas securities markets and expand the global scope of their investment portfolios. ARTRS, for example, held approximately 15% of its investment portfolio in global markets as of mid-2003. By September 2009, however, that percentage had increased to more than 33%.

33. Institutional investors that buy and sell foreign securities, such as ARTRS and other Class members, must engage in FX trading because the purchases, sales, dividends, and interest payments are all transacted in the currency of the nation in which the relevant securities exchange sits.

34. If, for example, a U.S. investor wishes to buy shares of stock in a German company that trades on a German securities exchange, the investor must sell U.S. dollars and purchase euros in order buy those shares. Further, any cash dividends paid on that German stock will be denominated in euros. To “repatriate” those dividends, the investor must sell the euros

received and purchase dollars. Accordingly, FX transactions are the means for converting U.S. dollars into foreign currency and vice versa.

2. How FX Trading Works

35. FX trading takes place around the world on a nearly 24-hour cycle, five-and-a-half days a week. The official FX trading week begins at 7:00 a.m. New Zealand time on Monday, with each subsequent trading day ending at 5:00 p.m. New York City time.

36. For each currency bought and sold during the course of the FX trading day, there will necessarily be a high trade and a low trade, with all other trades falling somewhere in between. This information is determined through trade data monitored and tracked by proprietary services such as, but not limited to, Electronic Brokerage System ("EBS") and Reuters.

37. The difference between the low trade and the high trade is called the "range of the day." More precisely, the "spot range of the day" refers to FX rates as of a specific and prompt settlement date, usually two business days after the trade date. To more accurately measure the trade cost for FX transactions that settle prior to or later than the date for spot trades, participants in the FX market also look to the "forward-adjusted range of the day." Because FX trades do not always settle two days after the trade, the forward-adjusted range of the day is a more conservative and accurate measurement such that it takes into account the interest rate differential that exists at the time of trade between the trade date and settlement date for the underlying currencies.

38. By way of example, assume 100 FX trades in euros-for-dollars (EUR-USD) during the course of one trading day. If the lowest rate trade occurred at $1.25 to buy €1.00, and the highest rate trade occurred at $1.35 to buy €1.00, the range of the day would be $1.25-$1.35.

39. Another useful measure is the daily "mid-rate," which is simply the sum of the forward-adjusted daily high and forward-adjusted daily low, divided by two. This rate reflects the "average" FX rate in a given currency on a given day.

40. The daily mid-rate is significant because of the absence of publicly accessible data showing the precise time of day at which FX trades occur (as exists with stock trading, for example) and because State Street did not disclose such information to its clients. By looking at the mid-rate over a significant period of time, however, one can reasonably estimate the average FX trade cost on any given day. Over the course of a month or years, it is reasonable to expect FX trades to regress to the mid-rate. On any given day, some trades might settle above or below the daily mid-rate, but over increasingly lengthy periods of time, a significant number of FX trades can be expected to occur at or extremely close to the mid-rate.

3. Negotiated vs. Non-Negotiated FX Trades

41. State Street gave ARTRS and other custodial clients a choice with respect to the manner in which FX trades would be conducted. In a "negotiated," or "active," FX trade, a custodial client or its outside investment manager would personally communicate the trade information to a State Street FX trader. The State Street FX trader would then quote a rate, which would be accepted or rejected. If accepted, State Street would execute the FX trade at the agreed-upon price, which could include a modest mark-up.

42. A "non-negotiated" or "standing-instruction" FX trade is essentially the opposite of a negotiated trade. There is no arm's-length negotiation of the price between the parties to the transaction. With non-negotiated or standing-instruction trades, custodial clients and their outside investment managers do not negotiate rates with State Street, and State Street does not quote rates. Instead, as the name "standing-instruction" suggests, custodial clients simply report the desired currency transaction to State Street, and trust and rely upon State Street, using "best

execution" practices, to execute the trade on the client's behalf. According to its Investment Manager Guides, State Street referred to standing-instruction FX transactions as "Indirect Deals" between 2000 and May 2008, and "Institutional Investors FX Trading" between May 2008 and November 2009. Since November 2009, State Street has referred to such trading as "Custody FX."

43. State Street's custodial clients, including ARTRS and the Class, reasonably expected that standing-instruction FX trades would have no mark-ups or fees. This was in view of, among other things, (a) the hefty annual fees custodial clients paid State Street to serve as custodian over their assets, (b) the Custodian Contracts and associated fee schedules that gave no indication that standing-instruction FX trading would incur extra fees or mark ups, and did not authorize any such fees or mark-ups, and (c) State Street's Investment Manager Guides that assured custodial clients and outside investment managers that the price of FX trades was ***"based on the market rates at the time the trade is executed."***

44. Institutional investors typically requested that State Street and other custodians handle the smaller FX transactions, mostly the repatriation of dividend and interest payments, through standing instructions because the amount of each trade rarely justified the time and effort required for a negotiated trade.

B. ARTRS Placed its Trust in State Street as its Custodian Bank, Relying on State Street's Expertise and Loyalty

45. Since at least September 15, 1998, State Street, as ARTRS's custodian bank, executed the majority of ARTRS's FX transactions for its accounts, including purchases and sales of U.S. and foreign currency as well as repatriations of dividends and interest payments into U.S. dollars.

46. ARTRS, like other Class members, reposed a high degree of trust in State Street to execute standing-instruction FX transactions. In conducting these transactions, State Street occupied a superior position to ARTRS due to its control over all aspects of the FX trade, including the timing of the trades, and most importantly, the price at which the trades were executed.

47. ARTRS depended upon State Street not only to execute the FX trades, but also to accurately and honestly report the FX rate and to carry out the trades in accordance with their Custodian Contracts, associated fee schedules, and guidelines as set forth in the Investment Manager Guides.

48. Additionally, separate and apart from the Custodian Contracts and Investment Manager Guides, ARTRS, like State Street's other custodial clients, had a reasonable expectation that the FX rates that State Street charged (or credited) on standing-instruction FX trades would accurately reflect the true rates of those FX trades. There is no reason a custodial client would expect its custodian bank—to which it was paying substantial annual fees for custodial services—to charge (or credit) it in connection with standing-instruction FX trades at any rate other than the actual rate for the FX trade.

C. State Street's Custodian Contracts and Investment Manager Guidelines Were Predicated on No-Cost FX Trading

49. ARTRS's initial Custodian Contract with State Street was dated September 15, 1998. The parties superseded that contract on July 1, 2001 with a new Custodian Contract containing nearly identical terms and provisions. The second contract was superseded by a Custodian Contract signed June 29, 2004, also containing identical provisions. That third contract was eventually superseded by a Custodian Contract dated June 30, 2009, containing identical relevant terms.

50. Each of the Custodian Contracts provided that State Street "shall be entitled to compensation for its services and expenses as Custodian" for ARTRS pursuant to "a written Fee Schedule between the parties."

51. ARTRS and State Street agreed to and executed a series of Fee Schedules covering the following periods:

(a) Effective September 15, 1998 through June 30, 2001;

(b) Effective July 1, 2001 through June 30, 2004;

(c) Effective July 1, 2004 through June 30, 2007;

(d) Effective July 1, 2007 through June 30, 2009 (as revised);

(e) Effective April 1, 2008 through June 30, 2009 (as revised);

(f) Effective November 1, 2008 through June 30, 2009; and

(g) Effective July 1, 2009 through June 30, 2014.

52. The Fee Schedule effective September 15, 1998 provided for an "estimated total annual fee" of $233,534. The remaining Fee Schedules provided for an annual flat fee to be paid by ARTRS to State Street for services as custodian:

(a) $600,000 per year from July 1, 2001 through June 30, 2004;

(b) $500,000 per year from July 1, 2004 through June 30, 2007;

(c) $400,000 per year from July 1, 2007 through June 30, 2009, with a subsequent revision to $320,000 from April 1, 2008 through June 30, 2009; and

(d) $200,000 per year from July 1, 2009 through June 30, 2014.

53. The Fee Schedules also set forth certain categories of ancillary services for which State Street was permitted to charge ARTRS additional fees, including Wire Fees, Reporting Fees, Delivery Fees and Subcustody Fees.

54. None of these particular ancillary service categories relate in any way to FX trading. The Custodian Contracts did not state that those ancillary fees relate to FX trading or that State Street would impose any fees in connection with FX trading.

55. Unlike most of the later Fee Schedules, which were silent as to fees and charges for FX trading, the September 15, 1998 Fee Schedule specifically mentioned FX trading, stating that ***"No Charge"*** would be assessed for any foreign exchange executed through State Street.

56. The July 1, 2009 Fee Schedule also mentions FX trading: State Street specifically stated that "[t]ransaction costs for all foreign exchange trades transacted through State Street ***will be waived.***" (Emphasis added.)

57. As such, for more than a decade, ARTRS's Custodian Contracts with State Street (a) expressly provided that standing-instruction FX trades would be executed free of charge; or (b) did not list FX transactions among the services for which it was permitted to charge an additional fee or any other cost above the annual flat fee.

58. Substantially similar terms were employed in the Custodian Contracts for other members of the Class during the Class Period.

59. Additionally, during the Class Period, State Street provided Investment Manager Guides to custodial clients and outside investment managers that contained comprehensive information about State Street's custody practices and services, including procedural requirements, costs, and features. The many services described therein included "State Street Foreign Exchange Transactions."

60. During the Class Period, State Street issued no fewer than 15 distinct Investment Manager Guides, including those dated July 9, 2003; August 9, 2005; September 26, 2006; October 17, 2006; November 20, 2006; December 15, 2006; January 25, 2007; October 30, 2007; November 21, 2007; December 19, 2007; January 28, 2008; May 1, 2008; October 31, 2008; December 30, 2008; and January 23, 2009, to custodial clients and outside investment managers.

61. State Street represented in each of these Investment Manager Guides that "State Street Foreign Exchange Transactions . . . are ***priced based on the market rates at the time the trade is executed."*** (Emphasis added.)

D. State Street's Deceptive Scheme Overcharged ARTRS and the Class for Standing-Instruction FX Trades

62. State Street's FX practices diverged from what the Custodian Contracts authorized and what the Investment Manager Guides represented. Despite assurances that FX transactions would be based on market rates, State Street reported and charged ARTRS and the Class FX rates on standing-instruction trades far above what State Street actually paid for foreign currency (or far below what State Street actually received for sales of foreign currency)—oftentimes, at rates that actually fell ***outside of the range of the day.***

63. As such, unbeknownst to ARTRS and the Class, State Street reported FX rates on standing-instruction trades to its clients that did not reflect the actual cost or proceeds of the FX transaction to State Street, and instead included a hidden and unauthorized mark-up. Put simply, State Street invented the FX rates it reported and charged (or credited) to ARTRS and the Class. State Street paid or received one rate for FX, reported to ARTRS and Class members another rate that was either higher (in the case of a purchase) or a lower (in the case of a sale), and pocketed the difference.

64. When custodial clients or their agents requested that State Street execute an FX transaction, the request was routed electronically via State Street's Market Order Management System (MOMS) to a group of "risk traders" working at State Street's FX trading desk who then executed the FX trades by entering trade information that did not reflect the actual rate State Street paid or received.

65. To illustrate the deception, assume again the example set forth above—100 euro-for-dollar trades on a given day that ranged from $1.25 to $1.35 (the "range of the day") to purchase €1.00, with a day's mid-rate of $1.30. On any, and all, standing-instruction euro-for-dollar trades on behalf of its custodian clients, State Street would have paid a rate between $1.25 and $1.35 for those euros, but reported to its clients that it paid more. State Street charged its clients the false higher amount and kept the difference.

66. This conclusion is supported by Plaintiffs' analysis of ten years of FX transactions executed by State Street on behalf of and reported to ARTRS. Between January 3, 2000 and December 31, 2010, ARTRS had a total 10,784 FX transactions with reliable data. Among these 10,784 transactions, 4,216, or 39%, were non-negotiated, standing-instruction trades. These 4,216 FX trades had an aggregate trading volume exceeding $1.2 billion.

67. In conducting the analysis, ARTRS's FX trades were compared to other FX trades logged and tracked in a comprehensive database of more than 2 million buy-side currency trades. By comparing ARTRS's trades in certain currencies with the same currency pair trades in the database, one can estimate the trading cost of ARTRS's standing-instruction FX trades in relation to trades made worldwide. For purposes of this analysis, the trading cost is the difference between the day's mid-rate and the rate that State Street charged (or credited) to ARTRS for standing-instruction FX trades.

68. State Street did not report to ARTRS (or any other Class member) the actual time of execution of any FX trade. Therefore, comparing the day's mid-rate to the standing-instruction FX rates State Street charged (or credited) to ARTRS is the best method of determining whether State Street charged (or credited) ARTRS a rate based on the actual market rate at the time of execution, as State Street represented in its Investment Manager Guides.

69. State Street derived its false FX rates by adding (on purchases) or subtracting (on sales) "basis points" or "pips" from the actual FX rate. A basis point, or pip, is a unit equal to 1/100th of a percentage point. For example, the smallest move the euro/dollar currency pair generally makes is 1/100th of a penny, or one basis point.

70. For the period of January 3, 2000 through December 31, 2010, the FX rates that State Street reported and charged (or credited) to ARTRS on its 4,216 non-negotiated FX trades were, on average, ***17.8 basis points*** above or below the day's mid-rate. In other words, the FX rates that State Street reported and charged (or credited) to ARTRS for standing-instruction FX trades, on average and during this 10-year period, created a trading cost 17.8 basis points higher than the average FX rate (the day's mid-rate).

71. By way of example, assume that the rate State Street actually paid to purchase €1.00 on a given day was $1.31551. If State Street charged ARTRS 17.8 basis points more than it paid, the rate would be $1.31729 ($1.31729 - $1.31551 = 0.00178). For a purchase of €10 million, the undisclosed profit to State Street on that single trade—and the concomitant unknown loss by ARTRS—would be $17,800. Accordingly, the difference in total trading costs between the actual and false rates can be very large.

72. Tellingly, for the same 10-year period, the FX rates that State Street reported and charged (or credited) to ARTRS on its more than 6,500 ***negotiated*** FX trades added, on average,

only ***3.6 basis points*** in trading costs as compared to the day's mid-rate. As such, while the FX trades executed by State Street pursuant to so-called "best execution" practices incurred trading costs of 17.8 basis points on average, the FX trades actively negotiated between State Street and ARTRS or its outside investment managers incurred trading costs of only 3.6 basis points on average.

73. The false or fictitious nature of the FX rates State Street reported and charged (or credited) to ARTRS is further demonstrated when viewing ARTRS's standing-instruction FX trades in the context of the forward-adjusted range of the day. Among ARTRS's 4,216 standing-instruction FX trades, ***2,217, or 53%, fell entirely outside the forward-adjusted range of the day.*** These 2,217 FX trades, with a total volume exceeding $200 million, added trading costs on average of ***64.4 basis points*** over the day's mid-rate—an enormous hidden and unauthorized mark-up. Using the above example of a purchase of €10 million, an undisclosed fee of 64.4 basis points would result in a $64,400 profit to State Street on that single transaction.

74. Rates consistently above (or below) the daily mid-rate alone demonstrate that State Street was not fulfilling its duties as a custodian by charging a hidden mark-up, and they demonstrate a violation of the terms of the Custodian Contracts and the representations in the Investment Manager Guides. But when more than half of all standing-instruction FX trades for a particular custodial client fall ***outside*** the forward-adjusted range of the day, it becomes clear that those reported FX rates were not actual, market-based FX rates, but were instead fictitious and designed solely to gouge the custodial client and, in turn, its beneficiaries. In the case of public pension funds, the beneficiaries include teachers, police officers, firefighters and many other public workers.

75. There is no rational, honest basis for a professional FX market participant like State Street, or indeed any FX market participant, to charge an FX rate outside the forward-adjusted range of the day without disclosing it. The day's range defines the range at which primary dealing banks and custodian banks transacted in FX during that trading day. The fictitious nature of rates assigned outside the forward-adjusted range of the day illustrates, perhaps most starkly, the unfair and deceptive nature of State Street's standing-instruction FX trading practices. In short, these practices were designed to enrich State Street while deceiving and unfairly depriving institutional clients such as ARTRS and the Class of much-needed funds.

E. State Street's Deceptive Acts and Practices Could Not Reasonably Be Detected by ARTRS and the Class

76. Neither ARTRS nor any Class member reasonably could have discovered State Street's deceptive acts and practices concerning FX trading during the Class Period. State Street executed hundreds if not thousands of FX trades on behalf of its custodial clients every month. The periodic reports State Street sent to ARTRS and the Class showed only the rate that State Street charged for its FX trades. The reports did not include the range of the day, the daily mid-rate, or any indication of the time of the day that the trade was executed (known as "time-stamps"). Accordingly, there was no way for ARTRS and the Class to reasonably determine, or even suspect, that State Street was secretly charging more than it actually paid for FX or was paying clients less than it actually received for FX.

77. It was reasonable for ARTRS and the Class to presume that the prices reflected in the reports State Street provided to them were an accurate representation of the true cost of the FX trades. With respect to ARTRS specifically, the Custodian Contracts expressly provided that the "Custodian shall render to the [Plaintiff] a monthly report of all monies received or paid on

behalf of the Fund[.]" Accordingly, State Street had an affirmative obligation to report accurately the amount of money it was paying or receiving for FX.

78. Furthermore, based on the Investment Manager Guides' assurance that FX rates would be "priced based on the market rates at the time the trade is executed," neither ARTRS nor the Class had any reason to suspect that they were being charged (or credited) anything other the rate that State Street itself had paid or received on those standing-instruction FX transactions.

79. Moreover, as alleged above, State Street occupied a position of trust and confidence with respect to its custodial clients. Those clients would not, and did not, suspect that the custodian in which that trust resided, would profit to a gross and undisclosed degree on the services for which they paid a handsome annual fee. Indeed, those custodial clients would, and did, presume that the custodian bank would act in and not against their best interests.

F. Events After October 2009 Begin to Shed Light on State Street's Deceptive Acts and Practices

80. On October 20, 2009, the Attorney General of California filed a Complaint in Intervention for violation of the California False Claims Act, Cal. Gov. Code § 12651, charging State Street with misappropriating more than $56 million from the accounts of California's two largest pension plans—CalPERS and CalSTRS—over a multi-year period in connection with the same unfair and deceptive FX practices alleged herein. *People of the State of Cal. ex rel. Brown v. State Street Corp.*, Case No. 34-2008-00008457-CU-MC-GDS (Cal. Super. Ct. Sacramento County Oct. 20, 2009).

81. The California Attorney General alleges that State Street reported inflated FX rates when buying foreign securities for CalPERS and CalSTRS, reported deflated FX rates when selling foreign securities for them, and pocketed the difference between the reported and actual rates. The Attorney General further alleges that State Street hid its wrongful conduct by

entering incorrect FX exchange rates into State Street's electronic FX trading systems and providing false records to CalPERS and CalSTRS.

82. In the months that followed, State Street dramatically changed its FX trading policies and disclosure and so informed ARTRS and other Class members. Under these new policies, State Street admitted for the first time that it had systematically imposed additional charges for FX trading. For example, in an excerpt from an updated Investment Manager Guide dated November 20, 2009, State Street advised custodial clients that it would post on its website, my.statestreet.com, "current mark-ups and mark-downs used by State Street Global Markets for [standing-instruction] foreign exchange transaction requests."

83. In a similar message sent to custodial clients, State Street admitted that ***"[s]ince December 2009***, State Street has provided to all of its custody clients and their investment managers via our dedicated client portal, my.statestreet.com, comprehensive disclosure of the pricing and execution methodology (including the maximum mark-up or mark-down that may be applied) for each of its Indirect [standing-instruction] FX Services." (Emphasis added.) State Street added that "on the day after a trade is executed, State Street provides for each currency pair the reference interbank rates and the times at which they are obtained, the actual rates, the daily high/low range at the time of pricing (where applicable) and the actual mark-up or mark-down that was applied."

84. State Street altered its practices to allow custodial clients more complete access to FX trading data only after its deceptive acts and practices began to be revealed. State Street's late disclosure that it charged mark-ups and mark-downs on standing-instruction FX trades contradicts its previous repeated assurances that FX rates would be based on market rates at the time the trade is executed.

85. According to a study conducted by an independent FX analyst after the California *qui tam* complaint was unsealed and State Street altered its FX policies, the cost of standing-instruction FX trades dropped by a remarkable ***63%.*** The study analyzed 498,940 FX spot and forward trades (196,280 standing-instruction trades and 302,660 negotiated trades) executed during 2000-2010, and found that investors who had their custodian banks, including State Street, execute FX trades on a standing-instruction basis during 2010 saw an overall 63% drop in trading costs from their average trading costs for the years 2000-2009.

FIRST CLAIM FOR RELIEF

Violation of the Massachusetts Consumer Protection Act, M.G.L. ch. 93A, § 11 (Asserted Against All Defendants on Behalf of Plaintiff ARTRS and the Class)

86. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs, as well as those in support of the other claims for relief asserted on behalf of the Class, and further alleges:

87. At all relevant times hereto State Street was engaged in trade or commerce.

88. While engaged in trade or commerce, State Street engaged in unfair and deceptive acts and practices, as alleged in this Complaint, in violation of the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A, §§ 2, 11, including, without limitation:

(a) Unfairly and deceptively pricing standing-instruction FX trades for custodial clients such as ARTRS and the Class in a manner designed to maximize profits to State Street at the direct and undisclosed expense of those custodial clients;

(b) Unfairly and deceptively reporting false and fictitious FX rates for standing-instruction FX trades to State Street's custodial clients such as ARTRS

and the Class rather than the actual rates at which State Street had effected those trades;

(c) Pocketing the difference between the actual FX rates at which State Street effected custodial clients' standing-instruction FX trades and the false and fictitious rates State Street reported to those custodial clients;

(d) taking undisclosed profits on standing-instruction FX trades from custodial clients such as ARTRS and the Class that grossly exceeded the customary prices at which similar services were readily obtainable in negotiated FX transactions by like Class members; and

(e) Violating Attorney General Regulations, including 940 CMR §§ 3.16(1-2).

89. These acts or practices violated Sections 2 and 11 of the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A.

90. State Street's unfair and deceptive acts or practices related to standing-instruction FX transactions occurred primarily and substantially in Massachusetts, where State Street's FX trading desk is located.

91. As a result of the unfair and deceptive conduct of State Street, ARTRS and the Class sustained economic damages in an amount no less than the difference between (a) the actual dollar amounts paid or received by State Street when conducting standing-instruction FX trades for ARTRS and the Class and (b) the false and fictitious dollar amounts charged or credited by State Street to ARTRS and the Class for those same trades.

92. State Street is in a unique position to know the exact amount of damages sustained by ARTRS and the Class as a result of State Street's unfair and deceptive conduct,

because, *inter alia*, throughout the Class Period, State Street did not provide time-stamps to its custodial clients for its standing-instruction FX trades.

93. State Street's unfair and deceptive conduct as described herein was willful and intentional, accordingly entitling Plaintiff and the Class to up to treble, but no less than double, damages, plus costs (including attorneys' fees).

94. Application of Mass. Gen. Laws ch. 93A to all Class members located throughout the United States, regardless of their state or residence, is appropriate because Defendants are located and engage in trade or commerce in Massachusetts and are thus subject to the laws of the Commonwealth. Defendants are registered to do business in Massachusetts, and their principal place of business is located in Massachusetts, from which they controlled and directed the deceptive and unfair practices described herein, including conducting FX trades on behalf of ARTRS and the Class. Further, on information and belief, all employees of Defendants directly involved in the activities complained of herein are based in Massachusetts.

SECOND CLAIM FOR RELIEF

Violation of the Massachusetts Consumer Protection Act, M.G.L. ch. 93A, § 9 (Asserted Against All Defendants on Behalf of Plaintiff ARTRS and the Class)

95. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs, as well as those in support of the other claims for relief asserted on behalf of the Class, and further alleges:

96. This claim for relief is pleaded in the alternative to the First Claim for Relief on behalf of Plaintiff and those members of the Class who, as not-for-profit entities utilizing State Street to conduct FX transactions, were engaged in the furtherance of their core mission, which includes investing and building retirement funds for public employees.

97. While engaged in trade or commerce, State Street engaged in unfair and deceptive acts and practices, as alleged in this Complaint, in violation of the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A, §§ 2, 9, including, without limitation:

(a) Unfairly and deceptively pricing standing-instruction FX trades for custodial clients such as ARTRS and the Class in a manner designed to maximize profits to State Street at the direct and undisclosed expense of those custodial clients;

(b) Unfairly and deceptively reporting false and fictitious FX rates for standing-instruction FX trades to State Street's custodial clients such as ARTRS and the Class rather than the actual rates at which State Street had effected those trades for those customers;

(c) Pocketing the difference between the actual FX rates at which State Street effected custodial clients' standing-instruction FX trades and the false and fictitious rates State Street reported to those custodial clients;

(d) taking undisclosed profits on standing-instruction FX trades from custodial clients such as ARTRS and the Class that grossly exceeded the customary prices at which similar services were readily obtainable in negotiated FX transactions by like Class members; and

(e) Violating Attorney General Regulations, including 940 CMR §§ 3.16(1-2).

98. These acts or practices violated Sections 2 and 9 of the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A.

99. State Street's unfair and deceptive acts or practices related to standing-instruction FX transactions occurred primarily and substantially in Massachusetts, where State Street's FX trading desk is located.

100. As a result of the unfair and deceptive conduct of State Street, Plaintiff ARTRS and the Class sustained economic damages in an amount no less than the difference between (a) the actual dollar amounts paid or received by State Street when conducting standing-instruction FX trades for ARTRS and the Class and (b) the false and fictitious dollar amounts charged or credited by State Street to ARTRS and the Class for those same trades.

101. State Street is in a unique position to know the exact amount of damages sustained by ARTRS and the Class as a result of State Street's unfair and deceptive conduct, because, *inter alia,* throughout the Class Period, State Street did not provide time-stamps to its custodial clients for its standing-instruction FX trades.

102. Pursuant to the Mass. Gen. Laws. Ann. ch. 93A, § 9(3), on February 16, 2011—more than thirty (30) days prior to the filing of this Amended Class Action Complaint, which asserts, for the first time, a claim pursuant to Mass. Gen Laws ch. 93A, § 9—Plaintiff mailed, via certified mail, return receipt requested, a written demand for relief to State Street identifying the claimants and reasonably describing the unfair acts or practices relied upon and the injuries suffered. State Street's response on March 18, 2011 contested Plaintiff's allegations and refused to make a reasonable (or any) offer of relief. The refusal to grant relief was made in bad faith with knowledge or reason to know that the acts of the Defendants violated Mass. Gen. Laws Ann. ch. 93A, § 2.

103. State Street's unfair and deceptive conduct as described herein was willful and intentional, accordingly entitling Plaintiff and the Class to treble damages, plus costs (including attorneys' fees).

104. Application of Mass. Gen. Laws ch. 93A to all Class members located throughout the United States, regardless of their state or residence, is appropriate because Defendants are located and engage in trade or commerce in Massachusetts and are thus subject to the laws of the Commonwealth. Defendants are registered to do business in Massachusetts, and their principal place of business is located in Massachusetts, from which they controlled and directed the deceptive and unfair practices described herein, including conducting FX trades on behalf of ARTRS and the Class. Further, on information and belief, all employees of Defendants directly involved in the activities complained of herein are based in Massachusetts.

THIRD CLAIM FOR RELIEF

Breach of Duty of Trust
(Asserted Against All Defendants on Behalf of Plaintiff ARTRS and the Class)

105. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs, as well as those in support of the other claims for relief asserted on behalf of the Class, and further alleges:

106. Plaintiff and the members of the Class placed their trust in Defendants to execute standing-instruction FX transactions necessary to facilitate the purchases and sales of foreign securities for the accounts of Plaintiff and the Class.

107. Defendants occupied a superior position to Plaintiff and the Class such that they controlled all aspects of standing-instruction FX trading, including the timing of the FX trades and the prices at which the trades were executed and settled. Plaintiff and the Class were entirely

dependent on Defendants to execute the FX trades and accurately report the price at which FX trades were settled.

108. Defendants understood that Plaintiff and the members of the Class placed their confidence and trust in Defendants to report FX trades accurately.

109. Defendants, by virtue of their superior knowledge and position of control as well as the confidence and trust placed in them by Plaintiff and the Class, owed a duty of loyalty to Plaintiff and the Class in connection with carrying out standing-instruction FX transactions.

110. Defendants, by virtue of their capacity as custodian for Plaintiff and the Class, and their superior knowledge and position of control as well as the confidence and trust placed in them by Plaintiff and the Class, owed a duty of disclosure in connection with carrying out standing-instruction FX transactions.

111. Defendants breached their duty of loyalty to Plaintiff and each of the Class members by: (a) charging Plaintiff and the Class higher FX rates than State Street actually paid when buying foreign currency; (b) paying Plaintiff and the Class lower FX rates than State Street actually received when selling foreign currency; (c) pocketing the difference between State Street's actual costs and the rates charged to Plaintiff and the Class; and (d) hiding their conduct by providing account statements to the Plaintiff and the Class that reported only the date on which standing-instruction FX trades were executed, and the price charged to Plaintiff and the Class, yet omitting important information such as the actual time the trade was executed, and the actual cost of the trade to State Street, that would have enabled Plaintiff and the Class to realize they were paying in excess of State Street's actual costs or receiving less than State Street's actual proceeds.

112. Defendants breached their duty of disclosure to Plaintiff and each of the Class members by providing account statements to the Plaintiff and the Class that omitted the actual cost of the trade to State Street and the actual time the trade was executed.

113. As a result of Defendants' breaches of duty, Plaintiff and the Class sustained damages, including, but not limited to, the difference between the amount of State Street's actual costs and the amounts charged to Plaintiff and the Class when purchasing foreign currency, and the difference between the amounts State Street received and the amounts paid to Plaintiff and the Class when selling foreign currency. Accordingly, Plaintiff and the Class are entitled to an award of money damages in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF

Negligent Misrepresentation
(Asserted Against All Defendants on Behalf of Plaintiff ARTRS and the Class)

114. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs, as well as those in support of the other claims for relief asserted on behalf of the Class, and further alleges:

115. Defendants' activities complained-of herein were performed in the course of State Street's business acting as custodian bank for Plaintiff and the members of the Class.

116. In connection therewith, Defendants supplied Plaintiff and the Class with periodic reports and statements, including monthly reports and trade confirmations, regarding the purchase and sale of foreign currency by State Street on behalf of Plaintiff and the Class. The reports and statements were provided by State Street for the guidance of Plaintiff and the Class in their business transactions.

117. The reports and statements State Street provided to Plaintiff and the Class omitted material information about the actual cost to State Street of the purchases and sales of foreign currency, and omitted to state the actual time the foreign currency was purchased or sold by State Street. Due to State Street's material omissions, Plaintiff and the Class were therefore unable to determine that State Street was charging them in excess of State Street's actual and reasonable costs for FX purchases, and remitting to Plaintiff and the Class less than the amounts State Street received for FX sales.

118. Because of State Street's special position of trust with respect to Plaintiff and the Class, and because of its superior position controlling all aspects of standing-instruction FX trading and reporting, State Street had a duty to disclose the omitted material information to Plaintiff and the Class. State Street's position of trust and superior position creates the duty to disclose.

119. Justifiable reliance is presumed because this Claim for Relief is based on Defendants' material omissions.

120. Defendants failed to exercise reasonable care or competence in obtaining or communicating the allegedly omitted information to Plaintiff and the Class.

121. Defendants' negligent misrepresentations caused pecuniary loss to Plaintiff and the Class.

122. Accordingly, Plaintiff and the Class are entitled to an award of money damages in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF

Breach of Contract
(Asserted Against Defendant State Street Bank on Behalf of Plaintiff ARTRS Individually)

123. Plaintiff repeats and re-alleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs and further alleges:

124. Plaintiff brings this Claim for Relief for breach of contract on behalf of itself individually.

125. Plaintiff entered into valid, binding Custodian Contracts with State Street Bank, pursuant to which State Street Bank agreed to, *inter alia*, provide services as custodian of the Plaintiff's assets.

126. The first Custodian Contract was dated September 15, 1998. It was terminated and superseded by a written Custodian Contract dated July 1, 2001, containing nearly identical relevant terms. It, too, was terminated and superseded by a written Custodian Contract dated June 29, 2004, containing identical relevant terms. That Custodian Contract was terminated and superseded by another written Custodian Contact dated June 30, 2009 containing identical relevant terms.

127. This Claim for Relief is brought pursuant to the law of the State of Arkansas. Each Custodian Contract provided that it "shall be construed and the provisions thereof interpreted under and in accordance with the laws of the State of Arkansas to the extent not pre-empted by federal law."

128. One of the services State Street Bank agreed to provide to ARTRS pursuant to the Custodian Contracts is the purchase or sale of FX, including pursuant to "standing instructions": "The Custodian is permitted to pay out of moneys of Plaintiff's account, upon proper

instructions, and which may be 'standing instructions' . . . [f]or the purchase or sale of foreign exchange or foreign exchange contracts for the account of the Fund, including transactions executed with or through the Custodian, its agents or its subcustodians."

129. The Custodian Contracts specified that the amount by which State Street Bank was entitled to be compensated for the services it performs for ARTRS pursuant to the Contracts would be set forth in a written Fee Schedule agreed-to by the parties: "The Custodian shall be entitled to compensation for its services and expenses as Custodian set forth in a written Fee Schedule between the parties hereto until a different compensation shall be in writing agreed upon between the System [ARTRS] and the Custodian."

130. ARTRS and State Street Bank agreed to and executed the following Fee Schedules:

(a) Effective September 15, 1998 through June 30, 2001;

(b) Effective July 1, 2001 through June 30, 2004;

(c) Effective July 1, 2004 through June 30, 2007;

(d) Effective July 1, 2007 through June 30, 2009 (as revised);

(e) Effective April 1, 2008 through June 30, 2009 (as revised);

(f) Effective November 1, 2008 through June 30, 2009; and

(g) Effective July 1, 2009 through June 30, 2014.

131. The Fee Schedules each provided for an annual flat fee to be paid by ARTRS to State Street Bank for its services as custodian, and set forth certain categories of services, such as Domestic Transaction Charges and Global Transaction charges, for which State Street Bank was permitted to charge ARTRS an additional fee.

132. The Fee Schedule dated September 15, 1998 discusses FX trading, stating that "***No charge*** will be assessed for each foreign exchange executed through a third party. Foreign exchange through State Street – ***No Charge.***" (Emphases in original.)

133. The Fee Schedules dated July 1, 2001; July 1, 2004; July 1, 2007; April 1, 2008; and November 1, 2008 do not mention FX trading or list FX trading as one of the services for which State Street Bank is permitted to charge Plaintiff an additional fee. Accordingly, each of these Fee Schedules contemplated that State Street Bank shall not be compensated for the purchase or sale of foreign exchange over and above the annual flat fee.

134. The Fee Schedule dated July 1, 2009 also makes this clear, and expressly states that "[t]ransaction costs for all foreign exchange trades transacted through State Street will be waived." Accordingly, State Street Bank is not permitted to charge ARTRS for the purchase or sale of FX above the annual flat fee under the terms of the Custodian Contract.

135. In the months after the California Attorney General filed its Complaint in Intervention against State Street on October 20, 2009, State Street Bank informed ARTRS of "current mark-ups and mark-downs used by State Street Global Markets for [standing-instruction] foreign exchange transaction requests." These "mark-ups and mark-downs" continue to breach the express terms of the June 29, 2009 Custodian Contract and associated Fee Schedule (effective July 1, 2009 through June 30, 2014), which states that "[t]ransaction costs for all foreign exchange trades transacted through State Street will be waived."

136. State Street's practices, detailed herein, of charging ARTRS inflated FX rates when buying foreign currency, and deflated FX rates when selling foreign currency, constitute a hidden and unauthorized charge to ARTRS above the annual flat fee.

137. By charging ARTRS the hidden and unauthorized fees described herein, State Street Bank has breached the Custodian Contracts, and ARTRS has suffered substantial money damages as a result of that breach.

138. The Custodian Contracts further provided that "[t]he Custodian shall render to the System [ARTRS] a monthly report of all monies received or paid on behalf of the System and an itemized statement of the securities for which it is accountable under this Contract as of the end of each month, as well as a list of all securities transactions that remain unsettled at that time."

139. State Street, however, provided ARTRS with monthly reports that showed only the price being charged to the Plaintiff for standing-instruction FX trades and the date of the trade. State Street omitted important information, such as the time-stamp of the actual time of the trade, and the actual price at which State Street paid for the purchase or sale of foreign exchange so as to hide the fact that ARTRS was being charged a secret profit on the trade.

140. State Street Bank's failure to comply with the Custodian Contracts' reporting requirement constitutes an additional breach of the Contracts, and ARTRS has suffered substantial monetary damages as a result thereof.

141. There is no limitations period that would act as a bar to this Claim for Relief pursuant to the maxim *nullum tempus occurrit regi* recognized under Arkansas law. Notwithstanding, ARTRS could not have discovered State Street Bank's breach even in the exercise of due diligence until the earliest, the unsealing of the California Attorney General complaint against State Street because, *inter alia,* the reports State Street provided to ARTRS showed only the price charged to Plaintiff for standing-instruction FX trades and the date of the trade. By omitting important information, such as a time-stamp and the actual price paid or

received by State Street, Defendants hid or actively concealed their improper conduct. Accordingly, even if a statute of limitations were to apply, it was tolled by State Street's actions.

Prayer for Relief

WHEREFORE, Plaintiff demands judgment for itself and all other members of the proposed Class as follows:

A. With regard to the First Claim for Relief, that the Court certify this action as a class action and enter judgment against Defendants in an amount equal to up to three but no less than two times the amount of damages Plaintiff and the Class have sustained as a result of Defendants' actions, plus costs (including attorneys' fees);

B. With regard to the Second Claim for Relief, that the Court certify this action as a class action and enter judgment against Defendants in an amount equal to three times the amount of damages Plaintiff and the Class have sustained as a result of Defendants' actions, plus costs (including attorneys' fees);

C. With regard to the Third Claim for Relief, that the Court certify this action as a class action, find that Defendants breached their duties of trust to Plaintiff and the Class, and award appropriate compensatory damages to Plaintiff and the Class in an amount to be determined at trial;

D. With regard to the Fourth Claim for Relief, that the Court certify this action as a class action, find that Defendants negligently misrepresented to Plaintiff and the Class the hidden fees charged in connection with FX trading, and award appropriate compensatory damages to Plaintiff and the Class in an amount to be determined at trial;

E. With regard to the Fifth Claim for Relief, that the Court find that Defendant State Street Bank breached each of its Custodian Contracts with Plaintiff, and award appropriate compensatory damages to Plaintiff in an amount to be determined at trial;

F. That the Court award Plaintiff and the Class all costs and expenses of this action, including reasonable attorneys' and experts' fees; and

G. That the Court award Plaintiff and the Class such other relief as the Court deems just and proper.

Demand for Jury Trial

Plaintiff demands a trial by jury of all issues so triable.

Dated: April 15, 2011

THORNTON & NAUMES, LLP

By: */s/ Garrett J. Bradley*

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Attorneys for Plaintiff and the Class

UNITED STATES DISTRICT COURT
FOR THE STATE OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, v. STATE STREET CORPORATION, STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS, LLC, Defendants.	)	Civil Action No. 11-CV-10230 (MLW)

CERTIFICATE OF SERVICE

I hereby certify that the forgoing Plaintiffs' Amended Class Action Complaint was filed through the ECF System on April 15, 2011 and accordingly will be served electronically upon all registered participants identified on the Notice of Electronic Filing.

/s/ Garrett J. Bradley
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Dated: April 15, 2011

EX. 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	No. 12-MD-2335 (LAK) (JLC)
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3066 (LAK) (JLC)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3067 (LAK) (JLC)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-~~3740~~ 3470 (LAK) (JLC)
Carver, et al. v. The Bank of New York Mellon, et al.	No. 12-CV-9248 (LAK) (JLC)
Fletcher v. The Bank of New York Mellon, et al.	No. 14-CV-5496 (LAK) (JLC)

~~[PROPOSED]~~ ORDER AND FINAL JUDGMENT

WHEREAS, lead plaintiffs Southeastern Pennsylvania Transportation Authority, International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund, Ohio Police & Fire Pension Fund, School Employees Retirement System of Ohio, Joseph F. Deguglielmo (in his capacity as a participant in and representative of the Kodak Retirement Income Plan) and Landol D. Fletcher (in his capacity as a participant in and representative of the Central States, Southeast and Southwest Areas Pension Plan) ("Lead Plaintiffs"), and the additional named plaintiffs Carl Carver, Deborah Jean Kenny, Edward C. Day, Lisa Parker, and Frances Greenwell-Harrell (the "Named Plaintiffs," and with Lead Plaintiffs, the "Plaintiffs"), on behalf of themselves and the Settlement Class (as defined below), and defendants The Bank of New York Mellon Corporation, The Bank of New York Mellon, The Bank of New York

Company, Inc., The Bank of New York, Mellon Bank N.A., The Bank of New York Mellon Trust Company, N.A. (formerly known as the Bank of New York Trust Company, N.A.), and BNY Mellon, N.A. (collectively, "BNYM"), and unnamed individuals designated as Does 1–20 in the Second Amended Carver Complaint (as defined below) and the Amended Fletcher Complaint (as defined below) (together with BNYM, the "Defendants") entered into a Stipulation and Agreement of Settlement, dated March 19, 2015 (the "Stipulation"), in the five above-captioned member cases (the "Litigation");

WHEREAS, pursuant to the Order (1) Provisionally Certifying the Settlement Class, (2) Appointing Lead Plaintiffs as Settlement Class Representatives, and Appointing Lead Settlement Counsel as Class Counsel, (3) Approving the Proposed Form and Manner of Notice, and (4) Scheduling a Final Approval Hearing (the "Notice Order"), entered April 22, 2015, the Court scheduled a hearing for September 24, 2015 at 10 a.m. to, among other things, determine (i) whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved by the Court, and (ii) whether the Order and Final Judgment as provided for under the Stipulation should be entered;

WHEREAS, the Court ordered that the Notice of (I) Pendency of Class Action, (II) Proposed Settlement, (III) Settlement Hearing, (IV) Plan of Allocation for Distribution (the "Plan of Allocation"), and (V) Lead Settlement Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice"), substantially in the form annexed to the Notice Order as Exhibit A-1, be sent by first-class mail, postage prepaid, on or before ten (10) business days after the entry of the Notice Order ("Notice Date") to all potential Settlement Class Members who could be identified through reasonable effort, and that a summary of the Notice (the "Publication Notice"), substantially in the form annexed to the Notice Order as Exhibit A-2,

be published in the national edition of *The Wall Street Journal* and over the *PR Newswire* within five (5) calendar days of the Notice Date;

WHEREAS, the Notice and Publication Notice advised Settlement Class Members of the date, time, place, and purpose of the Final Approval Hearing. The Notice further advised that any objections to the proposed Settlement were required to be filed with the Court by no later than August 26, 2015, and mailed to counsel for the Settling Parties such that they were received by no later than August 26, 2015;

WHEREAS, Lead Plaintiffs and Lead Settlement Counsel complied with the provisions of the Notice Order as to the distribution, mailing, and publication of the Notice and Publication Notice;

WHEREAS, on August 17, 2015, Lead Plaintiffs moved for final approval of the proposed Settlement, and the Final Approval Hearing was duly held before this Court on September 24, 2015, at which time all interested Persons were afforded the opportunity to be heard; and

WHEREAS, the Court has duly considered Lead Plaintiffs' motion, the affidavits, declarations, and memoranda of law submitted in support thereof, the Stipulation, all of the submissions and arguments presented with respect to the proposed Settlement, and the record in the Litigation.

NOW, THEREFORE, after due deliberation, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. **Incorporation of Settlement Documents**. This Order and Final Judgment hereby incorporates and makes a part hereof: (i) the Stipulation filed with the Court on March

27, 2015; and (ii) the exhibits attached to the Stipulation, including the Notice and Publication Notice, filed with the Court on March 27, 2015.

2. **Definitions**. Terms with initial capitalization, unless otherwise defined in this Order and Final Judgment, shall have the following meanings:

(a) "Claims Administrator" means Garden City Group, LLC.

(b) "Distribution Order" means the order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, if the Effective Date has occurred, in whole or in part, to Settlement Class Members.

(c) "Effective Date" means the latest date when all of the conditions set forth in Paragraph 43 of the Stipulation have occurred.

(d) "Lead Settlement Counsel" means the law firms of Lieff Cabraser Heimann & Bernstein, LLP, Kessler Topaz Meltzer & Check, LLP, and McTigue Law LLP.

(e) "Litigation Expenses" means the reasonable costs and expenses incurred by counsel for Plaintiffs in connection with commencing and prosecuting the Litigation as well as the costs and expenses of Plaintiffs directly related to their functions as named plaintiffs in the Litigation, for which Lead Settlement Counsel intend to apply to the Court for reimbursement from the Settlement Fund.

(f) "Net Settlement Fund" means the Settlement Fund less: (i) any Taxes and Tax Expenses; (ii) any Notice and Administration Costs; and (iii) any attorneys' fees, Service Awards, and Litigation Expenses awarded by the Court.

(g) "Notice and Administration Costs" means the costs, fees, and expenses that are incurred by the Claims Administrator in connection with providing notice to the Settlement Class and administering the Settlement.

(h) "Person" means any individual, corporation (including all divisions and subsidiaries), general or limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, or any other business or legal entity, as well as each of their spouses, domestic partners, heirs, predecessors, successors, representatives, agents, trustees, estates, administrators, executors, or assigns.

(i) "Plaintiffs' Counsel" means Lead Settlement Counsel and the law firms of Keller Rohrback LLP, Beins Axelrod P.C., Hausfeld LLP, Thornton Law Firm LLP, Hach Rose Schirripa & Cheverie LLP, Nix Patterson & Roach LLP, and Murray Murphy Moul + Basil LLP.

(j) "Released Claims" means, to the fullest extent permitted by law or equity (subject to the clarifications below), any and all claims, rights, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, including Unknown Claims, whether arising under federal, state, foreign or statutory law, common law or administrative law, or any other law, rule or regulation, whether fixed or contingent, accrued or not accrued, matured or unmatured, liquidated or un-liquidated, at law or in equity, whether class or individual in nature that Plaintiffs or any other member of the Settlement Class: (i) asserted in the Litigation; or (ii) could have asserted in the Litigation or any other action or in any forum, that arise out of, relate to, or are in connection with the claims, allegations, transactions, facts, events, acts, disclosures, statements, representations or omissions or failures to act involved, set forth, or referred to in the complaints filed in the Actions or that relate in any way to the Standing

Instruction FX Program, including claims relating to foreign exchange transactions executed through the Defendants' standing instruction channel but that are not the subject of separate, written agreements. "Released Claims" include all rights of appeal from any prior decision of the Court in the Litigation. "Released Claims" do not include claims arising out of, based upon, relating to, concerning, or in connection with the interpretation or enforcement of the terms of the Settlement, nor do they include any claims that are the subject of the tolling agreement entered into between Plaintiffs and BNYM dated December 19, 2014 (as amended March 19, 2015). For the avoidance of doubt, no Released Plaintiff Party shall be deemed to have released any claim pursuant to this Settlement that any other Released Plaintiff Party has not released.

(k) "Released Defendant Claims" means, to the fullest extent permitted by law or equity, all claims and causes of action of every nature and description, including Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Defendants, including but not limited to Defendants' counterclaims and third-party claims. "Released Defendant Claims" do not include claims arising out of, based upon, relating to, concerning, or in connection with the interpretation or enforcement of the terms of the Settlement.

(l) "Released Defendant Parties" means (i) the Defendants; (ii) each of the respective current and former parents, subsidiaries, divisions, and affiliates of each of the entities comprising BNYM, and the predecessors and successors of each of them; and (iii) each of the respective current and former officers, directors and employees of each of the entities comprising BNYM and of the foregoing (ii).

(m) "Released Parties" means the Released Defendant Parties, the Third-Party Defendants, and the Released Plaintiff Parties.

(n) "Released Plaintiff Parties" means Plaintiffs and each and every Settlement Class Member regardless of whether that Person actually obtains a distribution from the Net Settlement Fund, is entitled to receive a distribution under the Plan of Allocation approved by the Court, or has objected to the Settlement, Plan of Allocation, this Final Order and Judgment, and/or Lead Settlement Counsel's motion for attorneys' fees and request for reimbursement of Litigation Expenses; except that, for the avoidance of doubt, "Released Plaintiff Parties" does not include Persons expressly excluded from the Settlement Class (as defined below), or any of the respective current or former parents, subsidiaries, divisions, or affiliates of each of them, or any of the respective current or former officers, directors or employees of each of them.

(o) "Service Awards" refers to the funds awarded out of the Settlement Fund, if any, in addition to whatever monies Plaintiffs may receive pursuant to the Plan of Allocation, or as an award of Litigation Expenses, to compensate Plaintiffs for the effort and time spent by them in connection with the prosecution of the Litigation, as supported by adequate written documentation of such effort and time.

(p) "Settlement" means the Stipulation and the settlement contained therein.

(q) "Settlement Amount" means three hundred thirty-five million dollars ($335,000,000), paid by or on behalf of the Defendants. The Settlement Amount does not include any amounts separately paid into the Settlement Fund Escrow Account by any other Person.

(r) "Settlement Class Member" means any Person that is a member of the Settlement Class.

(s) "Settlement Fund" means the sum of (i) Settlement Amount paid by or on behalf of the Defendants plus any interest earned thereon; and (ii) $155,000,000, including interest accrued and less escrow fees paid before deposit of such funds into the Settlement Fund Escrow Account, plus any interest earned thereon.

(t) "Settling Parties" means (i) Plaintiffs on behalf of themselves and each Settlement Class Member and (ii) the Defendants.

(u) "Standing Instruction FX Program" means the standing instruction program for executing foreign-exchange transactions offered by BNYM, or its current or former parents, subsidiaries, divisions, or affiliates, or its predecessors or successors, including but not limited to the MTM and Beta Transition Management entities.

(v) "Tax Expenses" means any expenses and costs incurred in connection with the payment of Taxes (including, without limitation, expenses of tax attorneys and/or accountants and other advisors and expenses relating to the filing or failure to file all necessary or advisable tax returns).

(w) "Taxes" means any taxes due and payable with respect to the income earned by the Settlement Fund, including any interest or penalties thereon.

(x) "Unknown Claims" means any and all claims that any Released Plaintiff Party does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, and any and all claims that any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Claims, which if known to him, her, or it might have affected his, her, or its decision(s) with respect to the

Settlement, including, but not limited to, his, her, or its decision to object or not to object to the Settlement or not exclude himself, herself, or itself from the Settlement Class. With respect to any and all Released Claims and Released Defendant Claims, the Settling Parties stipulate and agree that, upon the Effective Date, each of the Plaintiffs and the Defendants shall expressly waive, and each of the Released Plaintiff Parties shall be deemed to have, and by operation of this Order and Final Judgment shall have, expressly waived and relinquished any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or any other jurisdiction, or principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Any Released Plaintiff Party or Defendant may hereafter discover facts, legal theories, or authorities in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and the Released Defendant Claims, but Plaintiffs and the Defendants shall expressly, fully, finally, and forever settle and release, and each Released Plaintiff Party shall be deemed to have settled and released, and upon the Effective Date and by operation of this Order and Final Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendant Claims as applicable, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, which have existed or now or will exist, upon any theory of law or equity, including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The

Settling Parties acknowledge, and each Released Plaintiff Party by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendant Claims was separately bargained for and was a key and material element of the Settlement.

Any term with initial capitalization that is not defined in this Order and Final Judgment shall have the meaning provided in the Stipulation.

3. **Jurisdiction**. The Court has jurisdiction to enter this Order and Final Judgment. The Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Settlement Class Members.

4. **Certification of the Settlement Class**. Solely for the purpose of effectuating the Settlement, the Court hereby affirms its determinations in the Notice Order and finally certifies, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, a Settlement Class defined as:

> All domestic custody customers of BNYM that used BNYM's Standing Instruction FX Program between January 12, 1999 and January 17, 2012. The Settlement Class does not include any custodial clients of BNYM with or on behalf of which BNYM has previously reached, or reaches before the Settlement becomes final, a negotiated resolution in connection with disputes or potential disputes relating to the Standing Instruction FX Program (whether or not a qui tam action was filed on behalf of such custodial clients).[1] The Settlement Class also does not include (a) plaintiffs in *Los Angeles County Employees Retirement Association, ex rel. FX Analytics v. The Bank of New York Mellon Corp.*, No. 12-cv-08990-LAK (S.D.N.Y.), and *In re Bank of New York Mellon Corp. False Claims Act Foreign Exchange Litigation*, No. 12-cv-03064-LAK (S.D.N.Y.); or (b) any of the New York

[1] These custodial clients on whose behalf qui tam cases were filed and resolved are Educational Retirement System of Fairfax County; Fairfax County Employees Retirement System; Fairfax County Uniformed Retirement System; Fairfax County Police Officers Retirement System; Massachusetts Pension Reserves Investment Management Board; State Board of Administration of Florida; and Virginia Retirement System.

> City funds named as plaintiffs in the action currently styled *People ex rel. Schneiderman v. The Bank of New York Mellon Corp.*, No. 09/114735 (N.Y. Sup. Ct.), except that the Teachers' Retirement System of the City of New York Variable Annuity Funds and the New York City Deferred Compensation Plan shall both be included in the Settlement Class. The Settlement Class also does not include any Defendants, their predecessors and affiliates, or any entity in which any Defendant has a controlling interest, and their officers, directors, legal representatives, heirs, successors, subsidiaries and/or assigns of any such individual or entity. The "Settlement Class" also shall not include any Person who submits a request for exclusion meeting the requirements of Paragraph 14 of the Notice Order. For the avoidance of doubt, it is agreed that this definition of the "Settlement Class" is intended to supersede the class definitions in the complaints in the Litigation.

5. **Settlement Class Representatives and Class Counsel**. Solely for purposes of effectuating the Settlement, the Court hereby affirms its designations in the Notice Order of Lead Plaintiffs as representatives of the Settlement Class and Lead Settlement Counsel as Class Counsel, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

6. **Notice**. The Court finds that the distribution, mailing, and publication of the Notice and Publication Notice to putative Settlement Class Members: (i) constituted the best notice practicable under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the Settlement, the effect of the Settlement (including the releases therein), and their right to exclude themselves from the Settlement Class or object to any aspect of the Settlement (and appear at the Final Approval Hearing), this Order and Final Judgment, the Plan of Allocation, and/or Lead Settlement Counsel's motion for attorneys' fees, reimbursement of Litigation Expenses, and any Service Awards; (iii) constituted due and sufficient notice of the Settlement to all Persons entitled to receive such; and (iv) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

7. **Final Settlement Approval and Dismissal of Claims**. In light of the benefits to the Settlement Class, the complexity, expense, and possible duration of further litigation against the Defendants, the risks of establishing liability and damages, and the costs of continued litigation, the Court hereby fully and finally approves the Settlement as set forth in the Stipulation in all respects, and finds that the Settlement is in all respects fair, reasonable, and adequate, and in the best interests of Plaintiffs and other Settlement Class Members. The Court further finds that the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of Plaintiffs, the Settlement Class, and the Defendants. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation.

8. The following complaints in the Litigation are each hereby dismissed in their entirety, with prejudice: (a) the Master Customer Class Complaint, dated July 1, 2013, in *Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.*, No. 12-CV-3066 (LAK), *International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.*, No. 12-CV-3067 (LAK), and *Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.*, No. 12-CV-3740 (LAK); (b) the Second Amended Class Action Complaint, dated June 6, 2014, in *Carver, et al. v. The Bank of New York Mellon, et al.*, No. 12-CV-9248 (LAK) ("Second Amended Carver Complaint"); and (c) the Amended Class Action Complaint, dated September 25, 2014, in *Fletcher v. The Bank of New York Mellon, et al.*, No. 14-CV-5496 (LAK) ("Amended Fletcher Complaint"). Provided, however, that nothing herein shall prevent any Settlement Class Member from bringing any claim that is the subject of

the tolling agreement entered into between Plaintiffs and BNYM dated December 19, 2014 (as amended March 19, 2015).

9. **Releases**. Upon the Effective Date, each and every one of the Plaintiffs and the Settlement Class shall be deemed by operation of law to have fully, finally, and forever released, relinquished, waived, discharged, and dismissed, with prejudice and on the merits, each and every one of the Released Claims against each and every one of the Released Defendant Parties, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any or all such Released Claims against each and every one of the Released Defendant Parties in any forum of any kind, whether directly or indirectly, whether on their own behalf or otherwise. All Released Plaintiff Parties shall be bound by the terms of the releases set forth in this Order and Final Judgment and the Stipulation whether or not they actually receive a distribution from the Net Settlement Fund.

10. Upon the Effective Date, each and every one of the Defendants shall be deemed by operation of law to have fully, finally, and forever released, relinquished, waived, discharged, and dismissed, with prejudice and on the merits, each and every one of the Released Defendant Claims against each and every one of the Released Plaintiff Parties and Third-Party Defendants, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any or all such Released Defendant Claims against each and every one of the Released Plaintiff Parties and Third-Party Defendants in any forum of any kind, whether directly or indirectly, whether on their own behalf or otherwise.

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

12. Nothing in this Order and Final Judgment shall prevent any Person that timely submitted a valid request for exclusion from the Settlement Class listed on Exhibit A annexed hereto from commencing, prosecuting, or asserting any Released Claim against any Released Defendant Party. If any such Person commences, prosecutes, or asserts any Released Claim against any Released Defendant Party, nothing in this Order and Final Judgment shall prevent the Released Defendant Party from asserting any claim of any kind against such Person, including any Released Defendant Claims, or from seeking contribution or indemnity from any Person other than any Released Plaintiff Party or Third-Party Defendant, in respect of the claim of that Person who is excluded from the Settlement Class pursuant to a timely and valid request for exclusion.

13. **Rule 11 Finding**. The Court finds and concludes that the Settling Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense, and settlement of the Litigation.

14. **Binding Effect of Order and Final Judgment**. Each Settlement Class Member, including each Plaintiff, is bound by this Order and Final Judgment, including, without limitation, the releases contained herein, regardless of whether such Settlement Class Member (i) receives the Notice, (ii) obtains a recovery from the Settlement Fund, or (iii) objects to the Settlement, this Order and Final Judgment, the Plan of Allocation, and/or Lead Settlement Counsel's motion for attorneys' fees, reimbursement of Litigation Expenses, and any Service Awards. The Persons listed in Exhibit A annexed hereto are excluded from the Settlement Class

pursuant to their valid and timely requests for exclusion and are not bound by the terms of the Stipulation or this Order and Final Judgment.[2]

15. **Use of this Order and Final Judgment**. Except as set forth in the Stipulation and in Paragraph 16 below, this Order and Final Judgment and the Stipulation, whether or not consummated, and any negotiations, proceedings, or agreements relating to the Stipulation, the Settlement, and any matters arising in connection with settlement negotiations, proceedings, or agreements, shall not be offered or received against any or all of the Defendants or the Released Parties for any purpose, and in particular:

(a) do not constitute, and shall not be offered or received against the Defendants or the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by the Defendants or the Released Defendant Parties with respect to the truth of any fact alleged by Plaintiffs or any other Settlement Class Member or the validity of any claim that has been or could have been asserted in the Litigation or in any other litigation or proceeding, including but not limited to the Released Claims, or of any liability, damages, negligence, fault, or wrongdoing of the Defendants or the Released Defendant Parties;

(b) do not constitute, and shall not be offered or received against the Defendants or the Released Defendant Parties as evidence of a presumption, concession, or admission of any fault, misstatement, or omission with respect to any statement or written document approved or made by the Defendants or the Released Defendant Parties, or against the

[2] The request for exclusion by TCW Funds, Inc. ("TCW") was submitted on behalf of only a select number of accounts (now closed or dissolved) that TCW once managed. While those specific accounts are excluded from the Settlement Class, the TCW accounts that remain part of the Settlement Class and that are participating in the Settlement are bound by the terms of the Stipulation and this Order and Final Judgment.

Defendants, the Released Defendant Parties, Plaintiffs, or any other member of the Settlement Class as evidence of any infirmity in the claims or defenses that have been or could have been asserted in the Litigation;

(c) do not constitute, and shall not be offered or received against the Defendants or the Released Parties, as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any other reason against any of the Defendants or the Released Parties, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(d) do not constitute, and shall not be construed against the Defendants or the Released Parties, as an admission or concession that the consideration to be given under the Stipulation represents the amount which could be or would have been recovered after trial; and

(e) do not constitute, and shall not be construed as or received in evidence as an admission, concession, or presumption against Plaintiffs or any other Settlement Class Member that any of their claims are without merit or infirm, that a class should not be certified, or that damages recoverable under the complaints in the Litigation would not have exceeded the Settlement Amount.

16. The Released Parties may file or refer to the Stipulation and/or this Order and Final Judgment to (i) effectuate the liability protection granted thereunder, including, without limitation, to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; or (ii) effectuate the liability protections granted them under any applicable insurance policies. The Released Parties may file or refer to the Stipulation and/or

this Order and Final Judgment in any action that may be brought to enforce the terms of the Stipulation and/or this Order and Final Judgment. All Released Parties submit to the jurisdiction of this Court for purposes of implementing and enforcing the Settlement.

17. **Retention of Jurisdiction**. The Court reserves and retains jurisdiction, without affecting in any way the finality of this Order and Final Judgment, over: (i) implementation and enforcement of the Settlement; (ii) the allowance, disallowance, or adjustment, on equitable grounds, of any Settlement Class Member's right to recover under the Stipulation, and any award or distribution of the Settlement Fund; (iii) disposition of the Settlement Fund; (iv) the hearing and determination of Lead Settlement Counsel's motion for attorneys' fees, reimbursement of Litigation Expenses, and any Service Awards; (v) the hearing and determination of any motions to approve the Plan of Allocation or the Distribution Order; (vi) enforcement and administration of this Order and Final Judgment; (vii) enforcement and administration of the Stipulation, including the releases and any bar orders executed in connection therewith; and (viii) other matters related or ancillary to the foregoing.

18. **Termination**. In the event the Settlement is terminated in its entirety or does not become effective in accordance with the terms of the Stipulation for any reason, the Stipulation, except as otherwise provided therein, including any amendment(s) thereto, and this Order and Final Judgment, including but not limited to the certification of the Settlement Class provided in Paragraph 4 above, shall be null and void and of no further force or effect, and may not be introduced as evidence or referred to in any action or proceeding by any Person, and Plaintiffs and the Defendants shall be restored to their respective positions in the Litigation as of February 13, 2015, and, except as otherwise expressly provided, Plaintiffs and the Defendants shall proceed in all respects as if the Stipulation and any related orders had not been entered, and the

balance of the Settlement Fund including interest accrued thereon, less any Notice and Administration Costs paid or incurred and less any Taxes and Tax Expenses paid, incurred, or owing, shall be refunded to BNYM.

19. **Plan of Allocation**. A separate order shall be entered regarding the proposed Plan of Allocation. Such order shall not disturb or affect any of the terms of this Order and Final Judgment.

20. **Attorneys' Fees, Litigation Expenses, and/or Service Awards.** A separate order shall be entered regarding Lead Settlement Counsel's motion for attorneys' fees, reimbursement of Litigation Expenses, and any Service Awards as allowed by the Court. Such order shall not disturb or affect any of the terms of this Order and Final Judgment.

21. **Administration of the Settlement**. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

22. **Consummation of the Settlement**. The Settling Parties are hereby directed to consummate the Stipulation and to perform its terms.

23. **Entry of Final Judgment**. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed.

Dated: New York, New York
Sept. 24, 2015

HONORABLE LEWIS A. KAPLAN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Exclusion No.	Name	City, State
1	Bridgewater & Associates Inc.	Westport, Connecticut
2	TCW Funds, Inc. (*see* FN 2, *supra*)	Los Angeles, California

EX. 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	No. 12-MD-2335 (LAK) (JLC)
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3066 (LAK) (JLC)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3067 (LAK) (JLC)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3470 (LAK) (JLC)
Carver, et al. v. The Bank of New York Mellon, et al.	No. 12-CV-9248 (LAK) (JLC)
Fletcher v. The Bank of New York Mellon, et al.	No. 14-CV-5496 (LAK) (JLC)

~~[PROPOSED]~~ ORDER AWARDING ATTORNEYS' FEES, SERVICE AWARDS, AND REIMBURSEMENT OF LITIGATION EXPENSES

This matter came on for hearing on September 24, 2015 (the "Settlement Hearing"), on Lead Settlement Counsel's motion to determine, among other things: (i) whether and in what amount to award Plaintiffs' Counsel in the above-captioned action (the "Litigation") attorneys' fees and reimbursement of expenses in connection with the settlement of the Litigation, and (ii) whether and in what amount to award Plaintiffs service awards in connection with their representation of the Settlement Class. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all persons and entities reasonably identifiable as members of the Settlement Class, and that a summary notice of the Settlement

Hearing substantially in the form approved by the Court was published in the national edition of *The Wall Street Journal* and transmitted over *PR Newswire* pursuant to the specifications of the Court; and the Court having considered Lead Settlement Counsel's application for attorneys' fees and expenses (the "Fee and Expense Application") and all supporting and other related materials.

IT IS HEREBY ORDERED, that:

1. This Order awarding attorneys' fees and expenses incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated as of March 19, 2015, entered into among Plaintiffs, on behalf of themselves and each Settlement Class Member, and Defendants (the "Stipulation") and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order awarding attorneys' fees and expenses, and over the subject matter of the Litigation and all parties to the Litigation, including all Settlement Class Members.

3. Notice of the Fee and Expense Application was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the Fee and Expense Application: (i) constituted the best notice practicable under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the motion; (iii) constituted due and sufficient notice of the Settlement to all Persons entitled to receive such; and (iv) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable law and rules.

4. Settlement Class Members have been given the opportunity to object to the Fee

In re Bank of New York Mellon Corp. Forex Trans. Lit. 12-md-2335 (LAK)

Rider 3 to Order Awarding Attorneys' Fees, Etc.

5. Plaintiffs' counsel are hereby awarded attorneys' fees in the aggregate amount of $83.75 million and reimbursement of out-of-pocket expenses in the aggregate amount of $2,901,734.10. The attorneys' fees awarded hereby are allocated among the relevant counsel as follows based on the multipliers applied to each firm's lodestar as proposed by Lead Counsel, which are adopted by the Court:

Firm	**Lodestar**	**Fees Awarding (and approximate multiplier)**
Lieff Cabraser	$20,256,579,50	$34,157,764 (1.686)
Kessler Topaz	$15,435,388.15	$26,027,124 (1.686)
Thornton Law	$1,600,683.00	$4,625,974 (2.890)
Hach Rose	$2,989,868.75	$4,458,776 (1.491)
Hausfeld	$2,578,086.50	$3,844,687 (1.491)
Murray Murphy	$2,115,135,50	$3,154,291 (1.491)
Nix Patterson	$732,600.00	$1,092,523 (1.491)
ERISA Counsel (McTigue Law; Beins Axelrod; Keller Rohrback)	$6,388,860.66	$6,388,861 (1.000)
Total	**$52,097,202.06**	**$83,750,000 (1.610)**

SO ORDERED

LEWIS A. KAPLAN, USDJ

9/24/15

EX. 10

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Case No. 11-cv-10230 MLW
- -x
ARKANSAS TEACHER RETIREMENT SYSTEM,
et al.,

Plaintiffs,

-against-

STATE STREET BANK AND TRUST COMPANY,

Defendant.

- -x

JAMS
Reference No. 1345000011
- -x

In Re: STATE STREET ATTORNEYS' FEES

- -x

June 16, 2017
8:14 a.m.

B e f o r e :

SPECIAL MASTER HON. GERALD ROSEN
United States District Court, Retired

Deposition of DANIEL P. CHIPLOCK, taken by Counsel to the Special Master, held at the offices of JAMS, 620 Eighth Avenue, New York, New York, before Helen Mitchell, a Registered Professional Reporter and Notary Public.

6

[redacted]

25 no.

8

[redacted]

7

[redacted]

9

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reliability of the representations made in the November 10th, 2016 letter from David Goldsmith, Esq. of Labaton Sucharow to the court;

"(c) the accuracy and reliability of the representations made by the parties requesting service awards;

"(d) the reasonableness of the amounts of attorneys' fees, expenses and service awards previously ordered, and whether any or all of them should be reduced;

"(e) whether any misconduct occurred in connection with such awards; and, if so,

"(f) whether it should be sanctioned."

So that's why we're here today.

EXAMINATION

BY MR. SINNOTT:

Q Dan, this will be a follow-up, and seem very similar to the conversation that we had approximately two months ago, but we are

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charged with providing record evidence, and that's why we have a court reporter here, and, hence, the formalities as well.

A Understood.

Q So good morning, Dan.

Could you tell us a little bit about your background, beginning with your education.

A Sure. My undergraduate education was at Columbia University. I received my BA in anthropology in 1994. I then attended Stanford Law School, where I graduated in 2000, and then I commenced work at Lieff Cabraser in September of 2000, and have been at the firm ever since.

Q So your entire legal career, practicing legal career, has been with Lieff?

A That's correct.

Q When did you become a partner at Lieff?

A I became what's known as a non-equity or a junior partner in or about 2006, and I became a full partner in or about 2012.

Q And could you tell us, in very

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brief terms, the course of your practice at Lieff Cabraser, what types of practice areas you are involved in?

A As far as practice areas go, I have predominantly worked in the securities and financial fraud practice area at the firm. I've also done cases in the consumer practice area during my career at the firm. I've also worked on some mass torts cases during my career at the firm.

Most of those cases have been class cases. However, I have worked on several individual cases where the plaintiff was an individual or collection of individuals.

Q With respect to your experience in recent years, have you had any experience in foreign exchange cases?

A A lot. I would say since 2012 or 2011 the foreign exchange cases have been my primary focus at the firm.

Q Can you tell us the names of the cases that you've worked on involving foreign exchange?

A There were essentially two

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class cases. The case that took the most amount of my time was the case we brought against the Bank of New York Mellon, which resolved in 2015 -- yes, 2015 -- and then the case against State Street, which resolved in 2016.

Q You mentioned a moment ago, Dan, that you'd worked in mass torts --

A Um-hum.

Q -- and personal injury and consumer matters, I believe you said. Could you describe very briefly the types of mass tort and consumer and PI cases that you've worked?

A Yes.

As far as mass torts and PI cases go, early on in my career -- or I should say earlier in my career, I worked on several cases where we represented individuals who had been injured as a result of the fen-phen diet drug combination. I also had a number of clients, individual clients, who were injured as a result of taking the prescription painkiller Vioxx. I also worked on several cases involving Baycol, which was a cholesterol lowering drug.

Those are the personal injury

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cases that I remember off the top of my head.

On a pro bono basis, I also represented two individuals who suffered injury on September 11th, 2001 at Ground Zero as part of the 9/11 Victims Compensation Fund cases.

And then in the consumer field I worked early on in my career in a case involving Fleet Bank credit cards, and it had to do with credit card overcharging.

I also, to a certain degree, considered both the Bank of New York Mellon and State Street cases to be consumer cases. There was some overlap in practice areas between the consumer field and the financial fraud field when it came to those two cases in particular.

Q Thank you.

From an overview perspective, could you tell us your role in the State Street litigation, and what your duties were, in general terms, in this case?

A As far as State Street is concerned, I would say I was basically the partner in charge of the case as far as Lieff Cabraser was concerned, as far as our

involvement was concerned. So I attended all the mediation sessions, I was involved in crafting the allegations that were included in both the first complaint we filed and in the amended complaint that we filed.

(Mr. Toothman enters the room.)

A I was heavily involved in briefing on the motion to dismiss in that case. I attended argument on the motion to dismiss, I sat next to Mr. Goldsmith.

I attended all hearings in the case. There weren't that many, but I attended the preliminary approval and final approval hearings in the case.

I oversaw the general litigation effort at the firm in that case, which included coordinating with Kirti and the document reviewers in the case. So I coordinated with Kirti and the document reviewers in our case to handle all document review assignments that were allocated to our firm. I also coordinated with my corollaries at the other firms on the case, so at Labaton that would have been principally David Goldsmith and

Mike Rogers, and at Thornton that would have been principally Mike Lesser, and also Evan Hoffman to a certain extent.

Q So it would be fair to say you had a significant role in this case both on behalf of your firm, but also in partnership with the other firms?

A Yes.

Q As part of your involvement in the motion to dismiss briefing that you've described in your coordination with the attorneys at the other firms, did you develop a theory of damages in this case, or did you contribute to that development of theory, and could you tell us about that?

A My principal contribution was developing the Chapter 93A theory, which it came to us early on in the case, and I remembered it because I spent my 2L summer working for a solo practitioner in Somerville, Massachusetts, who did employment cases and civil rights cases, and in the course of my work there for him I did a lot of legal research, and I came across the statute, the Massachusetts Consumer Protection

Statute, and I remember being impressed at the time that it was a very powerful -- it seemed to be a very powerful statute for consumers, somewhat unique under Massachusetts law. And I kind of filed it away. And so when we were looking at possible claims we could bring against custody banks like Bank of New York Mellon or State Street, one of the theories we hit on was consumer protection.

In the Bank of New York case it was a little bit complicated because there were two banks and they came from different parts of the country, one in Pennsylvania, one in New York.

In State Street it was made a little bit more simple because you had a Massachusetts-based bank. And I remember at some point it dawned on me there was this statute I remembered from my prior work as a 2L, and I looked into it. And the more I looked at it, the more promising it looked as a possible class-wide remedy.

Q When did you first consider 93A as being a potential avenue to pursue in this

case?

A I think it would be late 2010 or early 2011. So we filed the first complaint in February of 2011, and I think I probably would have hit upon the idea probably in late 2010. And I remember evangelizing the concept. And that -- that was true throughout the case, too, that I was a constant advocate for that claim in particular as being solid for a number of reasons, both because it -- it was a great avenue, a great vehicle for obtaining relief, and it also seemed to present a very promising vehicle for class certification.

Q And what was it about 93A that made it a great vehicle for relief?

A Well, even the case law and commentary in Massachusetts describes Chapter 93A as sui generis, it sort of stands on its own, it's neither contract nor tort theory, it's basically an all-encompassing theory that's meant to address unfair or deceptive conduct, and it applies not only to individual consumers, but it can also apply to businesses who are victimized, for lack of a better word, by that

Chiplock

type of conduct in their inter-business dealings. It offers double or treble damages if the conduct is found to be willful or intentional, and it also allows for prejudgment interest, which I forget the exact number, but I think it's fairly generous. So it's a powerful statute.

Q In applying this statute, had you had the opportunity to conduct a factual review of some kind of records relative to State Street Bank?

A Well, we didn't have much by way of anything in terms of internal documentation at State Street. What we did have were the whistleblowers' allegations as to what State Street had done.

There had been whistleblower cases filed in California -- and elsewhere, but the one in California was the one that was unsealed and made public in October of 2009. So we had that, and we also had our own analyses, which we had done by basically looking at the mid-rate of foreign exchange trades for particular clients over the course of years --

Chiplock

well, looking at the actual trading prices for an individual client's trades, and then comparing them to the mid-rate on contemporaneous days, and looking at patterns.

And we were able to discern a pattern in pretty much every case we looked at that showed that prices tended to veer towards the extremities of the range of the day, and that they almost always worked against the interest of the client. So the client would find themselves paying more on an everyday basis for their foreign exchange trades than they would otherwise had there been no unfair pricing going on.

Q And was that, at its essence, what this case was about, the range of time manipulation by State Street?

A Yeah, essentially what the case was about, we alleged that the bank consistently overcharged for foreign exchange trades that were done for its customers on an indirect basis, or a custody basis as they called it.

Q And we'll get back to that later on, but as part of your overall duties in

Chiplock

the State Street case, did you participate in preparing the fee petition?

A What I participated in was preparing my own fee declaration. I do recall submitting modest comments to the omnibus declaration that Larry -- that Larry Sucharow submitted.

As far as the fee brief goes, and as far as everyone else's individual fee declarations, I don't recall having input.

I definitely did not have input into anyone else's individual fee declaration because I didn't see them before they got filed.

The fee brief itself, it's possible I might have had comments to that, but I just don't recall.

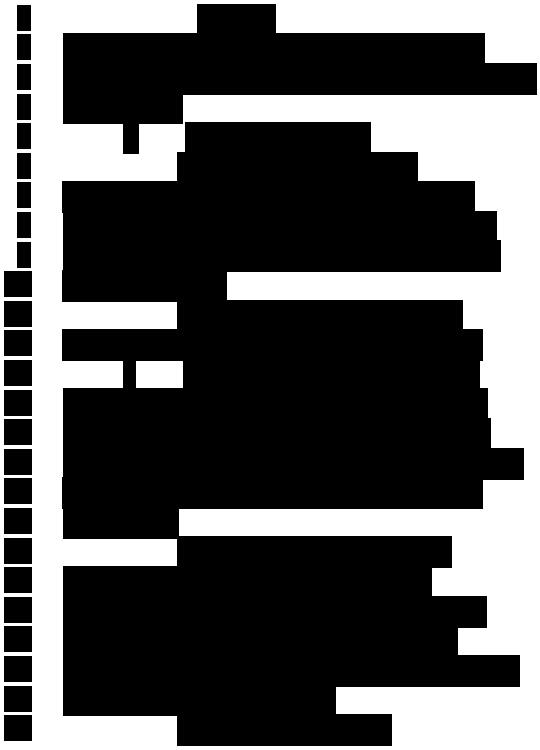
Q All right, thank you.

And also in the realm of filing, of your involvement in this case, as far as your responsibilities, did you participate in the drafting of a letter on November 10th, 2016?

A I did.

Q And what was your role in that?

A I reviewed drafts that were



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Q Did Mr. Lieff have any prior history or contacts that Thornton found valuable, based on your understanding of the case?

A I think so. I think Bob had a good relationship with the then attorney general of California, and/or his staff.

Q Would that be Jerry Brown?

A Yes.

Q What were the allegations in the California case with respect to State Street?

A They were essentially similar to what we alleged in the class case ultimately.

The California litigation alleged that State Street had unlawfully overcharged on foreign exchange transactions that were done on a custody or indirect basis for certain California funds.

Q All right, thank you.

Now, let me move you forward to the BoNY Mellon case and ask you what role Lieff played in that particular litigation.

A So ultimately Lieff Cabraser

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was co-lead counsel for a nationwide class of affected consumers in the Bank of New York Mellon litigation.

We began by filing a class case in California in federal court, in the Northern District of California, before Judge Alsup. That was a case that was brought on behalf of pension funds that were unlawfully overcharged, in our view, on their foreign exchange transactions by the Bank of New York Mellon.

Another firm, called Kessler Topaz, filed a similar nationwide class case in the Eastern District of Pennsylvania.

These cases were both filed in 2011.

In addition to that, and subsequent to both of those filings, the United States District -- the United States Attorney for the Southern District of New York filed a case in late 2011 against the Bank of New York, and they filed their case in the Southern District of New York.

The New York Attorney General filed a case either that same day or the day

Chiplock

before, also in the fall of 2011, against the Bank of New York. So there were a number of cases on file.

The Bank of New York filed what's known as a multi-district litigation petition which sought to centralize all the cases in the Southern District of New York. That petition was granted in 2012, whereupon all the cases were centralized in front of Judge Kaplan in that district, and as part of that centralization, Lieff Cabraser was appointed two things: We were appointed co-lead counsel for the affected nationwide class of consumers, or custodial customers of the bank; we also were named to the executive committee overseeing the entire litigation effort on behalf of plaintiffs in that case. And there were three firms on that executive committee; Lieff Cabraser was one, Kessler Topaz was another, and the firm of Bernstein Litowitz Berger & Grossman was the third. They were the lead counsel in a securities fraud lawsuit that had been brought against Bank of New York.

So it was quite a massive

Chiplock

undertaking, and we were at the center of it all.

Q Describe the basic allegations against BoNY Mellon.

A The central allegations there were very similar to the allegations in the State Street case. What we alleged was that the Bank of New York Mellon had consistently overcharged its custody customers for foreign exchange trades that they did on a standing instructions basis, which, in State Street lingo, would have been known as indirect FX or custody FX.

Q Were there any significant differences between the --

MR. SINNOTT: Strike that.

Q With respect to the BoNY Mellon case, you would agree that there were some significant similarities with the State Street case that we're here on today; correct?

A Very much so. What you had were two custody banks who were essentially accused of doing the same thing, which was to basically price gouge their customers when doing

Chiplock

what they were referring to as sort of a courtesy service. And in the process of assuring customers that they would be providing best execution, or using prices that were competitive, or based on interbank market prices at the time of the trade, instead of doing any of those things, they were basically charging as much as they thought they could get away with, essentially.

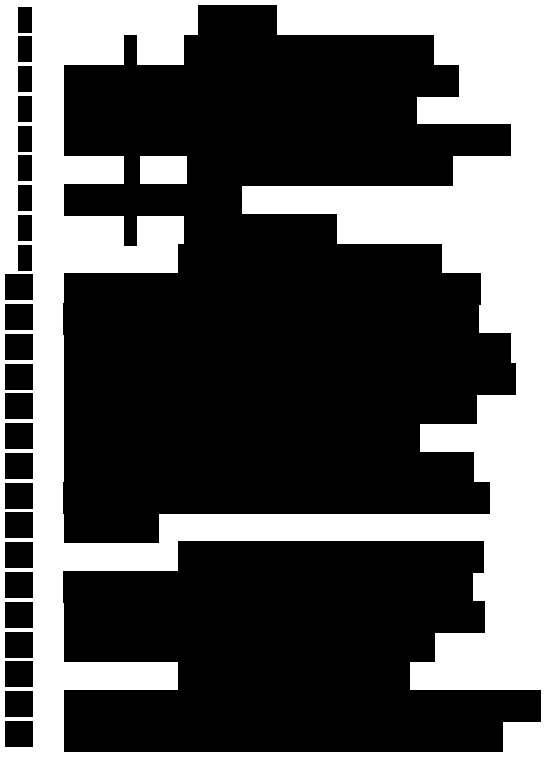
Q Would it be fair to say, Dan, that Lieff's experience in the California action, and especially in the Mellon action, allowed it to develop a baseline of familiarity and expertise that it brought to the State Street case?

A Absolutely.

Q Were there any significant differences between either or both of those prior cases and the Massachusetts case?

A When you say, "either or both of the prior cases," you mean the California State Street case and the Bank of New York Mellon case?

Q Yes.



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Lieff Cabraser clients -- clients of ours and clients of our co-counsel's.

Q Were there retainer agreements with these clients and class representatives?

A Yes, there were retainer agreements. Lieff Cabraser had individual retainer agreements with the Ohio funds. With the Local 138 Fund, I believe the individual retainer agreement would have been with one of our co-counsel, Hach Rose Schirripa & Cheverie.

Q Did those agreements address attorneys' fees awarded if litigation was successful?

A With respect to the Ohio agreement, I'm trying to remember if there was an actual cap put on it, or if it basically said, you know, we apply to the court and it would be up to the court's discretion, with the advice and input of the client. I just don't remember.

Q Okay. Thanks, Dan.

Now, the Mellon case involved pretty intense discovery; is that a fair statement?

Chiplock

A It certainly did.

Q Could you describe that for us?

A The total number of depositions that were taken in that case, I think at the end of the day, were in excess of 120. There were something north of 20 million pages of documents produced and reviewed in that case.

The bank itself actually took -- noticed and/or took more than 60 depositions of -- many of them being of third parties, but also a large number of them, frankly, being of our clients and our clients' associates. It was a very, very hard-fought litigation.

Q And you described the document review. Can you tell us how that document review compared in complexity or scope with the document review in the instant case, the State Street case?

A I would say that the State Street document review tracked very closely our experience in the Bank of New York Mellon case up until the point that the State Street case -- that the efforts in the State Street case ended

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because we had reached an agreement in principle.

So, in other words, in the Bank of New York Mellon case, like the State Street case, we started out by doing document-by-document review, with experienced staff attorneys looking for documents that will help us to build our case, and also looking along the way for any documents that we think State Street might point to as supportive of its defense.

That was very similar to what we did in the Bank of New York Mellon case, up until the point where we dove into depositions. Then once we dove into depositions in the Bank of New York Mellon case, the effort got -- entered, I would say, a separate stage, which was, I would say, preparation of the witness kits for witnesses that were being deposed or defended in that case.

Q Are you able to say whether that preparation for depositions that staff attorneys were involved in in the Mellon case was substantively different from the work that they did in the non-depo preparation, the other

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things that you've described?

A Well, it was only different to the extent that in the Bank of New York Mellon case they were obviously focused on individuals, and so when they were preparing a witness kit, they're looking specifically for compelling or helpful documents that that witness might actually know about, so they would be e-mails that the witness was copied on or documents that that specific witness may have drafted.

In the State Street case, we never got to the deposition phase, but what we did do was to have the staff attorneys prepare very detailed memoranda on issues, issues that we would wish to explore in depositions once witnesses were identified, and we also wanted them to help us really home in on areas of follow-up discovery and document discovery, if the mediation were to end without a resolution, and we were put into a posture where we had to very quickly get the case ready so that we could move to that next stage, which was depositions

Q All right. Thank you, Dan.

What was Lieff's involvement in

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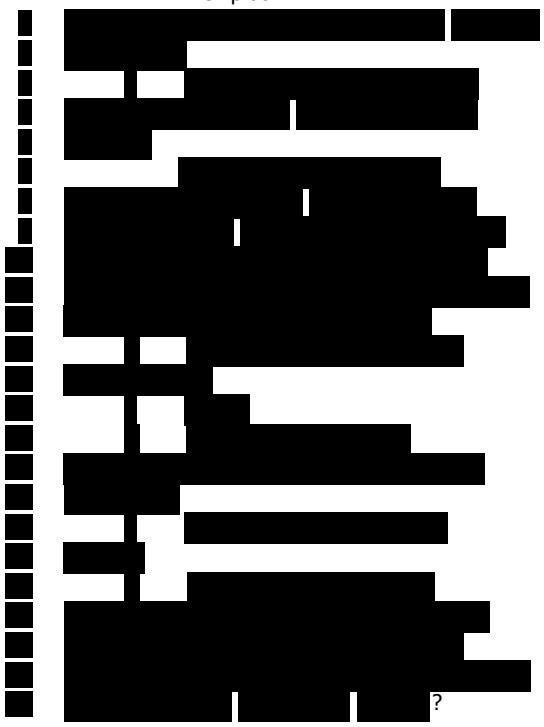

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A I would say that we did. There was no actual case as far as I understand it. What I understand happened -- and Richard and Kirti would be the primary authorities on this, but what I understand happened is [redacted] essentially reached a pre-filing resolution with State Street and obtained what I believe may have been a hundred percent of its alleged losses as a result of the conduct that we outlined for them.

Q So would you agree that that was a useful and valuable experience for the firm?

A Yes.

Q Previously you referred to the Mellon case and at some point Lieff being appointed as co-lead counsel; is that correct?

A Yes.

Q Did that change Lieff's role in the case, or the nature of its involvement in the Mellon case?

A I think it did, because when we started out in the California litigation we were one of three firms, we were all growing equally,

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as it were, in the California litigation, so our co-counsel were the Thornton Law Firm out of Massachusetts, and also Hausfeld LLP; predominantly they're lawyers based in San Francisco. So that was then. That was in 2011 and early 2012.

Once the cases got centralized in the Southern District of New York, Lieff Cabraser, I guess, sort of emerged, along with Kessler Topaz, who had brought the case in the Eastern District of Pennsylvania, as one of two law firms that was appointed to be co-lead for all affected consumers. And the Thornton Law Firm and Hausfeld LLP continued to work on the case, but my firm took on an additional leadership role overseeing all of the cases, and with that came more responsibility and more authority.

Q And who was Lieff's primary or point person in that lead counsel role?

A I was.

I was the principal day-to-day point person on the case. Elizabeth Cabraser was the individual who was appointed to the

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executive committee that oversaw the MDL.

So if you were to read the executive committee appointment order, it would name Elizabeth Cabraser of my firm, it would name Joseph Meltzer of Kessler Topaz, and it would name Steven Singer, who was then at Bernstein Litowitz Berger & Grossman, as the three-member executive committee, but essentially what that meant was that the three firms were overseeing the case, and so functionally what that meant was I was the point person in the Bank of New York Mellon case.

Q And as point person, Dan, what were your primary duties?

A I would say everything that I said with respect to State Street earlier. So I was principally responsible for coordinating our efforts with co-counsel. I also, unlike in State Street, had a tremendous amount of contact and communication with the U.S. attorneys who worked on that case and who were very actively litigating against the Bank of New York Mellon, and we worked in pretty close partnership with them, frankly, throughout that litigation.

Chiplock

So I had very active day-to-day communications with all the attorneys in the case, and the government attorneys, attending all depositions, taking or defending many of them, and working closely with our staff attorneys and our -- the other attorneys doing document review, to help develop the case and theories that would push us forward.

Q Did you also have responsibilities ultimately with respect to a fee petition or petitions?

A Yes.

Q If you could describe what those were in the Mellon case.

A So my principal cohort at Kessler Topaz and I were primarily responsible for drafting the fee petition in the Bank of New York Mellon case. I also had help, substantial help, from attorneys in my office in drafting those papers, as did my colleague at Kessler Topaz, I'm sure. But as co-lead counsel, we were responsible for basically putting that package together, and in collecting individual fee declarations from our various colleagues in

that case.

Q And in collecting those individual fee declarations, did you compare them?

A We looked at them closely, yes, we did.

Q What were you looking for as you looked at them closely?

A We were looking to make sure that, to the best of our ability, that time that related to things like the actual fee petition were not included. We also, I believe, asked everyone to exclude timekeepers who had put in less than ten hours on the case, I think. I think that was the cutoff that we used.

We also, in that case, asked everyone to divide up their time into categories. I think we had ten categories of time in that case, whether it be different types of discovery or attendance at hearings, or communications with colleagues and general strategy time. We broke out that time into categories so that the judge could get a good idea of what we had spent five years -- or

whatever -- four years doing, and making sure that nothing looked too out of kilter.

Q In that case, Dan, was there any sharing of document reviewers?

A Not that I recall.

Q As part of your role in comparing the fee petitions, did you try to look for duplication of hours?

A Well, I certainly looked to make sure that no hours were being duplicated on our side, on the Lieff Cabraser side.

I think -- I'm not sure how we -- since no individuals were crossed between firms, or overlapped between firms, that wasn't an issue in the Bank of New York Mellon case. We did not share staff in the Bank of New York Mellon case the way we did in State Street, so that was not an issue.

Q Would you agree that it's reasonable to expect lead counsel in a matter to ensure accuracy of fee petitions?

A Yes.

Q And this is more of a long-term strategic question, but should lead counsel also

be responsible in cases such as this for periodically reviewing hours and fees spent by other attorneys -- other firms, as well as its own?

A I would say it's good practice to do so.

Often -- I know in the Bank of New York Mellon case, I think it was actually written into the order appointing us as lead counsel that we would periodically do that.

Q Now, Dan, earlier you talked about how Lieff was able to build on its valuable experiences in other cases to include the California case and the Mellon case leading up to the instant case. How did Lieff avoid duplication of effort on these cases? Because there was overlap; correct?

A Overlap between the State Street and Bank of New York Mellon cases?

Q Yes.

A How did we avoid duplication in those two cases?

Q Yes.

A I'm not sure I understand how

there would be duplication. I think, if anything, the efforts in Bank of New York Mellon in particular very helpfully informed our efforts in State Street, and if anything made our efforts in State Street more efficient as a result.

Q And was there an effort to segregate work that was done on one case from being included in the billing of another case?

A We did not include any effort spent on the Bank of New York Mellon case in the State Street fee application.

Q And the same could be said for work done on other cases as well?

A Yes, that would be true.

I mean, I will say in very early days, let's say in 2008 or 2009, we may have looked at the behavior of custody banks overall, and there may have been work that could equally have applied to State Street versus Bank of New York Mellon, because we were looking at whether this was an industry-wide practice. So in early days, like 2008 or 2009, it's possible that there was time that we devoted that would

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have been helpful to either case, because we were still developing this theory about -- about the industry and what we suspected was a practice that was common to participants in that industry.

Q Would that include expert review of foreign exchanges and --

A I believe we worked with outside consultants, yes.

Q And how would you determine to which case such overlapping review or research should be applied?

A Whichever case it seemed more applicable to. I mean, it's -- I mean, I will say this, we did not include the same time in two different cases. So the decision -- if we were to look back to 2008, into really early days, that time would be either allocated to one case or the other; it wouldn't fall into more than one bucket.

And so in early days we did work with consultants, who were helping us to look at pricing patterns, and Kirti Dugar himself, at our firm, was able to also do work

Chiplock

on those types of analyses, with the help of data that was supplied or shared with outside consultants.

So -- now I'm forgetting what the question was.

Q I think you answered the question.

A All right.

Q Let me follow that up, Dan.

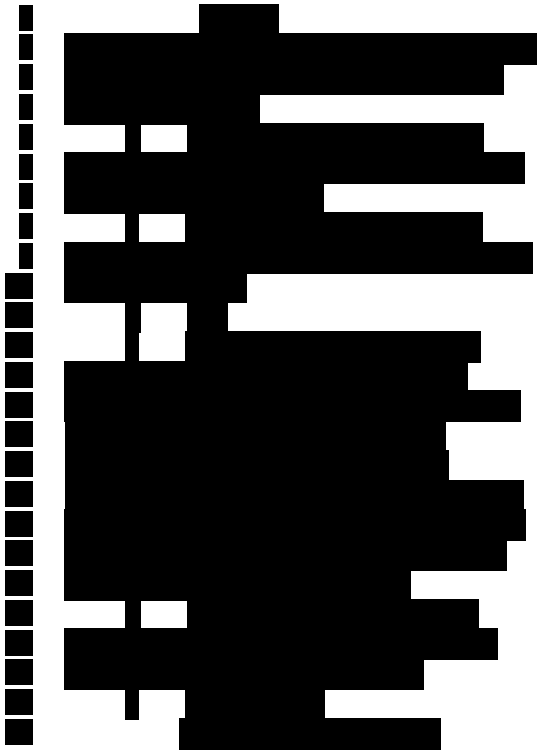
Whose responsibility at Lieff was it to ensure that document review or expert work or research was assigned to the appropriate case?

A To State Street or Bank of New York Mellon?

Q Yes.

A To be honest, I'm not sure I understand the question.

The document review -- I guess the responsibility for assigning out document review principally was mine, in either case; I'll say that. But there wouldn't have been overlap in document review in those two cases because they were different cases, and the



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ensuring that State Street document review versus Bank of New York Mellon document review was done correctly?

Q Yes.

A That would ultimately fall to me.

Q Let me bring you forward, Dan, to Lieff's involvement in the State Street litigation, and ask you how that came about. How did Lieff come to be involved in the other firms?

A In the State Street case?

Q Yes.

A My understanding is that for the class litigation we were associated -- Lieff Cabraser was associated into that case, I would say, in late 2010, after we were advised that Labaton had a client who was interested in proceeding as a proposed class representative in that case.

Q And who was that client?

A The Arkansas Teachers Retirement System.

Q It's fair to say that Lieff did

Chiplock

not have a client; correct?

A Not in the State Street class litigation, no.

Q Had you participated in other class actions in which the firm didn't have a client?

A I'm sure my firm has. I mean, I'm sure my firm has been associated in class litigation where the firm itself did not have the individual client relationship. I'm sure that's happened.

Q Is it fair to say that clients are pretty valuable in cases such as this?

A Yes. I don't have a case without a client. And, also, I would say the firm that has the client relationship usually has --

(Brian McTigue joins the conference call)

MR. SINNOTT: Welcome, Brian. We're about an hour into the examination of Dan Chiplock.

MR. MCTIGUE: All right.

A So I think, as I was saying,

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yeah, the firm that has the client, so to speak, often has, you know, a certain cache, a certain role in the case, that they might not otherwise have.

Q What did Lieff bring to the table -- and I know some of this will be redundant, but if you can tell us at the outset of State Street and this partnership with the other firms, what was Lieff bringing in the absence of having a client?

A I would say two or three things. We brought class action expertise, which Labaton no doubt had also. We also brought resources, which Labaton also had. We also brought a deep institutional knowledge of foreign exchange that we had obtained up to that point by having worked on the whistleblower investigations and in developing a companion case against Bank of New York Mellon.

MR. MCTIGUE: I can't hear Dan's words. If he could speak closer to the microphone, or more directly into it.

MR. SINNOTT: All right. If we

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had a microphone, Brian, we'd accommodate that, but I will move the phone closer to the witness, and I'll ask the witness to keep his voice up.

Okay?

MR. MCTIGUE: Thank you.

MR. SINNOTT: Sure.

Q Were there any non-monetary outcomes that Lieff was hoping to derive from the State Street case?

A Non-monetary outcomes?

I would say principally the objective was to obtain reform in how custodial banks conducted their business vis-a-vis their customers. I would say that would be the chief non-monetary outcome that would have been desired as a result of litigation.

Q And earlier you had referred to -- regarding the State Street case, as being a consumer case in some respects. Would that be consistent with that objective?

A I think of it that way, yes.

Q And what skills or institutional knowledge did Lieff bring to the

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case that were most important, in your view?

A I may be repeating myself, but I think it would be the skills and knowledge that we had developed over the course of, at that point years, in developing the custodial foreign exchange overpricing theory.

We also brought counsel who were very experienced in class action litigation practice.

We also brought a diversity of practice areas -- experience in a diversity of practice areas in our firm. We didn't just do financial fraud cases, we also did consumer cases and other types of cases, and like I said earlier, this case in particular was sort of a hybrid, if you will. It wasn't -- it wasn't a securities fraud case, that's for sure, but it was a case that largely involved large financial institutions, and their relationship to what were largely institutional clients, who also tended to be somewhat sophisticated themselves. So it wasn't your run-of-the-mill consumer case, it was a -- it was sort of a hybrid of both types of cases.

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Q All right, thank you.

And beyond the experience that the firm as an entity brought into the State Street case, is it fair to say that many individual employees of Lieff who had worked on the California and [redacted] case and the Mellon case also worked on the State Street case?

A Yes, that's fair to say.

Q So they brought with them some very useful and effective skills from their work in the previous cases?

A I would say that's true. And it became more and more true as the case wore on, because the Bank of New York Mellon case was being very actively litigated throughout the 2012 to 2015 time frame, and so that experience only grew and grew, as we were actively litigating that case while simultaneously mediating the State Street case.

Q Would it be fair to say also that documents obtained in those earlier cases would, in many cases, be relevant to the foreign exchange case at State Street?

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A Yes. In particular, in the State Street case we ultimately -- State Street agreed to essentially reproduce the documents it had produced in the California Attorney General's case to us -- and when I say "us," I mean the firms prosecuting the State Street class case -- so that we could review those documents.

Q And I would imagine that was extremely helpful?

A It was helpful to have those documents, that's for sure.

Q So would you agree with me that there was, because of the evolving nature of litigations in these cases, there was an overlap in experiences and in resources from those earlier cases that were brought to bear in the State Street case?

A Yes. The resources and experience that we acquired in the Bank of New York Mellon case certainly helped to inform our efforts in the State Street case.

Q All right. Thank you, Dan.

Earlier you talked about the

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[redacted]

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universe, but substantive ones that were pondered or seriously considered?

A And this is where my experiences with Bank of New York Mellon might start to bleed over into State Street.

I know in Bank of New York Mellon we asserted an unjust enrichment theory and a breach of the covenant of good faith and fair dealing theory, both of which were ultimately dismissed because there's law in many jurisdictions that says if you have a contract, you can't -- you either bring a contract claim or you bring one of those claims; you can't bring both. And even if -- in some jurisdictions you can't even bring them in the alternative. But I don't remember, frankly, in

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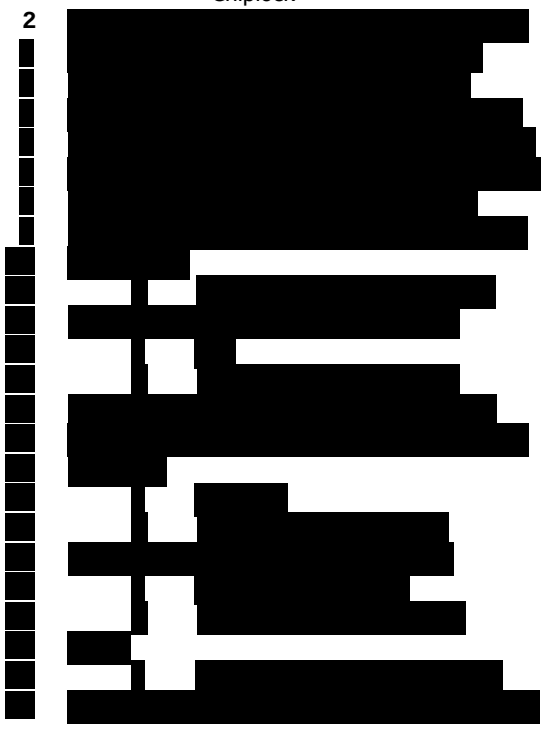


some months subsequent to the filing of the consumer case -- I'm calling it "the consumer case" for lack of a better word. There was no contact with ERISA counsel before they filed that case.

So the only quote-unquote strategizing that would have taken place with ERISA counsel would have been during the course of the mediation that followed after the cases were brought together.

Q Now, you testified earlier about the 93A analysis that was done.

Is it fair to say that Lieff was the principal drafter of those claims?

A I think so, yes.

Q And is it fair also to state that initially it was Section 9 of 93A that was alleged?

A I'm trying to remember which came first.

Q Okay.

A So there are two sections, there's Section 9 and there's Section 11. Section 9 applies more to sort of the man on the

street-type consumer, the individual consumer who's been defrauded by an unfair or deceptive trade practice. Section 11 is the section that's brought to bear on business-to-business type dealings. And, I'm sorry, but I can't remember which one we asserted first.

We asserted one of them, and then I believe for our amended complaint we asserted both, because we felt there was a colorable basis for doing so.

Q So just trying to round out and make it a more comprehensive allegation?

A Yeah. And I think the thinking was, you know, Arkansas could be looked at two different ways -- I'm talking about the Teachers Retirement System, the plaintiff in the case.

They were a public pension fund. They were not a prototypical business that was in the -- you know, in the business of making money for itself. And we identified some case law that permitted non-profit entities, which is what we were analogizing the pension fund to, proceeding under Section 9 rather than under Section 11. And that was a good thing

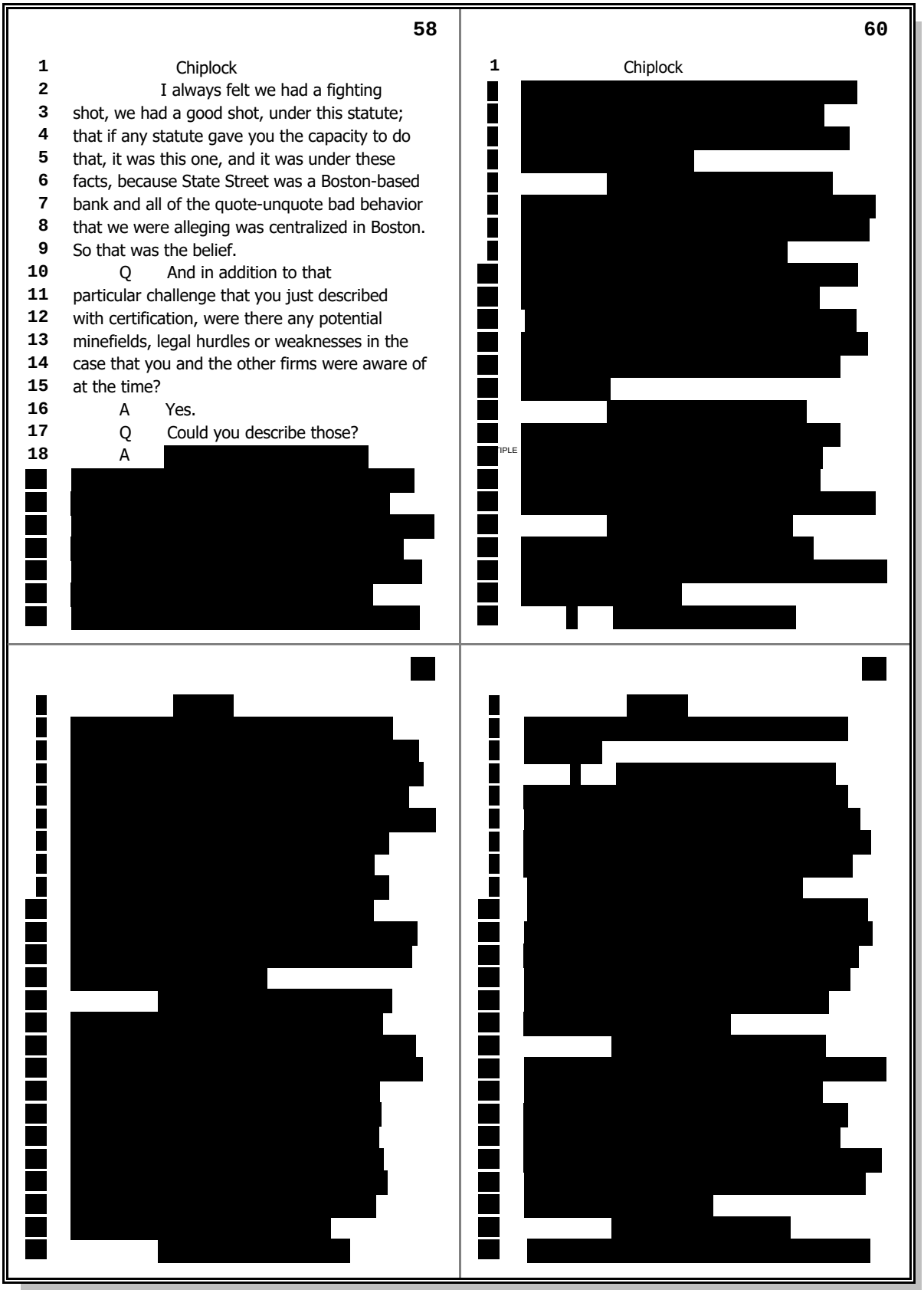
from a plaintiff's perspective because Section 9 was arguably more liberal, it presented a better vehicle potentially for obtaining literally the pleading burden -- the pleading and proof burden was arguably lower under Section 9 than it was for Section 11, although the law was a little bit fuzzy on that.

I think Judge Saris had a famous quote about Section 9 and Section 11, saying that the difference between them was as clear as mud.

Q Well, thank you for making it slightly clearer than mud with that explanation. Substantively -- substantially clearer than mud, I should say.

Were there concerns, Dan, at this stage about your ability to certify as a nationwide class under 93A?

A There were because there aren't a whole lot of cases out there -- I would say there aren't very many cases out there where a nationwide class has been certified under one state's consumer protection law in federal court.



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Chiplock

I always felt we had a fighting shot, we had a good shot, under this statute; that if any statute gave you the capacity to do that, it was this one, and it was under these facts, because State Street was a Boston-based bank and all of the quote-unquote bad behavior that we were alleging was centralized in Boston. So that was the belief.

Q And in addition to that particular challenge that you just described with certification, were there any potential minefields, legal hurdles or weaknesses in the case that you and the other firms were aware of at the time?

A Yes.

Q Could you describe those?

A [redacted]

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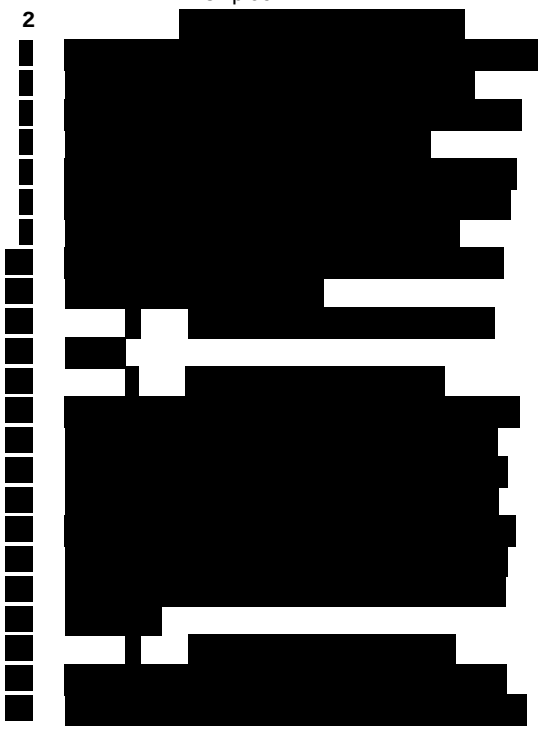
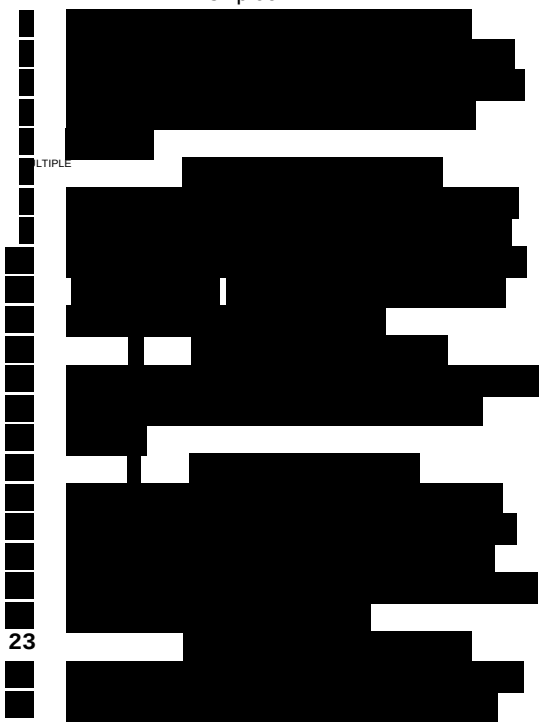
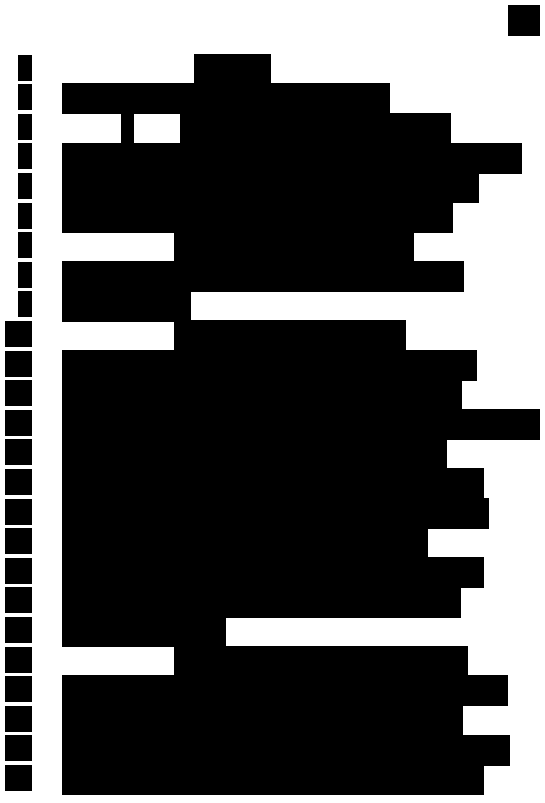
Chiplock

[redacted]







And with the ERISA firms becoming involved, did that create any other concerns for the life of the case?

A Well, yeah, one potential concern is that -- and I'm not an ERISA specialist, but my understanding is that there is at least an argument, and some case law on this, that ERISA preempts other causes of action, other claims for -- like, I don't think you can bring a cause of action under ERISA to

Chiplock

seek a certain relief or to correct a certain type of conduct and simultaneously do that under other types of statutory regimens, or common law regimens even.

I'm getting a little bit out of my depth because I'm not an ERISA lawyer, but I know that preemption is a possibility. There may have been instances where people have been able to do both in a case, but I know preemption is raised as a possibility once you bring ERISA into the picture.

Q Any other weaknesses or issues that you can recall.

A About ERISA claims?

Q No, about the case as a whole.

A About the class case as a whole?

Q Yes, and the allegations that were being brought.

A There may be more, but I've told you a lot.

Q And you've testified that counsel for State Street was aware, by and large, of these defenses?

Chiplock

A They were very capable and experienced counsel.

Q And in light of counsel on the other side and this -- the number of challenges that you faced, let me ask you how these factored into the litigation strategy and/or mediation strategy that you pursued.

A I'm sorry, can you repeat that? I want to..

[redacted]

Chiplock

[redacted]

Q What was the tenor of those mediation sessions?

A They were hard fought. I would say at times we grew frustrated over the course of the mediation.

They remained collegial. I have to tip my hat to Wilmer Hale in particular because I think they did a very good service for their client. And I know that because I lived through Bank of New York Mellon.

What Wilmer Hale was able to do

Chiplock

was essentially to resolve those claims short of the all-out roar that took place in BoNY Mellon, and short of alienating custody customers, which I believe happened in Bank of New York Mellon, and spending what I'm sure must have been north of a hundred million dollars worth of legal expenses. So -- I think Wilmer Hale did a good job, and I have to tip my hat to them.

We fought with them hard during the mediation, and I think the mediator himself would -- would second that.

Q Dan, let me just show you an e-mail dated May 9th, 2014, from you to Jonathan Marks.

And who was Jonathan Marks?

A He was the mediator in our case.

Q And I see you've cc'd a number of counsel, including Mike Rogers, Mike Lesser, David Goldsmith, Larry Sucharow, Michael Thornton and Lynn Sarko on this, and there may be others that I've missed.

Could you take a look at this?

A Sure.

Chiplock

Q Just take your time, but refresh your memory as to that.

(Pause)

MR. MCTIGUE: Could you give me the date of that e-mail?

MR. SINNOTT: May 9th, 2014.

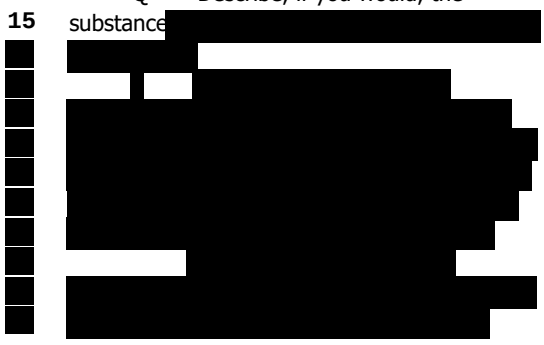
MR. MCTIGUE: Thank you.

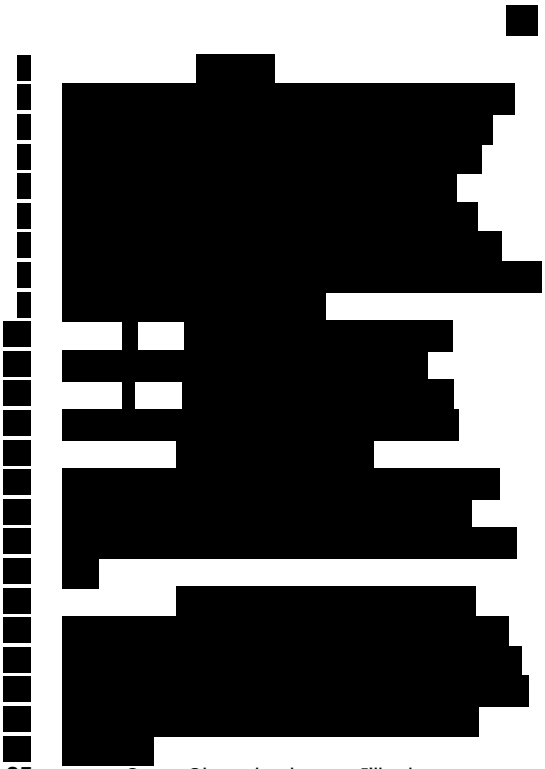
A Yes, I've looked at it.

Q Is it fair to say that you're forwarding a PowerPoint presentation to Marks?

A Yes, I believe that's what I was doing here.

Q Describe, if you would, the substance





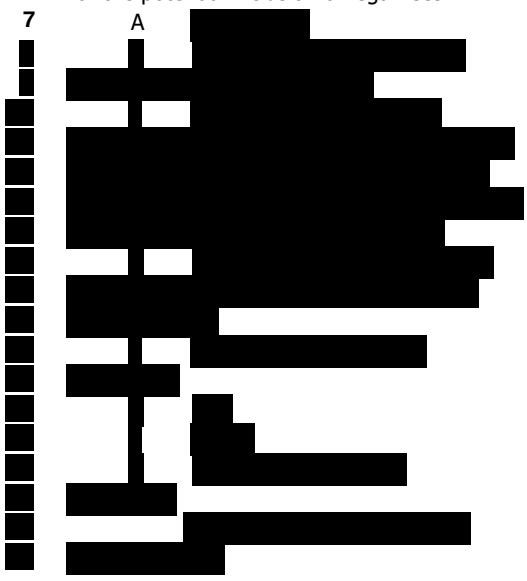
Q Okay, thank you. I'll take

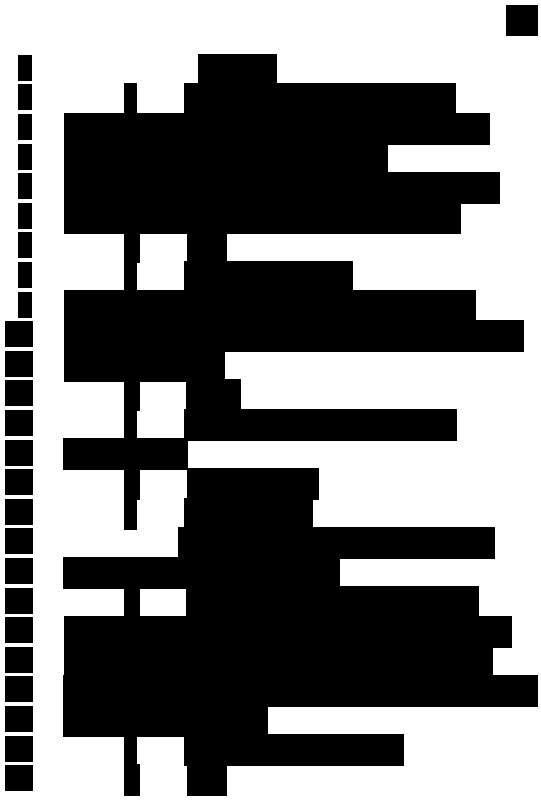
Chiplock

that back.

And in addition to the treble damages, Dan, that 93A can provide, would you agree that 93A, statutorily at least, provides for the potential inclusion of legal fees?

A





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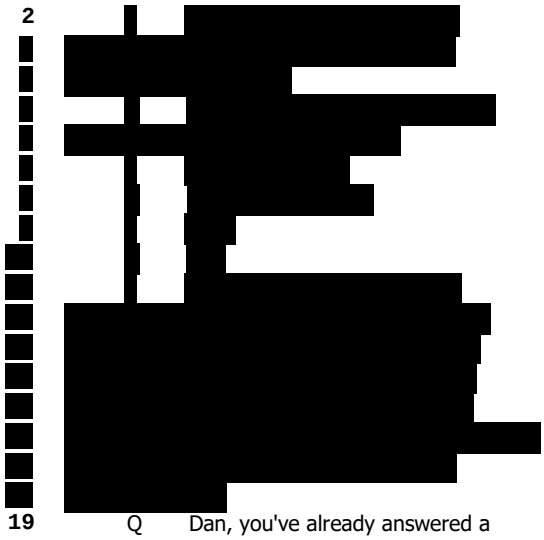


Q Dan, you've already answered a couple of questions on this, but let me just talk about coordination with ERISA counsel in this matter.

What was the general working relationship that Lieff had with ERISA counsel?

A What was it?

Chiplock

Q Yes.

A So I would say my principal contact on the ERISA side would have been Lynn Sarko throughout both the Bank of New York Mellon and the State Street cases. And in State Street I also had a fair amount of dealing with Carl Kravitz, and I also dealt with Mr. McTigue.

Q All right.

And were there conflicting theories of recovery with the ERISA counsel?

A I think ERISA just had its own statutory regimen and its own -- its own damages regimen, which I'm not that well versed in.

I don't think it provides for double and treble damages. I think it has its own damages measure, but beyond that I'm not really qualified to say.

Q Were there any tensions between Lieff/Labaton/Thornton on the one hand and ERISA counsel on the other hand, either because of differing theories of damages or personalities?

A Personality-wise, I would say by and large we all got along very well. I would say in particular with Lynn and Carl there

Chiplock

were never any issues.

The -- as far as damages go, I think I spoke earlier that ERISA at least creates the possibility of preempting other causes of action, and so from a personal standpoint, from my own standpoint, I may have felt some frustration at the outset that here we had this great unifying theory that linked together all affected custody customers at the bank, which was 93A and breach of fiduciary duty, but once you introduced ERISA you potentially vulcanize and create a class of customers that might not get the benefit of the consumer law because they're now in this ERISA bucket.

But that was, like, an initial impression I had at the outset. But once those cases were filed and under way, and we were essentially thrown together for purposes of mediation, we knew we were in it together. We knew the ERISA cases were not going away unless, you know, they lost on a motion to dismiss, you know, which never got adjudicated, but as long as they were there, we needed to work together,

Chiplock

and that's what we did in crafting the resolution that we did.

Q Now, I believe earlier, Dan, you made reference to informal discovery in the State Street case.

Is that a fair characterization, that the discovery was informal as part of the mediation and attempt to resolve this?

A Yeah, we referred to it, I guess, as information exchange. So although I believe the parties did exchange document requests, what we got were productions that the bank was willing to make because it had already produced them in other cases. And it was a substantial amount of material, but these were not productions that State Street had gone out and collected and reviewed and made specifically for us. These were productions that they had done in the California case, and also in another federal case that was pending in the District of Massachusetts, the Hill case, which was a securities fraud case. And I believe there may have been some materials produced to regulators

Chiplock
also included in what they produced to us. So that was the universe of what we received.
Q All right.
And did the ERISA firms play any role in this informal discovery?
A They were there during the mediation sessions when it was negotiated that we would get these documents to review.
Q Do you recall ERISA client contracts and RFP responses being included in the informal discovery?
A We definitely got numerous RFP responses, and some of them would have been with ERISA clients.
Q Do you know who requested these documents?
A Who requested the ERISA contracts?
Q Yes.
A The requests that we made were for all custody contracts. The fact that ERISA contracts were included in what was produced to us was not the result of any special request for ERISA contracts that I can recall.

Chiplock
Q Did you delegate any substantive work to the ERISA firms?
A I did not. And I don't recall any -- you mean document review work?
Q For example, yes.
A No, I'm not aware of any document review being delegated to the ERISA firms.
Q How about research or pleadings?
A No pleadings.
No research that I can recall.
So essentially what I recall the ERISA firms being principally responsible for was advocating in the mediation context for ERISA causes of action and the strength of ERISA as a vehicle for certifying a class of ERISA clients specifically, and obtaining relief for ERISA clients.
The ERISA firms also liaised with the Department of Labor to ameliorate any concerns the Department of Labor may have with a global deal that could implicate the interests of ERISA clients of the bank.

Chiplock
Q And was that another potential weakness or challenge in the case, was the Department of Labor's monitoring or oversight and potential intervention?
A I wouldn't call it a weakness of the case other than it was an additional layer of consideration that we collectively as a group needed to take into account, that -- in other words, there were state actors, there were regulatory actors who had specific interests that needed to be taken into account in order for a global resolution to be put together, and ultimately to succeed. [redacted]
(Special Master Rosen enters the room.)
A So all of these cases are intertwined, and State Street's been consistent about that from the get-go, that for there to be a resolution of any of the cases, they all need to be resolved.

Chiplock
Q All right, thank you.
Were there any legal discussions with the ERISA firms before the Henriquez complaint was filed in November 2011?
A No, there were not.
Q How about before the Andover complaint was filed in 2012?
A I was not part of any conversation that I can recall.
Q And was the --
MR. SINNOTT: Strike that.
Q What was the platform that was used for document review in the State Street case?
A So the vendor that we used was Catalyst, which is an outside vendor, and they provide a document review platform, if you will, for online document review.
Q And was that database, Catalyst database, hosted by your firm?
A It was, in San Francisco.
Q And was it shared with Labaton and Thornton?
A Yes, it was.

Chiplock

Q Was it shared with the ERISA firms?

A I can't remember. They may have had user accounts, I just can't remember. Kirti may know.

Q Do you recall whether documents were shared with the ERISA firms?

A The documents produced by State Street?

Q Documents produced as a result of document review.

A Our work product, in other words?

Q Yes.

A I don't believe so -- well, only to the extent that documents were discussed in the course of the mediation, where everybody was present, then, yes. But outside of that, we did not really work with the ERISA firms on document review.

Q What was the role of ERISA counsel in this case, as you would characterize it?

A So principally I would just go

Chiplock

back to what I said before, which is to advocate for ERISA clients specifically as being the beneficiaries of this ERISA regimen, and the special fiduciary duties that inure to ERISA clients under ERISA.

That would be one. And the other would be to liaise with the Department of Labor, and to be sure that the Department of Labor's concerns about any global deal were adequately addressed to the department's satisfaction.

Q Did the ERISA firms play a role in mediation?

A Yes.

Q And what was that role?

A Principally what I just said. I would just be repeating what I just said.

Q All right.

Nothing beyond that?

A Not really.

Q Were the ERISA firms part of the finalization of the term street?

A I believe so.

Q At some point was there a

Chiplock

discussion as to what percentage of fee award the ERISA firms should receive?

A Yes.

Q And describe that.

A So there was an agreement that was entered into at a certain point of time -- now I'm forgetting what year it was -- that allotted 9 percent of any total fee ultimately awarded by the court to ERISA counsel.

Q And do you recall what the basis was for the 9 percent number?

A The basis was what we -- it was our best understanding of what we believed the overall trading volumes, and in connection with that the total estimated damages, that would inure to ERISA plaintiffs -- or ERISA customers as a percentage of the total group.

Q At some point, Dan, close to the final settlement of this case, was that percentage changed?

A Yes. I believe we agreed amongst the three firms -- the three principal firms leading the consumer side of the case, we agreed that ERISA counsel should get 10 percent,

Chiplock

rather than 9 percent.

Q And what was the basis for that increase?

A I think -- the best of my recollection is that Larry suggested it, and that it was in recognition of the efforts that Lynn Sarko in particular, but also Carl, had made to work with the Department of Labor and to -- and to answer their questions, because the Department of Labor had many questions. And even if we felt that the overall universe of affected customers was relatively small vis-a-vis the whole, the department understandably wanted to be sure that its clientele, for lack of a better word, were getting what they deserved under the settlement. And Lynn in particular has a lot of experience with the Department of Labor, and -- so we just agreed to increase the percentage from 9 to 10.

Q So that universe of customers, as you describe it, or trade volume, did not play a role in the increase?

A It may have. And the reason I say "may have" is that our understanding of the

Chiplock

total trading volumes shifted over time.

I think early on in the case, just based on discovery that was produced to us by the bank, the total trading volume for ERISA plans looked to be very small; it was like 3 to 4 percent. And then if you factored in -- if you factored in funds associated with group trusts, it went up a little bit, but not that much.

But then towards the tail end of the case, State Street came back to us and I think said they may have underestimated the total volume of what would be considered ERISA volume if you factor in all of the group trusts, and I think the Department of Labor would argue that if a group trust had one dollar of ERISA money, then all of it should be considered part of ERISA volume, or something like that, whereas State Street had the contrary view, and then there was something in the middle.

So the overall trading volume that would be attributed to ERISA did go up from what we previously estimated it to be, but it still remained fairly small.

Chiplock

Q Ultimately did you consider the 10 percent to be a fair allocation?

A Yes.

Q Let me talk about the document production in this case. And you've already discussed this in some measure. You discussed, I believe, two major productions of documents in the State Street case, one being from the California action. And do you recall what the size of that production was, or the number of documents?

A Kirti would know better. I think there were something like 200 -- between 2 and 300,000 documents, or -- or I may be confusing that with megabytes, I'm sorry.

The California production was smaller than the subsequent production that we received. The subsequent production, just in terms of memory size, was substantially larger than the first production, as I recall.

Q And do you recall when the documents were received in the California case, from the California case?

A It would have been early 2013.

Chiplock

Q And you mentioned a Hill case --

A Yes.

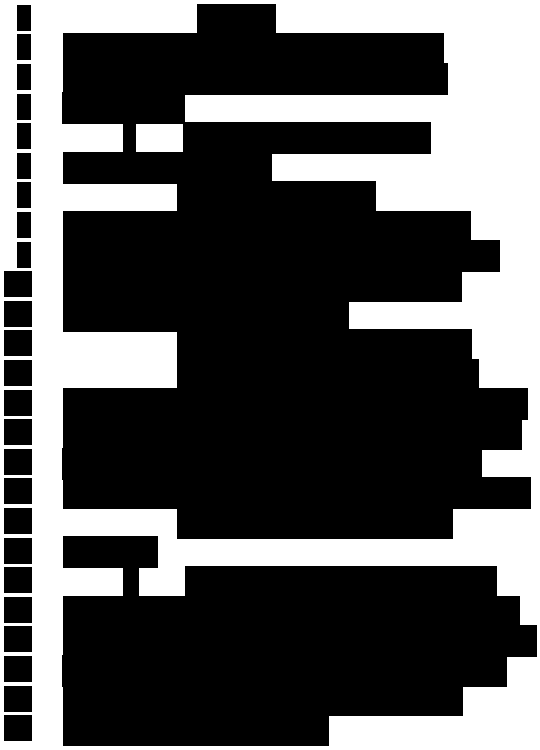
Q -- as being a second production of documents.

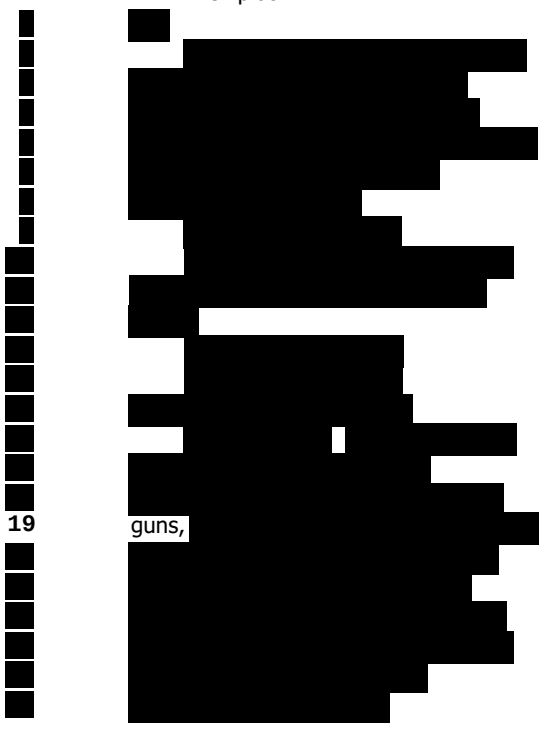
A That was the second large production. Understand, there may have been -- there may have been some discrete productions of data and documents apart from those, but those were the two big productions I recall, and the Hill production came in towards the end of 2013, I believe.

Q Do you remember how many documents or pages were produced in that particular case?

A I'm having trouble disaggregating the two productions in terms of size. I do know that the total universe, once it was all in, was something around 9 million pages. And like I said before, I believe the Hill production, just in terms of volume -- in terms of the amount of space it took up on a memory bank, was bigger.

Q Did you also receive State





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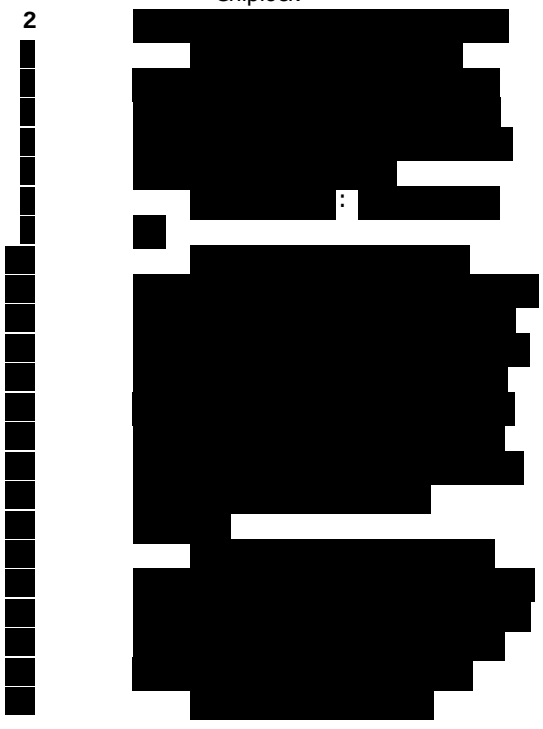
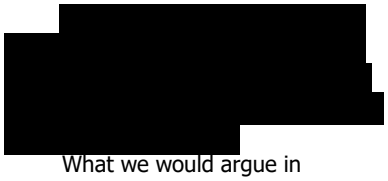


externally.

Internally --

JUDGE ROSEN: And internally?

THE WITNESS: Internally, the awareness was much more sophisticated, and that is the nice way to put it.



What we would argue in opposition to that is we can -- we can debate what "best execution" means, but nobody would reasonably suspect that "best execution" actually means worst execution.

JUDGE ROSEN: From the client's perspective?

THE WITNESS: Correct.

JUDGE ROSEN: Thank you.

While I'm questioning, I wanted to go back -- and if you covered this, just go right past this. When I came

in you were asking Dan about the ERISA contributions -- contributions of the ERISA law firms, and the role that they played, and you talked about mediation.

Do you recall whether there was a time initially that the ERISA firms were going to be excluded from the mediation process, and were told specifically that -- Sarko was told that the ERISA firms were not going to be participating in the mediation?

THE WITNESS: In the mediation at all?

JUDGE ROSEN: Yes.

THE WITNESS: I don't recall that. I honestly do not recall that.

What I do recall is that by 2014-2015 we were definitely rowing together, particularly with Lynn.

JUDGE ROSEN: So you were not part of any discussion moving toward a decision by what would be the consumer firms, principally the lead firm and the Labaton firm and the Thornton firm,

Chiplock

to exclude the ERISA firms from the mediation?

THE WITNESS: I can't recall that.

JUDGE ROSEN: Do you have any recollection of that at all?

THE WITNESS: I don't recall that.

All I can say is what I said earlier, before you entered the room, which was I can recall in early days in the case there may have been some tension, as it were, between a case like ours, which sought to obtain relief for everybody under a unitary set of theories, versus this case that was brought solely on behalf of ERISA plans, which potentially could interfere with those ERISA plans' ability to recover under what we thought to be a very generous statutory scheme, which was the Massachusetts consumer protection law.

I know I felt that tension. I

Chiplock

did.

I'm not sure how strongly others felt it, because I was a real believer in the consumer statute. Still am.

So I honestly don't remember if at the outset -- we were told to mediate by Judge Wolf early on, and this was before the ERISA case had even been filed -- I think.

Well, the ERISA case at least had not gotten past the motion to dismiss.

The ERISA case never got past the motion to dismiss. There was no motion to dismiss ever adjudicated in their case. So after we got past the motion to dismiss, we were ordered to mediate by Judge Wolf.

It's possible the ERISA case was pending, but nothing had happened in it.

Afterwards, the ERISA case, the parties there were ordered to mediate

Chiplock

also, I think, and to participate in the global mediation, but I honestly do not recall being part of a discussion saying, "We're not including them." I mean, once it became clear that they had to mediate, I don't recall being part of that discussion.

If there are e-mails that say I was, I just don't recall them.

JUDGE ROSEN: I think, in fairness, Lynn Sarko has a recollection that initially, when he first showed up for the mediation, he was told he would not be --

Is Lynn on the line?

MR. SINNOTT: He is.

JUDGE ROSEN: Lynn, if I'm mischaracterizing what you told us in the interview, please jump in --

THE WITNESS: I would defer to Lynn. Lynn probably has a better memory of how he was treated.

JUDGE ROSEN: Lynn's not under oath here, but he will be.

Chiplock

MR. SARKO: Your Honor, it's Lynn Sarko, yes, I am on the line.

And there was actually discussion, and the conversations were from the mediator.

JUDGE ROSEN: From the mediator? Okay.

MR. SARKO: Yes.

JUDGE ROSEN: You don't recall whether the mediator derived it from the parties?

MR. SARKO: No, I was told that the parties did not want the ERISA counsel to be present. I mean, we were at the mediation, but -- to participate, and that we were shuttled to a side room, and that's where we were to stay. However, that soon changed that morning.

THE WITNESS: Yeah, I would say that state of affairs did not last very long at all.

JUDGE ROSEN: Okay.

THE WITNESS: Which is why I

Chiplock

don't recall it.

JUDGE ROSEN: Thank you, Lynn.

You know, when we get -- when we do your dep, we'll drill down a little more on that.

One of the issues in the case -- maybe not a direct issue, but -- was the relationship with the ERISA plaintiffs, the consumer plaintiffs, and how that played out ultimately in the resolution -- where it started, and how it played out.

THE WITNESS: Under oath I will say I get along with Lynn great, and I think he's a very capable and effective lawyer.

JUDGE ROSEN: We all do.

MR. SINNOTT: And he doesn't have his fingers crossed, Lynn, just so that you know.

Anything else, Judge?

JUDGE ROSEN: No, I just wanted to make sure we --

MR. SINNOTT: That was helpful.

Chiplock

JUDGE ROSEN: -- got Dan's view on this.

BY MR. SINNOTT:

Q You described Judge Wolf's mediation order, and informal discovery exchange that took place in the context of that mediation.

A Um-hum.

Q Was there a protective order --

A Yes.

Q -- that governed that informal discovery?

A Yes, a protective order was entered in our case.

Q And how did that come about, do you recall?

A I'm not sure who drafted it, I can't remember. I might have played a role in drafting it. But we put it together, with comments from both sides, and it was submitted to the court, and we entered it.

Q Let me move into the staffing of staff attorneys in the State Street case, and ask you to describe the ebb and flow, or manning

Chiplock

levels, and the urgency, or lack of urgency, over the life of the State Street case.

MR. HEIMANN: If I may, we've been going for two hours. Are you going to be concluding soon, or have we got another hour or so to go?

MR. SINNOTT: I think we've got probably 40 minutes.

MR. HEIMANN: Take a break?

MR. SINNOTT: You'd like to take a break?

MR. HEIMANN: Please.

MR. SINNOTT: Of course.

I'm sure our court reporter appreciates that suggestion.

(Recess taken)

(Mr. Axelrod joins the conference call)

MR. SINNOTT: Madam Court Reporter, if you could read back the question that was posed just before Mr. Heimann, to the relief of all, asked for a break.

THE WITNESS: Can I add one

Chiplock

thing before we do that? I want to go back and touch on one of the challenges of the case which I may have taken for granted all along, but I wanted to make sure I stated it on the record.

Just the novelty of bringing litigation like this against one's custodian, this is not something that was done generally. Custody customers generally like their custodian, they have longstanding relationships with them. It is also not easy to change custodians, you have to go through a process, and it's not something that pension funds in particular, who have limited resources, relish doing.

So it was not easy to bring people along to that theory, even if they felt that they may have been overcharged on some of their services. So that was yet another challenge to the case overall that I wanted to make sure we put out there.

MR. SINNOTT: All right, thank

Chiplock

you.

JUDGE ROSEN: That challenge, was that also manifested in any legal issue challenges?

THE WITNESS: It was, yes.

So the relationship between a custodian and its customer was normally considered one of a fiduciary and the beneficiary of the fiduciary relationship. However, when it came to ancillary services like foreign exchange, custody foreign exchange, standing instructions foreign exchange, that relationship could become more attenuated under the law and under the various contracts in play. So there was a discussion that provoked much debate.

JUDGE ROSEN: As to whether the custodian had fiduciary responsibility for this kind of trading?

THE WITNESS: Correct.

Sorry for the interruption.

MR. SINNOTT: No, the

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clarification was helpful.

Madam Court Reporter, if you could read back the question that was posed just before the break.

(The record was read back as follows:

"Question: Let me move into the staffing of staff attorneys in the State Street case, and ask you to describe the ebb and flow, or manning levels, and the urgency, or lack of urgency, over the life of the State Street case.")

A So in early 2013, we get the initial bid document production from State Street. We have the documents uploaded to the Catalyst repository, and we bring on certain document reviewers to help us with that review.

And at this point I'm only talking about Lieff Cabraser, I'm not speaking to what other firms did, because I'm most qualified to speak to what Lieff Cabraser did.

So we staffed the initial document review with, I believe, four to five

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staff attorneys, document reviewers, in early 2013, who all were trained how to use Catalyst, and were given a list of codes -- issue codes and descriptions of what each issue code meant, as well as copies of the operative pleadings in the case for background, so that they could be educated about the case as they began the process.

So we had four to five reviewers working on the document review at the outset.

That ebbed a little bit over -- as 2013 and 2014 wore on, because some of those reviewers were pulled onto the Bank of New York Mellon case, I believe, which was very intense at that point in time, we had received a lot of documents, and it was being actively litigated in the form of depositions taking place. So I think we took a few of the reviewers who had started out doing document review on State Street, pulled them into BoNY Mellon, and we left a couple who were doing nothing but State Street all through 2013 and 2014.

By the close of 2014, Kirti did

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an analysis of how far along we were as a group in our document review in State Street, and so he was able to look and see -- because we had tried to evenly allocate the documents between the three primary firms, my firm, Thornton and Labaton, and to the best of my recollection, Kirti, by the end of 2014, was able to go in and see how far along everybody was.

The conclusion was we still had a ways to go, because that included not just the California production, but also the Hill production, that had come in at the end of 2013, so there was a lot of material in there by that point.

So January of 2015 comes around, just shortly after Kirti has done this analysis, and as it happens, the fact discovery cutoff in the Bank of New York Mellon case is January 2015, so right there I have something on the order of a dozen more document reviewers who have been through war in Bank of New York Mellon, and who are extremely well-versed in the issues, who are suddenly available. And I said, "Let's put them on State Street, let's get this

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done." Because at the same time --

If this answer becomes too lengthy, cut me off.

-- at the same time, early 2015 is when things are starting to crystallize in the Bank of New York Mellon case in the way of mediation and possible resolution.

We mediate the Bank of New York Mellon case, I believe in February 2015, and we reached an agreement in principle in March.

Staff attorneys already are done working on Bank of New York Mellon, because, like I said, they're done, they finished that work. The fact that we were close to or had reached resolution in Bank of New York Mellon lended an urgency to the mediation on State Street because this resolution of a very similar case against a competitor in the same space was about to become public --

JUDGE ROSEN: Did you view that as potentially BoNY providing a template for settlement of State Street?

THE WITNESS: I did, yes. And

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I think -- I think various government actors did also, frankly. I think the ESC and the DOJ and the DOL looked to the BoNY settlement as a template.

JUDGE ROSEN: Okay.

A And so to complete my answer, all of these things coming together lent an urgency to the process in early 2015. I think the collective view was mediation had already gone on for quite a long time, and it needed to be resolved one way or another, either with us settling the case or with us off to the races.

Q And had Judge Wolf provided any impetus to that view?

A Well, I will say insofar as he had set deadlines for the mediation. So I believe the mediation had -- the time for completing the mediation and going back to him and setting a pre-trial schedule had been extended at least once or twice by that point, and I believe we had had a deadline of end of 2014, which, with the way things were developing in the Bank of New York case, we agreed to extend for at least a modest amount of time, and

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I think we extended it until April of 2015. And I think that might have been the last official extension we obtained.

I'm not sure if we -- even though the mediation kept going after that, by that point we were so far along, I think we understood we didn't need to keep going back to Judge Wolf to request formal extensions; I think we figured he would understand.

JUDGE ROSEN: So -- I just want to go back to something, and I think Bill is going to get into this further, but you've been referring to the folks who were doing the document reviews as "the reviewers."

THE WITNESS: Yeah.

JUDGE ROSEN: You had attorneys -- staff attorneys -- who were actually employed by your firm doing that; correct?

THE WITNESS: Yes.

JUDGE ROSEN: But at some point you also engaged an outside agency to provide attorneys to do document review

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as well; correct?

THE WITNESS: Um-hum -- yes. There may have been more than one agency.

JUDGE ROSEN: Do you remember when that happened, when you brought the outside attorneys in?

THE WITNESS: You're referring to attorneys who were paid by outside agencies?

JUDGE ROSEN: Correct, and billed you on an invoice basis.

THE WITNESS: I don't recall. And the reason why is that that distinction was never my focus, between who was a so-called agency lawyer versus who was on our payroll.

And the reason why -- and it may sound corny -- is that these people had all the same value in my eyes. They were all doing the same kind of work, they were all doing high-level attorney work, in my view. And to this day I still couldn't recite from memory

Chiplock

who was a so-called agency lawyer versus who was on our payroll because they were all important to me.

JUDGE ROSEN: But you don't remember at what stage in the review process the decision was made to bring in the agency reviewers, as opposed to the folks on -- the staff attorneys who were doing it?

THE WITNESS: Well, what I can say -- I can talk to two specific instances, which were Ann Ten Eyck and Rachel Wintterle. They were brought in in March of 2015, they were agency lawyers. The reason I know that is because they were lawyers that were paid for by Thornton, but housed in our San Francisco office, working side by side with our staff attorneys in our San Francisco office doing the same work.

JUDGE ROSEN: And I think Bill will get into this in more detail, but you said you didn't focus on any

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difference between your staff attorneys and the agency lawyers because they were doing substantively the same work?

THE WITNESS: Correct.

JUDGE ROSEN: But your staff attorneys were also doing memoranda, and doing sort of overview memoranda, deposition preparation memoranda and those sorts of things.

Did the agency lawyers also do that?

THE WITNESS: Yes, they did.

JUDGE ROSEN: They did?

THE WITNESS: Well, nobody did deposition prep memos because we -- we didn't get that far. Well, we didn't do witness memos.

JUDGE ROSEN: Issue?

THE WITNESS: We did do issue memos, and, yes, the agency lawyers did issue memos, too. I looked at one from either Ann or Rachel. And I think we had other -- I think Virginia Weiss was an agency lawyer -- she's another one

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I'm remembering, she was an agency lawyer.

JUDGE ROSEN: Also allocated to Thornton?

THE WITNESS: Virginia was allocated for a time to Thornton, and then she came back to us.

But she did memos, too. They were all asked to do the same work.

BY MR. SINNOTT:

Q Before I follow up on that, let me just ask you while I'm looking of it, you've described how the mediation took on some urgency Did the document review play any role n your mediation or mediation strategy?

A It did. I can remember a detailed presentation that was put together -- I can't remember if it was 2013 or 2014 -- a fairly lengthy liabilities and damages presentation that was largely put together by Mike Lesser of the Thornton firm, in which he quoted from a number of documents that were produced in our case, and they were summarized n a very -- I should say entertaining

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presentation, that was done very well. And there were some -- there were good documents in there

So, yes, the document review did inform the mediation process. We felt good about what was there. We also knew that had the mediation ended, we were going -- we were going to go back and get some more, because these were documents that had been produced in other cases and had been handed over to us, and given that we were seeing what we saw already, we knew there had to be more, and we would be going out and getting that material tout suite if the mediation came to an end without a resolution

JUDGE ROSEN: So just to dril down on that, when you say they were helpful, did they provide -- "they," the documents that had been produced by the staff attorneys/document reviewers -- did they provide you with supporting material that you could use against State Street in the mediation to buttress your positions?

THE WITNESS: Yes

JUDGE ROSEN: Is that all you want to say about it?

THE WITNESS: Well, I'm giving a lot of long answers today.

I would say yes. I cataloged the types of documents we were reviewing earlier, and I can't remember if you were here, but --

JUDGE ROSEN: Oh, I'm sorry if you answered this before, but it seems to me that you were at, what you earlier described, an inflection point --

THE WITNESS: Yes.

JUDGE ROSEN: -- in this spring 2015 period --

THE WITNESS: Right.

JUDGE ROSEN: -- and this was a point at which you were going to put the pedal to the metal in the mediation. Is that fair?

THE WITNESS: From my perspective, yes, that's fair.

JUDGE ROSEN: And BoNY had

wound down --

THE WITNESS: Yup.

JUDGE ROSEN: -- and you knew what the template might be as a supplement --

THE WITNESS: Yep.

JUDGE ROSEN: -- so when you were planning your mediation strategy --

THE WITNESS: Yes.

JUDGE ROSEN: -- did the documents that staff attorneys and the agency attorneys produced buttress your strategic positions in the mediation vis-a-vis State Street?

THE WITNESS: From my perspective, the answer is yes.

[redacted]

[redacted]

JUDGE ROSEN: So how did you use this ammunition in the mediation? Did you work it through the mediator, or did you use it directly with State Street, or both?

THE WITNESS: I would say -- we did not make any presentations to State Street about what we were seeing in the documents.

JUDGE ROSEN: You didn't?

THE WITNESS: We felt like we did not need to go there at that point in time --

JUDGE ROSEN: You didn't want to show your hand?

THE WITNESS: Well, that's kind -- that's true. That's kind of where I'm going.

I mean, by April and May of 2015 there's still the possibility that the mediation's going to fall apart, and we're not going to say, "Here's our best documents," you know, because we'd rather surprise them at depositions with our best documents, so we're not going to do that.

And I don't recall, frankly, educating the mediator on specifics either, but I do recall having in our minds the awareness that there was information there to buttress our claims, and that if we needed to go forward we could.

So it was really more to inform

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our hand, as it were, rather than something we presented to them, like, as any kind of gotcha moment.

BY MR. SINNOTT:

Q Let me follow up on that, Dan. Your firm has provided to us -- and this is designated Bates stamps 48762, 63, 64, 65 and 66 -- and the first page is an e-mail from Kirti Dugar to BNY Mellon coders, Peter Roos is cc'd, as is Ryan Sturtevant, and the subject is "State Street Coding Guide," which is the attachment to this.

Could you look at that --

A Sure.

Q -- and tell us if you've seen --

A Yeah.

Q -- that document, particularly the attachment, or whether you authored the attachment, or participated in it.

A I think I wrote it, or at least I had a large hand in drafting this document review guide.

Q And that's a coding guide, in

Chiplock

essence, is it not?

A Yup.

Q And what was the purpose of that, and how would you characterize that, the substance of that document?

A So this is a list of a series of what we considered to be potentially important issues in the case, along with a description of each issue to guide our document reviewers through the process of reviewing these -- the documents that had been produced by State Street in the case. And we developed these issues based on our experience -- our years of experience at this point -- in litigating foreign exchange cases, and what we believed would be the most pertinent issues to proving our case at trial.

Q All right, thank you.

And we keep hearing the name Kirti Dugar. Was Kirti the supervisor of the overall document review effort?

A So he was the day-to-day manager, I would call him, of the -- of our document reviewers in San Francisco.

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Kirti was on the floor, as it were. So we had a room where people worked, we also had some people who worked remotely, trusted reviewers who had put in thousands of hours with us by that point, but Kirti was sort of their go-to guy when they had questions about the platform, questions about their assignments, which had come down from me or my colleagues at the other firms to Kirti and then to them. So he was -- he was the face that they saw every day if they were in the office.

Q Whether they were agency or --

A Yes.

Q -- staff?

A Yes, that's correct.

Q And earlier, Dan, you had said that at some point prior to 2015 Kirti had done a review of the status of document review, or a review of the review --

A Progress.

Q Progress.

And you mentioned that it was not just Lieff's progress, but it was the progress of Labaton and Thornton; correct?

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A Yes.

Q What was, if you know, his assessment of the progress of Thornton's review at that point?

A It was -- they were -- they were almost as far along as the rest of us were, is the best of my recollection.

I think Kirti -- Kirti's the person to ask, but as I recall, they had certainly done a fair amount of review, and they certainly had a fair amount left to do, which I think was fairly said about all three firms; we had done a fair amount, but we had a ways to go.

Q Who had done, if you know, the Thornton review?

A I don't know. And to this day I cannot name any individual reviewers at Labaton, for instance. I mean, I know they were doing the work, but I just -- I don't know names. I know Todd Kussin was their point person, but I don't know individual names.

And the same goes for Thornton. I'm pretty sure Mike Lesser and Evan did what review they could outside of their other

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litigation responsibilities.

And I know, based on preparing for this deposition, we set up an account for Michael Bradley, so I know that name now, too, but I don't know any other names.

Q Okay.

And you mentioned just a moment ago that some of your staff attorneys were working remotely; correct?

A Yes.

Q How would they report their hours of document review?

A They reported their hours either on a daily or weekly basis. Whether -- either to us directly or to Thornton directly, or both, depending on who they were reporting to at the time.

Q And did their remote status, in your view, have any effect on their performance in document review?

A I would say no. I mean, you met Chris Jordan, who worked remotely, and Chris is one of our best reviewers, and is very impressive, and he does very impressive work

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product, is an excellent writer, and I think one reason we use him -- he's based in Texas, and he started on a case that we filed in Texas originally, and we kept him on because he's so good.

The people who work remotely have proven themselves and they do high quality work, so I'm confident that they're doing good work, and they report their time to us steadily.

Q Let me talk about the cost sharing agreement with Labaton and Thornton.

A Um-hum.

Q How did that come about, as best you know?

A So --

MR. HEIMANN: Which cost sharing agreement?

THE WITNESS: I was going to go back to the beginning.

MR. SINNOTT: Please.

A From the get-go, the understanding always was that the firms would try to share equally in the risk, the three firms would try to share equally in the risk of

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the case. And by sharing in the risk, that means trying to equally bear the costs, and equally investing time and resources in the success of the litigation.

That wasn't written down anywhere, as far as I know, at the outset, but the agreement, as it was recited to me -- sort of like the handshake agreement -- was all for one, one for all, that any fee would be -- like, 60 percent of that fee would be divided up equally, we're just going to agree that at the outset, so 20/20/20, the three firms split up 20/20/20, and the other 40 percent we can figure out at the end of the case just based on an overall appraising of the firms' contributions. So that was --

JUDGE ROSEN: Including the ERISA firms?

THE WITNESS: That was not including the ERISA firms, because this was before we even filed our case. So this was before 2011 this understanding came to be, so this was as we're getting ready to file the case. The

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ERISA case doesn't get filed until later on, and we had no discussions with them.

JUDGE ROSEN: Okay.

A So that was the overarching understanding that animated the case throughout, that all the firms would try to make equal contributions, and so at the end of the day we wouldn't have one firm saying, "Well, we did everything," or, "We did all this stuff and you didn't take on any of the risk, therefore you don't get your fair share of the fee."

Q So that was a handshake agreement that you all --

A Essentially.

Q Nothing in writing, to your knowledge?

A Nothing in writing, to my knowledge, because I -- yeah, I never saw anything in writing on that.

JUDGE ROSEN: Who were -- these conversations, who were the participants in these conversations?

THE WITNESS: So I was not part

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of that initial conversation, it was just relayed to me that this is the understanding. And so Bob Lieff, Larry Sucharow, I think Chris Keller at Labaton may have been part of that, and Mike Thornton. I'm not sure who else.

BY MR. SINNOTT:

Q Did that agreement stay the same until the resolution of the case, or was there a change in the outlook of it?

A The final fee agreement, you mean?

Q No, this handshake agreement to share costs.

A It became more formalized near the conclusion of the litigation. And when I say "conclusion," I mean literally a month or two before we filed the final approval papers, because the rest of that 40 percent has to be figured out. So that became more formalized at the very, very tail end of the case, where it was agreed that, you know, Lieff Cabraser, at the end of the day, would collect something just under 25 percent of any awarded fee, Thornton

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would have its percentage, Labaton would have its, and ERISA counsel would get 10 rather than 9.

So that was divvied up formally before we actually submitted the fee petition, but up until that point the general understanding was always the three firms will try to equally contribute to the risk.

Q And with respect to how they would contribute to the risk, was there a change of some kind in January of 2015 or thereabouts?

A I wouldn't say it was a change. I think there was an effort to implement.

Because we knew we had to staff up the review to get it done, Thornton wished to contribute to that effort on equal terms, or on as equal terms as it could with the other firms, understanding that it did not have the facilities to host a dozen -- or however many -- attorneys who were strictly doing document review.

And so they asked -- and I think it was a telephone conversation I had with Garrett Bradley, who asked me whether we at

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Lieff Cabraser would be willing to house some staff attorney document reviewers that Thornton would pay for, so that Thornton could be making its equal contribution to bearing the risk in the litigation. And I agreed to that. I had no problem with that.

Q And were you aware as to whether there was a parallel agreement with Labaton?

A I was aware at that time that the same ask or arrangement was being requested of Labaton.

I wasn't aware of any prior arrangement. So in January 2015 my assumption was, "Okay, both we and Labaton are going to do this so that Thornton can be an equal partner in this effort."

JUDGE ROSEN: Was there a discussion between you, or someone else at Lieff, and somebody at Labaton to the effect, in order to implement this -- "Okay, we've got 15 staff attorneys working on this" -- or 30 staff attorneys, whatever the number,

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between your two firms -- and by "staff attorneys" I mean also document reviewers -- "Why don't we each contribute five" -- or some other number -- "and allocate those five" -- or some other number -- "to Thornton and bill them for that"?

Was there that sort of discussion between you and the Labaton folks?

THE WITNESS: I believe there was, that sounds familiar, and I believe those were actually the numbers we arrived at.

JUDGE ROSEN: Conceptually, how much detail did you discuss about how this was going to be done? Between you and Labaton.

THE WITNESS: Other than what you just said, in terms of "We'll do this and here's how the numbers -- you know, we'll do this many staff attorneys," I would say none.

We had had our own way at Lieff

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Cabraser of keeping track, and I'm sure we're going to get to how that process broke down, but we had our own processes in place for how we were going to do that and how we were going to keep track going forward to making sure that Thornton was making its equal contribution to the effort.

JUDGE ROSEN: How did you -- Lieff -- decide which staff attorneys, or reviewers/agency attorneys, would be allocated to Thornton? Was there some sort of --

THE WITNESS: Method?

JUDGE ROSEN: Yes.

THE WITNESS: I don't think there really was. I discussed it with Kirti, and we talked about practicalities, we talked about who's available, who's -- because this is in January of 2015, remember, so we have a bunch of people coming over from Bank of New York Mellon, so we're deciding, okay, who's available. I think Kirti

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had a couple of people who had been freed up from another case that were being brought in.

So we decided who do we have -- we wanted to make sure Lieff Cabraser's putting in its fair share, and then we want to make sure we are meeting our obligation to Thornton, so if we need to hire a couple of people that are being paid for by Thornton, let's go do that, and we'll send Thornton the resumes so they have them.

So those were the discussions. But we didn't say, "X person should be a Thornton person" just because -- there really wasn't much of a method to it, we just decided who was available and divided them up.

JUDGE ROSEN: As part of your initial discussions with Garrett Bradley, and then your discussions with Labaton, did you go to the next step and say, "If there's a successful resolution, either by settlement or a

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litigated result, in the fee petition we will permit Thornton to claim in their fee petition for these attorneys"?

THE WITNESS: The attorneys that they were financially responsible for?

JUDGE ROSEN: Correct.

THE WITNESS: I would say it was completely understood by me when I talked with Garrett that that would be how it worked, because it was obvious to me that if you pay for the work that is being done, then, just as with any other employee when you're paying them, that you include their hours in your lodestar when you report it at the end of the day.

I don't think that needed to be spelled out for me or for Garrett; it was just obvious.

JUDGE ROSEN: It was tacit?

THE WITNESS: I would go beyond tacit, as in -- well, yeah. I mean, we

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didn't write it out, but it was obvious to me that if you have an employee -- essentially, when you're paying someone to do work, and you're taking on the risk of not being paid for that work, which is always a risk in our cases, that if you paid for that work, you include it in your lodestar at the end of the day. That was the understanding.

JUDGE ROSEN: So let me just pursue this a little more.

There are at least two ways, maybe more, in which Thornton could have shared in the risk and cost sharing, and ultimately shared in the award.

One is the way in which you did it, allowing these -- allowing Thornton to claim these staff attorneys in their fee petition --

THE WITNESS: As their own.

JUDGE ROSEN: -- as their own, and bill the rates. That's one way to

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do it.

The other way to do it would be to simply have billed them, without allocating the attorneys, without permitting them to put the attorneys in their fee petition, simply billed them, and then at the end you send them an invoice for the pro rata share of the costs of these document reviewers, and then they paid it on an ongoing basis, just as they were doing, and then at the end, if there was a successful result, either by settlement or litigation, have the same reward sharing agreement that you had, 20/20/20, or 25/25/25, however it worked out, without having the paradigm of putting these staff attorneys -- allowing Thornton to have these staff attorneys on their fee petition.

THE WITNESS: So -- okay, I want to make sure I understand --

JUDGE ROSEN: It's a long question.

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THE WITNESS: -- the two different scenarios.

To understand the alternative that you're presenting, you're not suggesting that Thornton should only have been able to submit these people as a cost item, in other words?

JUDGE ROSEN: No, I'm not suggesting that.

THE WITNESS: You're saying that Thornton ought to have been able --

JUDGE ROSEN: Well, they could have done that, or not done it at all, and gotten -- and gotten compensated at the end in the way you had talked about.

THE WITNESS: Well -- okay.

I guess -- I guess what I would say to that is Thornton didn't want to be a special case, I don't think.

I mean, I shouldn't -- they can speak for themselves, but the only thing different about Thornton from us

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is that the people doing the work for them were not actually sitting in Thornton's offices in Boston and doing it.

JUDGE ROSEN: And they were not supervised by Thornton?

THE WITNESS: I wanted to speak to that.

JUDGE ROSEN: All right, we'll get to that.

But from what we've heard, from some of your folks anyway, they had no contact with Thornton lawyers, number one --

THE WITNESS: I can address that.

JUDGE ROSEN: Okay.

These were the staff attorneys.

THE WITNESS: Um-hum.

JUDGE ROSEN: Number two, many of these folks -- not the agency folks, but all of the other folks -- were your employees. You took the -- "you" Lieff and Labaton -- took the burden of

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employing them, you gave them W-2s and all of the other -- they were employees for --

THE WITNESS: Right.

JUDGE ROSEN: They weren't called associates, but they were employees.

THE WITNESS: Um-hum.

JUDGE ROSEN: You don't see that as a distinction?

THE WITNESS: Well, let me speak first to whether the staff attorneys had any interaction with Thornton.

They may not have been supervised on a day-to-day basis by Thornton, the ones who were putting in "Thornton hours" or doing "Thornton review." However, they did receive guidance from Thornton, filtered through me and/or Kirti. And I say that because Mike Lesser in particular -- I would characterize Mike as one of the thought leaders of this

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case overall, and Mike did send very thoughtful, lengthy e-mails, and musings, via e-mail to the rest of us about what we should be looking for in the case, important issues for discovery.

Mike Lesser also was the principal author of -- he was the principal compiler of all the issues that the staff attorneys wound up writing memos on -- all of them, not just the Thornton staff attorneys. Mike was the principal author of that list.

And so, yes, the staff reviewers -- the staff attorneys whom you have deposed were correct, or by and large, that they had little or no direct contact with Thornton attorneys, but to say that the Thornton attorneys were not providing guidance to the overall effort would be unfair. So I want to make that clear.

JUDGE ROSEN: That's good.

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THE WITNESS: In terms of the distinction, yes, we -- yes, we hosted people in our facilities. There are costs associated with that. We provided the physical training for how to use the Catalyst system. We provided workstations. But we were reimbursed, if we needed to be, for that, or else, you know, Thornton paid an agency directly for those people and we just provided the physical space.

The reason why Thornton included these people in their lodestar was simply to recognize, I think, that apart from that distinction, their physical location, Thornton was not making any less of a contribution to this document review effort than the other two firms were.

That was my belief. And that's what we were trying to implement by keeping the numbers equitable as much as we could.

JUDGE ROSEN: That could have

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been recognized at the end, in giving them the same share of an award.

THE WITNESS: Fair enough.

If you have a judge who doesn't care. Some judges do.

Now, Judge Kaplan, in the Southern District of New York, has a reputation for looking beyond the total lodestar number, and he will often say in his cases, "I want to know what each firm did. I want to see your lodestar reports, and I want to know who really bore the risk in this case."

And Thornton had experienced that in the Bank of New York Mellon case, and I think they may have felt that was unfair, and you can talk to them about it.

JUDGE ROSEN: Well, you've anticipated my question, because it goes to almost a philosophical jurisprudential difference between judges, and how judges --

THE WITNESS: I think --

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MR. HEIMANN: Let him finish.

JUDGE ROSEN: -- and how judges view the lodestar, how they view the risk, how they evaluate, for purposes of determining a fee, the risk. It's one of the interesting issues, obviously, in this case, and in some ways law firms have to know the strike zone of their judge.

THE WITNESS: Fair enough.

I think -- the bottom line is, from my perspective, I viewed Thornton as a co-equal partner in the venture in getting the job done and in bearing the risk of the case. And as part of that I viewed it as fair that they would contribute the overall -- they would contribute to the overall burden of making sure that document review was staffed and completed appropriately. And they did that. And I had no issue with them seeking to be treated on an equitable basis for purposes of their fee petitions from us. They didn't

want to be looked at differently, to the extent anybody would look at them differently, because their staff attorneys were not sitting in their offices in Boston, they were sitting somewhere else.

JUDGE ROSEN: I don't mean to unduly expand this deposition and take time, but this is a really important issue, obviously, to Judge Wolf --

THE WITNESS: Um-hum.

JUDGE ROSEN: -- and in the public perception.

From the perception of the public and the perception of a judge, the judge gets fee petitions. It is represented on the fee petition that Thornton had X number of staff attorneys/document reviewers working on the case for them doing the review, and this is the regular rates of these lawyers charged to clients and having been approved in cases.

THE WITNESS: Um-hum.

JUDGE ROSEN: A natural conclusion that a judge is going to draw from that is, "Oh, okay, this firm has these folks, this is part of their risk, and it's part of the" -- you may say, "Well, in the end there's no difference," but in a judge's mind, like Judge Kaplan, I suspect Judge Wolf --

THE WITNESS: Um-hum.

JUDGE ROSEN: -- there's a big difference, because there's a certain element of lack of transparency in the way these fee petitions were presented to Judge Wolf, in that the allocation agreement was never -- at least in anything we've seen -- disclosed to the judge initially in the fee petitions.

So all of this begs the question of best practices in the future. Maybe the best practice is to do it exactly the way you did it here but have a disclosure, an explanatory disclosure to the judge exactly what

happened --

THE WITNESS: That the staff attorneys were used --

JUDGE ROSEN: Not just housed, on the grounds, supervised by and employed by, on the employment rolls of a different firm. I'll go so far as to say possibly, if it had been done that way, the scrutiny may have been different at the outset by your firms, we would not have had the issue of the inadvertent double billing --

THE WITNESS: Double counting, yes.

JUDGE ROSEN: Double counting, thank you.

And we might not all be here today.

THE WITNESS: Fair enough.

I read --

JUDGE ROSEN: And let me just finish.

This is important, at least in terms of my investigation, a number of

contexts, not the least of which is I think all of us, and particularly Judge Wolf, is interested in lessons learned and best practices in these kinds of huge cases. And this is one issue in this case that informs my inquiry on best practices.

So feel free, Dan, to comment on anything along the way there, but -- and at the end we'll give you an opportunity, as we have for everybody, to comment on what best practices might be from your firm's perspective in managing these cases.

THE WITNESS: Okay.

JUDGE ROSEN: It's a lot.

THE WITNESS: So in terms of best practices, there were two -- there were two errors, fundamental errors, on the Lieff Cabraser side that contributed to what happened by way of an inadvertent double counting -- the double counting. The first of which I can identify by the fact that Virginia

Chiplock
Weiss --
MR. HEIMANN: Well, wait a minute.
This is a volunteered response -- I know where he's going, but I don't think it's really responsive to what you particularly --
JUDGE ROSEN: If it's not responsive, I won't use it, Rich.
MR. HEIMANN: But I assume you're going to get to a point where you're actually asking him questions about this.
THE WITNESS: Well, I was trying to get to that point.
JUDGE ROSEN: I'm genuinely interested -- genuinely interested in not just how this happened, because we do need record evidence on it -- and I think that's where Dan's going here --
MR. HEIMANN: He is, I know it.
JUDGE ROSEN: -- so we do need to get to it -- better now than later --

Chiplock
THE WITNESS: Yup.
JUDGE ROSEN: -- we do need to get to it, but the second part of the inquiry is what can we do in the future so it doesn't happen again.
THE WITNESS: Yes.
So with respect to Virginia Weiss and Andrew McClellan, who were two agency lawyers whom we shared with Thornton, their hours were allocated correctly and accurately, as far as I can tell, between the Thornton firm and my firm.
The reason I believe that that was done correctly is that they were trained correctly at the outset not to directly submit any time that they were spending doing review on Thornton folders to Lieff Cabraser's internal time keeping system. And I believe, just by process of elimination, that was because Kirti was present in early 2015, when those people began that process. And so that's why it was

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handled correctly.
With respect to Ann Ten Eyck and Rachel Wintterle, who started in March of 2015, they were brought on to fill a gap because we had lost a couple of people, or a couple of people were being transitioning -- transitioned away. They were brought on in order to keep Thornton's contribution to the effort equitable.
They were brought on at a time, in March 2015, when our key people, as it happens, were not there. Two key people in our human resources or administrative roles at Lieff Cabraser were absent. One was on maternity leave, one was on an extended sick leave. And Kirti, as it turns out, during that crucial two or three-week time period, was in India visiting family, and so -- unbeknownst to me and Nick Diamond, who was someone I had delegated some of this role to, we were both sitting in New York.

Chiplock
These new agency attorneys, when they came on in March, were trained to do what every other staff attorney is trained to do when they do work in our office, which is religiously send your time to our internal time keeping department, keep careful record of your time. Which they did. Religiously so.
We did not know, because we didn't have reason to believe that they were doing that, and that's why the time for those two individuals -- even though they're constantly sending their time to their agency and they're constantly letting the Thornton lawyers know what they're doing, they're also inputting their time into our system, which they should not have been doing.
So that -- the process broke down. And from my vantage point, it was sort of an anomaly created by the absence of some key people, as evidenced to me by the fact that we got

Chiplock

it right earlier that year when one of our key people was around.

So that's not an excuse --

JUDGE ROSEN: So earlier in the year the time was not double counted?

THE WITNESS: Correct, yes.

So it's just for those two individuals for the three or so months that they worked on the case, because at the get-go they were trained by somebody, I think in our IT department, who didn't know who from who, that this is how we keep track of our time at Lieff Cabraser; you need to be careful, you need to send it to our timekeeper, and that's what they did.

So that's why the time for those two individuals was included in our system and it was never caught. And that falls on me. When I'm reviewing our time in September of 2016, which is more than a -- almost a year and a half later, you know, the passage of time and my ignorance that

Chiplock

these people were not trained in the way they should have been trained with respect to their time keeping -- I'm paying attention to their work product, to everybody's work product, and I'm assuming that they were trained correctly, but when I'm reviewing time in September of 2016, over a year later, it's not at the forefront of my mind that there may be time in there for certain staff attorneys which shouldn't be. I think it's been taken care of.

So I've kicked myself a thousand times since this process began as to why my memory banks didn't work better in September of 2016 --

JUDGE ROSEN: You had a lot on your mind and a lot to dangle, and you didn't have a process in place to capture this at a later point.

THE WITNESS: Right.

JUDGE ROSEN: Neither firm did, neither Labaton nor Lieff.

Chiplock

THE WITNESS: That was a breakdown in the process, and it was made possible by the absence of some important people at the time they were trained.

With respect to Mr. Zaul and Mr. Jordan, who you met, who we shared responsibility for a time with Thornton, I think Thornton was financially responsible for about eight weeks of their time. They entered their time into our system so that we had the capacity to create an invoice that we could then send to Thornton.

I delegated that process to Nick, and to Kirti, to work out with our accounting department creating an invoice and sending it off to Thornton so that those hours are properly accounted for and paid for.

What did not happen is once we got paid for that time, once the check came in --

JUDGE ROSEN: Didn't come off

Chiplock

the rolls.

THE WITNESS: -- that time needed to be deleted from our system, and that instruction, that specific instruction, was never given to our accounting department. And, again, that ultimately falls on me.

Now, in my defense, I'm thinking I've delegated the issue of billing and accounting for time appropriately, I've delegated it elsewhere, and it's being taken care of, but I was not explicit enough with that -- with that final instruction, which is, "Once we get paid, that time has to come out of our system, because Thornton is obviously going to take credit for time that it's paid for, as it should." So that's my fault also.

And so in September of 2016, when I'm reviewing time records, I am not thinking to myself, "There's time in our system that should not be there, I should go back and check."

JUDGE ROSEN: So that's at the front end.
THE WITNESS: Yes.
JUDGE ROSEN: At the back end --
THE WITNESS: What would have helped me to figure it out?
JUDGE ROSEN: Yes.
THE WITNESS: It would have helped -- it probably would have helped had I seen the other firms' fee petitions before they got filed.
JUDGE ROSEN: And you didn't?
THE WITNESS: I did not.
JUDGE ROSEN: Either you or some monitor for the three firms to homogenize the petition to make sure that things like this didn't happen?
THE WITNESS: Yeah, and clearly there were overlapping names on the different fee petitions.
That was completely transparent. Nobody was hiding the fact that there was the same people on

different ledgers. And Judge Wolf did not comment on that fact, after -- he called the papers excellent.
So it was all there, all the hours were there, all the names were there, including names that appeared on more than one ledger.
Had I seen the other two petitions and seen the overlapping names, it might have spurred me -- I can't say for certainty, but it might have spurred me to say, "I'm going to go back and -- it's okay that there are the same names here, but I'm going to go back and make sure that we deleted the time we needed to delete before this petition goes in."
JUDGE ROSEN: And that the same names and the same time was not on both petitions?
THE WITNESS: Right. Which is what I'm saying.
JUDGE ROSEN: For the same time frame?

THE WITNESS: For the same time -- yeah. The hours that needed to be deleted should have been deleted, and weren't. So that's...
JUDGE ROSEN: Look, we all learn from hindsight --
THE WITNESS: Correct.
JUDGE ROSEN: -- but in the benefit of hindsight, and best practices going forward, do you believe that allocating work done by staff attorneys employed by your firm, or by Labaton, for purposes of a fee petition to another firm, is a best practice in terms of transparency to the court, in terms of transparency to the public, in terms of avoiding these kinds of errors, which are human errors -- you're beating yourself up. You're a busy guy and you have substantive responsibility for the case, you're beating yourself up for that when in fact inherent in this system was a very high potential for exactly this sort of

problem.
THE WITNESS: Yes -- I appreciate all of that. And I think a best -- a better practice going forward would be if we are going to have this kind of arrangement, that we say so in our papers, and -- and say why we think there's nothing wrong with that. Which I still honestly believe.
You know, Thornton could have rented a room in Boston and housed a bunch of staff attorneys. They could have done that. It would have --
JUDGE ROSEN: But more than that, they would have had to have had these folks on their payroll, they would have had to have somebody supervising their folks -- a Kirti, a Todd Kussin --
THE WITNESS: Right.
JUDGE ROSEN: -- it's not simply that they were housed somewhere else.
THE WITNESS: I get it.

Chiplock

JUDGE ROSEN: You and I might have a fundamental disagreement here. It's not simply that.

THE WITNESS: Fair enough.

I think a better practice would be more transparency about the arrangement, so that the judge can ask us questions about it, if he has them, and express his concerns, and we can have this discussion about --

JUDGE ROSEN: And the judge may say to you, "That's not how I want you to do it."

THE WITNESS: He may.

JUDGE ROSEN: Or she may say, "That's not how I want you to do it, we want full transparency here in the process, and attorneys who are paid by a firm should be on that firm's fee petition."

Okay, I'm done for a while.

Sorry.

This is a really important piece of my investigation, because I

Chiplock

know it's an important piece for Judge Wolf. And I think for the profession.

THE WITNESS: Understood.

BY MR. SINNOTT:

Q Dan, let me just jump in with a few documents that I think in some measures buttress or corroborate what you've said, and in one or two instances just prompt a couple of questions.

I've got a document that Labaton has provided to us, and it's Bates stamp 5253 and 5254, and it's an e-mail thread that originated on Wednesday, November 9th, 2016, at 2:55 p.m., and it's from you to -- originally from you to David Goldsmith concerning State Street.

Then there's a message that same day, at 3:38 p.m., from -- a return message from Attorney Goldsmith to you, where he appreciates your input where previously you had said, "For what it's worth, I strongly agree with just one fulsome letter on this issue."

That being a letter to Judge Wolf; correct?

Chiplock

A Yes.

Q And then there's a more lengthy message from you on that same day at 7 p.m., and it's from you to David Goldsmith, but you've also cc'd Evan Hoffman and Michael Lesser at the Thornton Law Firm, and you describe what you've been able to determine, and you reference some of the things you just talked about, "Rachel Wintterle and Ann Ten Eyck should not have been included in Lieff's lodestar at all" --

A Yup.

Q -- and you talk about Christopher Jordan and Jonathan Zaul and the confusion over their hours, and you also speak to Andrew McClellan and Virginia Weiss' lodestar checks. And other than expressing your grief over the presidential election, it seems to encompass some of those items that you've just described.

A Yup.

Q Looking at that, is that, in your view, consistent with the description that you just gave Judge Rosen?

A Yes, it is. I remember it

Chiplock

well, and I remember the feeling I had as I wrote it.

Q Beyond the grief of the election?

A It was compounded.

Q Let me show you something else --

JUDGE ROSEN: Not a good two or three-day period.

THE WITNESS: It was terrible.

I had flown back from Jacksonville, Florida that day, because I had been volunteering on Election Day at a polling place.

Q Let me show you a document dated January 23rd, 2015, and this is from Lieff's disclosure, and it's number 48780, and there's an e-mail at the bottom, which is my focus, from you to an Eric Fastiff, with Kirti being cc'd.

Who's Eric?

A Eric Fastiff is a partner in our San Francisco office.

Q Okay. I was trying to be fancy

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saying fas-teef, but it's fas-tif.

A It's fas-tif.

Q In that you say, "Eric" -- and once again, this is dated January 23rd, 2015, and initially at 7:16 a.m. you say, "Eric: We have a compressed amount of time to get some additional document review done in the State Street case, and I understand that some [redacted] reviewers may be freed up soon."

A Uh-huh.

Q "One of our co-counsel, Thornton & Naumes, has asked whether we can 'house' up to five reviewers that they can pay for." And then in parentheses you say, "LCHB itself would be responsible for around a dozen. The entire project should not take more than eight weeks, and may take less than that. Since this plan would not involve hiring any more people, just reassigning people who are already here, I'm hopeful that we can manage it space wise.

"If you want to discuss logistics and economics of it, I'm in the office and available today, except for a handful of

Chiplock

calls. Thank you very much."

Eric acknowledges your message and says, "Joy will come speak with you in the New York office today," and you respond by thanking him.

A Uh-huh.

Q So describe, if you would, in the context of what you just told us, what your conversation was with Garrett Bradley, and what the level of that discussion was as far as the assignment of staff attorneys was.

A Well, it was as I described. I'm sure I sent this e-mail pretty shortly after I spoke with Garrett, and we were trying to quickly come up with a solution. And Eric was overseeing a case that involved a number of staff reviewers, and so we were simply trying to take stock of who we had available.

Separate and apart from people who were being rolled over from the Bank of New York Mellon case, we wanted to take stock, because space was also a concern in our office in San Francisco. We had a lot of people -- if I remember correctly, in early 2015 we had a lot

Chiplock

of document reviewers, and I'm not sure how much more room we had to hire new people, so it was more of an allocation issue.

Q Okay.

And let me bring you to April of 2015. And these are documents provided by Thornton Law Firm, and e-mails involving you and persons at Thornton and persons at Labaton as well. At any time I'll be happy to show it to you, but in the interest of time, let me just reference a couple of things.

There's a message from Mike Rogers on Monday, April 13th in the morning, at 10:37, to Mike Lesser. For this particular page the Bates stamp -- the entire Bates unit for this thread is TLFSST 014836 through 843, and this particular document is on 841, and in this message from Mike Lesser of Thornton to -- I'm sorry, from Mike Rogers of Labaton to Mike Lesser of Thornton, in which you, Kirti and Evan Hoffman are cc'd, you respond to a message from just a minute before in which Mike Lesser had written to you, "Batch as necessary for any available reviewers. I see most of these as one

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to a reviewer, except where there is obvious synergy, like the one person should probably take the first three on the PTEs and Section 408(b). Use your judgment in assigning the more hot topics to more better reviewers (bad grammar supplied)" --

A I think he was being funny.

Q I think he was being funny.

So what was Mike Lesser saying to you in that message, and to Mike Rogers? What was the message with respect to the document review?

A Well, I think, as best as I can recall, Mike Lesser, as I said earlier, was the principal compiler of the many issues that we had document reviewers focus on when writing the memorandum, and he -- there were a series of e-mails, there wasn't just one, where he circulated ideas for people to focus on.

Mike Rogers and I contributed thoughts to that process, but it was mostly Mike Lesser.

Q And you acknowledge that response -- I'm sorry, Mike Rogers acknowledged

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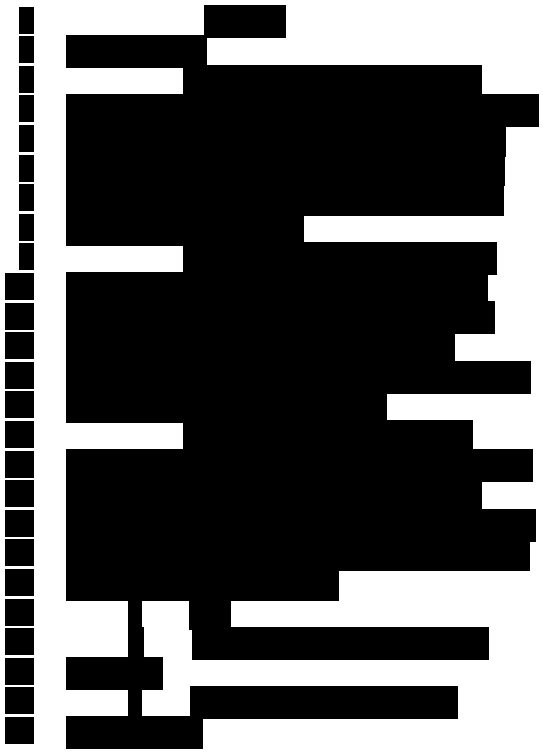

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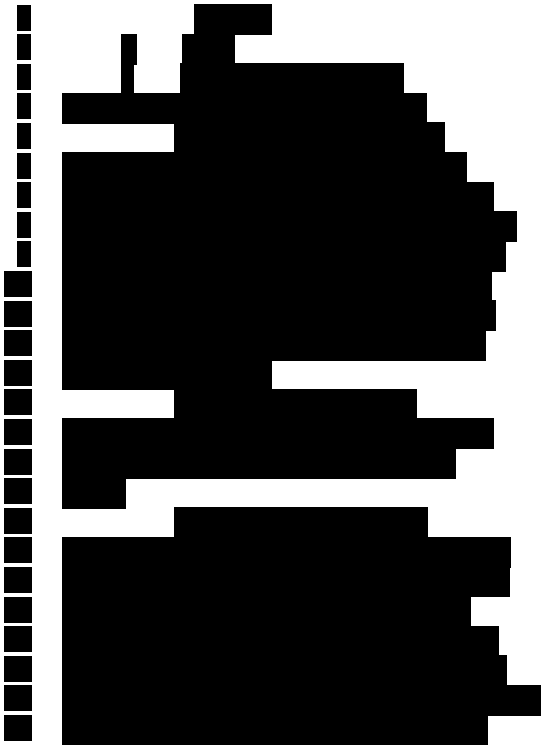

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turnover.
That was never explained to me. I don't think anybody really responded to this e-mail. I don't remember getting a response.
Q I think you kind of respond to your own e-mail --
A By cutting -- by cutting back, yeah.
So I think -- this is why we reallocated in the middle of April 2014. So Jon Zaul and Chris Jordan come back onto the Lieff Cabraser ledger at this point, Ann Ten Eyck and Rachel Wintterle, they continued as Thornton contract agency attorneys. But that's why -- that's why Chris and Jordan were brought back onto the Lieff Cabraser ledger, because I was under the impression that the numbers had changed while I wasn't paying attention, because I wasn't focused on the day-to-day of the staffing, I was assuming it was being maintained on an equitable basis.
Q All right.
A And so that's why we adjusted.
But nobody ever corrected me.

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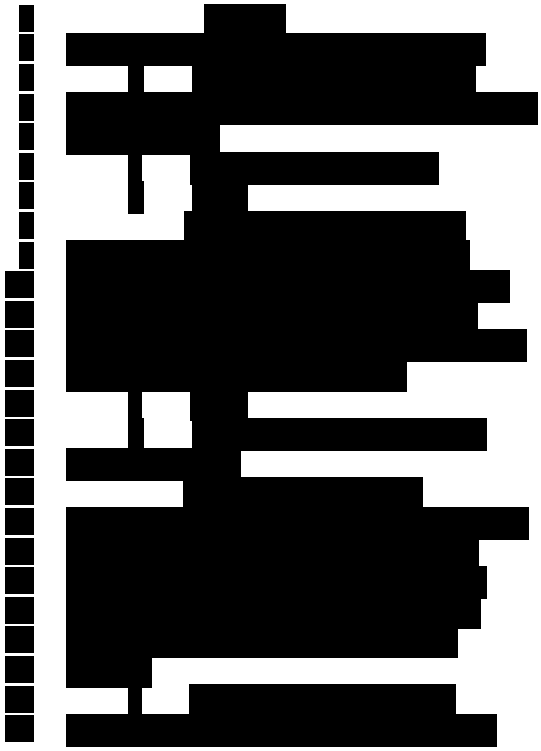

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In September of 2016, a year and a half later, we submit the papers, with names -- all the names are there, they're on different ledgers, the same names, but there's no explanation, and I think we should have supplied the explanation, and if we were submitting our fee petitions in May of 2015, when this issue was fresh in our minds, we may have done that, but by September of 2016 -- you know, there's even an e-mail exchange, and we produced it -- we produced these documents also, they're in our production, you just may not have seen it yet --

Q Yeah.

A -- I believe in September of 2015, which is a few months after this, there's an e-mail exchange about, you know, we should talk about the fee petitions and, you know, how we're going to harmonize and explain the issues to the court. And I think Mike Rogers responds and said, "Yes, that's a good idea, let's do this."

But this is September 2015. And then we get waylaid because we are dealing

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with the Department of Labor, we're dealing with other issues, and so when a year goes by and we're preparing the papers, that discussion doesn't get picked back up, and instead we prepare our fee petitions, it's based on a template that's given to us by Labaton, we fill in the information we need to, we review our own lodestar to make sure we're taking out hours we need to take out to the best of your knowledge, and then it all gets filed, and that discussion never continued about harmonizing and making sure we explain what we need to explain. And so I blame the passage of time. I don't blame the goodness of the people involved. I think everybody had good intentions and worked hard, but...

Q Do you think you overcomplicated things by coming up with this allocation theory?

A In retrospect, it was probably -- it didn't need to be this complicated.

Again, from the Lieff Cabraser standpoint, this were two fundamental mistakes,

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which I've identified; the training of Rachel and Ann when they started, and the failure to instruct our accounting department at the end of the day to remove the time submitted by Jordan and Zaul that was paid for by Thornton. Those were the two key mistakes.

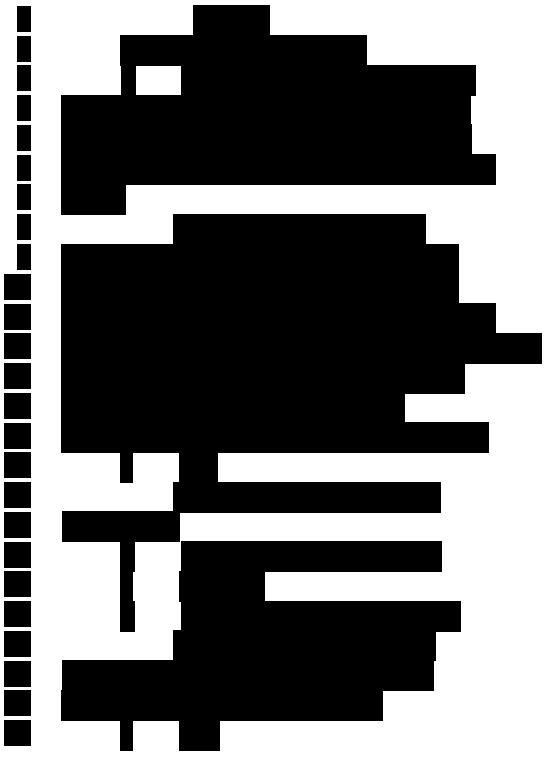
Had we not made those two key mistakes, there would have been no double counting whatsoever.

And I, arguably, wouldn't be sitting here -- although maybe I would be because I'm part of the whole case. But if it weren't for those two mistakes, the double counting would not have occurred on the Lieff Cabraser side. So that's what I kick myself over, and I wish we could have avoided.

I don't blame the process so much as human error for those two mistakes. The ultimate human error is mine.

Q Thank you, Dan.

MR. SINNOTT: For the record, I just confirm what Attorney Chiplock said, Lieff did turn over that thread, beginning at LCHB-52620 through 626,



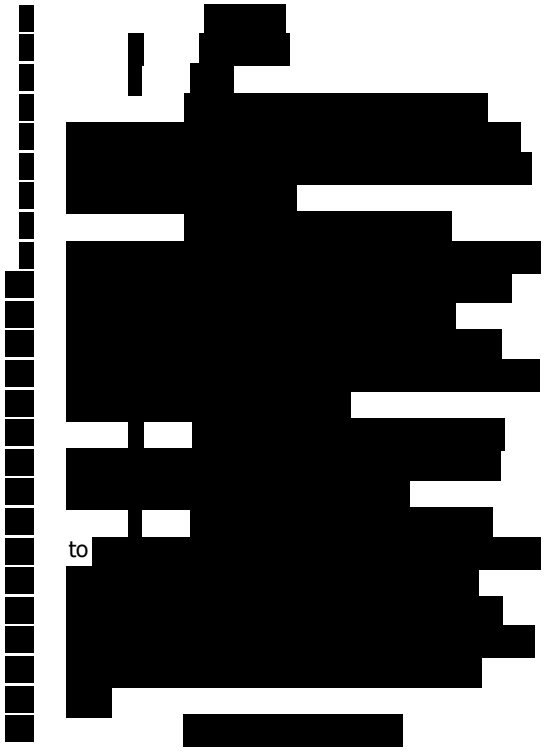
Chiplock

Q And did you consider this to be substantive guidance?

A Yes, I did.

Q Thank you.

I have a two-page e-mail thread that your firm has provided as part of discovery, and this is LCHB-52627 and 52628. I'm going to ask you to look at this and explain what's going on, but it would appear that



to

Chiplock

there's a discussion beginning in this thread in August of -- end of August of 2015 in which you and others from Labaton and Thornton are trying to figure out what the document reviewer rate is.

So let me ask if that's a mischaracterization, and see if you can tell me if there was any resolution of that.

A Yeah, so this is probably the communication I alluded to earlier.

Yes.

So there's an e-mail in here -- so the exchange begins with Mike Rogers suggesting that at this stage of the case we should gather our time and daily backup, as he calls it, plus our expenses info, and start to get a hang on what the total lodestar expenses are in the case, because this is right around the time when we're getting ready to sign a term sheet in our case. We had already reached an agreement in principle to settle the case in June, so this is a couple months after that.

And I respond and say, "That's a good idea," and then I say, "Do we want to cap

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document reviewer rates at a certain level?" And I say, "We probably need to pick a consistent rate." In Bank of New York Mellon, the top document reviewer rate was 425 an hour.

And then I say, "We didn't include lodestar for timekeepers who billed less than ten hours." That's a fairly typical adjustment that's made.

Yeah, and then there's follow-up e-mails to this, like, "Are we ready to exchange our time yet? Are people done preparing their time and expenses? Can we circulate them?"

But that discussion about capping rates never was picked up again. Like, how -- what rates do we want to set for document reviewers was not picked up again, and this was 2015. We do the fee petitions, I think, almost exactly a year after this, so -- it just didn't happen.

Q And let me show you a thread from 2016 -- I'm sorry, from November 16th of 2016, so this would be after the unpleasantness --

Chiplock

A Yeah.

Q -- in the case.

A On multiple levels.

Q On many levels.

This was provided -- the document I have in my hand is from Thornton Law Firm, although it may have been provided by your firm as well, because you are an addressee on it, but beginning with TLFSST-015066, and the thread concludes on 015071.

In this thread there's a discussion about the lodestar in this case, and the multiplier. And if I could direct your attention to page 15067, and ask you to look at -- and I'll give you the preceding pages as well, but the two e-mails in the middle.

First of all, the one that you send, but the one below that --

A Yeah.

Q -- what is that discussing as far as a methodology?

A I think where -- you mean where I say, "I think to the extent there are any shared attorneys where the lowest rate that was

Chiplock

reported in the prior declarations is the one that should be used"?

Q Yes.

A Is that -- yeah.

So for purposes of the corrective letter, the mea culpa letter that was sent to the court on November 10th --

Q Yeah.

A -- we took the view -- I think it was suggested by Labaton, and I agreed, that we should give the court the most conservative view of what the total all-in lodestar would be once you corrected for the double counting. And the way to do that was not to worry about who paid for what, in terms of labor, but instead to take any so-called double counting time and only include the time that was billed at a lower rate.

And so Thornton I think by and large used 425, perhaps thanks to this e-mail from fall of 2015, where I said, "in Bank of New York Mellon I think we used 425," which I think we did, because Thornton was involved in that case, too. So they used 425.

Chiplock

Our rates tended to be lower -- not always, but they tended to be at 415, sometimes they were at 515 for just a couple of people, whereas Labaton's tended to be around 375. Some of them might have been higher, I can't remember.

So for purposes of that corrective letter, we wanted to give the court the most conservative view of what the total lodestar would be so that we could make -- the companion point was even if you take the most conservative view -- in other words, even if you treated this error the most harshly and removed the time, any double counted time that was at the higher rate, just throw that out, the effect on the multiplier is still not that great, and certainly within the bounds of -- well within the bounds of what's permitted in the First Circuit.

Q All right.

A So that was -- so this discussion happens after that, and we're talking about preparing corrected fee declarations, and I think we're trying to figure out, A, should we

do that; B, if we do that, do we do it in a way that's totally consistent with that letter, or do we really try to figure out who paid for what and prepare the corrected declarations that way? Because you can come up with two slightly different results as a result of doing that.

Q And along those lines, the first page in that thread, 015066, you seem to speak about the need for consistency and taking a conservative approach.

A Yeah.

Q Describe that final message from you in the thread.

A Yeah, I think I'm saying if -- if we need to submit corrected declarations -- and I think we did prepare them. We didn't file them because we were awaiting instruction, but we were prepared to file them if instructed, and the upshot at this point in time was to prepare them so that when the court took all the fee petitions together and considered the lodestar as a global unit, he would get the most conservative view of what the lodestar should be.

Q Okay.

JUDGE ROSEN: Could I...

I'm trying to understand how taking the lower amount billed would be the most conservative view? Because if you took the highest amount billed, that would produce a bigger number, and a potentially more alarming --

THE WITNESS: I get it. I'm saying conservative from our standpoint.

JUDGE ROSEN: From your standpoint.

THE WITNESS: What we wanted to tell the court --

JUDGE ROSEN: But a worst scenario would have been to take a higher number, the higher rate number?

THE WITNESS: Right. But my point is we wanted to tell the court, "Even if you decide" -- even if we were compensated at lower rates --

JUDGE ROSEN: Ahh.

THE WITNESS: -- across the

board or on average, because you removed the double counted hours that were reported at higher rates, you throw those out and we lose the "benefit" of that higher lower lodestar --

JUDGE ROSEN: I see, by throwing out the higher numbers...

THE WITNESS: We threw out the higher numbers so that we would not get the benefit of that number, which results in a larger multiplier. And, as you know, the bigger the multiplier gets, the more a court will look at your fee as potentially unjustified.

So we wanted to basically tell the court, Judge -- Judge Wolf, "Here's the worst case scenario. If you were to remove this high-priced time, this high-priced double counted time from our ledgers, even if you did that, the resulting effect on the multiplier is .2, and that's the worst case scenario."

If we included our higher priced time, the resulting effect on the multiplier would have been that much smaller; it might have been .1 or less.

JUDGE ROSEN: But to complete the perspective, if you included it just as it was, the higher time and the lower time, the actual numbers of hours double counted and actual total dollar value double counted would be higher?

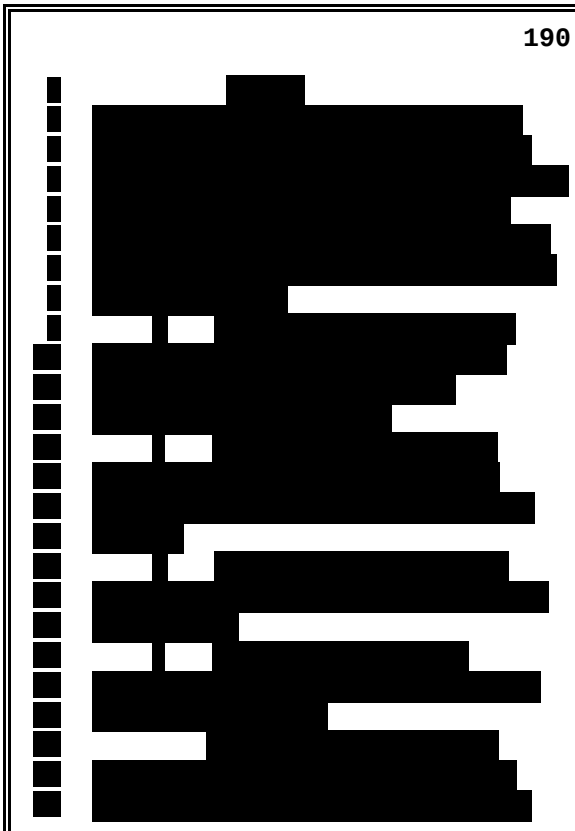
THE WITNESS: That's what we -- that is what we were reporting. That's what was reported in the original fee petition, which corresponded to a multiplier of 1.8.

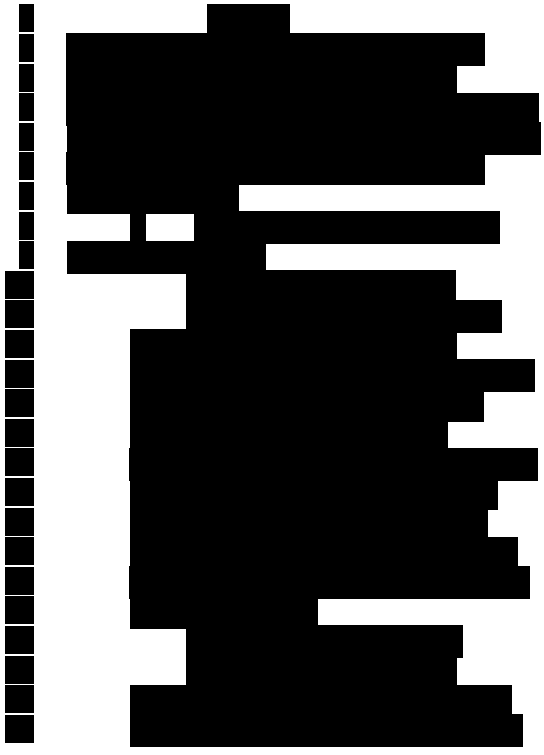
Once we made the harshest correction, if you will, that one could based on rates, it resulted in a multiplier of 2.0, as opposed to 1.8.

BY MR. SINNOTT:

Q Who in your accounting department maintained the hourly data, Dan?

A I wouldn't say it's one





Chiplock

individual qui tam cases was not being included in the class benefit time.

Q So you were trying to segregate to avoid billing for the same work in more than one case?

A Right. Because they had a very similar -- they had the same case number, but different subcodes, different matter numbers, and sometimes people make mistakes when they're writing down their time, and so I remember going through hundreds of pages of records to make sure that time was correctly allocated between the two different matters.

Q Now, at some point did you receive from Nicole Zeiss at Labaton a template?

A For the fee declarations?

Q Yes.

A Yes.

Q And was this a usual practice for lead counsel?

A Yes.

Q And when Lieff is lead counsel, do you provide templates to other firms?

A I believe we did. I believe in

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the BoNY Mellon case we created the template and circulated it to other counsel in the case for them to insert firm-specific information.

Q In this particular case, with this template, do you recall whether you made any changes in the language?

A I don't recall making any changes other than changes that were specific to my firm --

Q Okay.

A -- specific information related to my firm's contributions and lodestar and costs, that sort of thing.

Q And with respect to that language -- showing you the declaration that you submitted in this case, and if I could direct your attention to paragraph five --

A Yup.

Q -- I'm sure it's not a surprise to you that we're going to ask about this matter.

A Yup.

Q To quote it, it says in paragraph five of the fee declaration, "The

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hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions."

A Um-hum.

Q As you were reviewing the language for this case, did you pay any particular attention to that paragraph?

A I did. I reviewed it.

Q Is this the same or similar to language you've used in other cases?

A I don't know that it is identical to any declaration I've ever signed, but the concept is similar to what we have conveyed in our other fee applications, which is to say, "These are our regular rates. These have been readily accepted in other jurisdictions, in other class cases, or routinely accepted," or whatever the wording might be.

I will say that we submitted language that was similar to this in the Bank of New York Mellon case, and if anything we were

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even more explicit that these are rates we have charged paying clients, and they have paid them.

MR. HEIMANN: And I have copies of that declaration with me, which you might -- if you haven't seen, you may want to take a look at.

JUDGE ROSEN: The BoNY declaration?

MR. HEIMANN: Yes.

JUDGE ROSEN: I think that would be helpful.

Let me just jump in -- quickly, I hope.

Your firm at times did have paying clients; right?

THE WITNESS: Yes.

JUDGE ROSEN: Did these rates reflect the rates charged to those paying clients?

THE WITNESS: As far as I know, the rates we charged to paying clients were market-based rates, like these, and were the same or comparable to.

And I say that because it might

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have happened in different years.

So we had a paying client, for instance, on a case I cut my teeth on in the early 2000s, against McKesson HBOC, and we worked for a client who was paying us by the hour, and we had a couple of contract staff attorneys doing document review, and I think on average we billed them out at $300 an hour, but that was in 2003. So rates do change from year to year, but our regular rates are what they are.

JUDGE ROSEN: But to your recollection, in those relatively rare instances, but in those instances, that you had paying clients, the rates in the fee petition were the rates that you actually charged the paying clients, maybe adjusted for passage of time, inflation and those sort of things?

THE WITNESS: Yes, our regular rates were the same.

Now, some clients can get

discounts, as it does happen, but our regular rates were what they were, and we had clients who paid our regular rates.

MR. HEIMANN: I would emphasize you might want to look at the BoNY Mellon declaration, because it addresses this very issue.

THE WITNESS: We were very explicit about that.

JUDGE ROSEN: Thank you. We will.

You know, for purposes of the record, we did this a little bit informally. Are you able to verify -- look at this and verify and authenticate this as the declaration that was used? And we should have it as an exhibit.

THE WITNESS: I can. Except I will note in the copying of this document they left off my signature page, so we may want to provide you with a completed version.

And the very --

JUDGE ROSEN: Let me just say, there is a signature page that you signed?

THE WITNESS: There is a signature page that I signed.

This whole document is on Pacer, it's a public document, but we can get you a complete copy.

The other thing we did was to leave off Exhibit A, which is our firm resume, and is over a hundred pages long, and I don't think is necessary for your purposes.

MS. MCEVOY: We have the copy of something similar.

THE WITNESS: I think we produced it anyway.

MR. SINNOTT: And just to read into the record the BoNY Mellon paragraph five also --

THE WITNESS: Yes, it's paragraph five.

MR. SINNOTT: Why don't you

read that into the record, Dan.

THE WITNESS: So in the BoNY Mellon fee declaration we said in paragraph five, "The hourly rates charged by the timekeepers are the firm's regular rates for contingent cases, and those generally charged to clients for their services in non-contingent/hourly matters." And then there's a footnote.

JUDGE ROSEN: Read the footnote now.

THE WITNESS: Yup, footnote two.

"On occasion, and for a specific type of representation, the firm may offer a discount on its hourly rates to longstanding clients."

So then I can continue -- so going back to the body of paragraph five, it continues, "Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in

their respective cities by attorneys and paraprofessionals of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements."

JUDGE ROSEN: So all of this begs the following question:

This is obviously a much more explicit and robust, complete explanation, as compared to paragraph --

THE WITNESS: Five.

JUDGE ROSEN: -- five of your declaration in the State Street case.

THE WITNESS: Yep.

JUDGE ROSEN: Why not use exactly this language?

THE WITNESS: This was the template provided to me -- there's no...

There's no official officially accepted language to convey this point.

In the Bank of New York Mellon

declaration -- I don't even know if other firms in the Bank of New York case used the same exact language that I used in paragraph five. I know we provided templates.

I actually doubt that every firm used the exact same language, because some firms may never have had a paying client at all. The fact was we had, and we view that fact as helpful for the court to evaluate our rates.

JUDGE ROSEN: Why not put it in the State Street?

THE WITNESS: Well, it does say that. It says, "These are my firm's regular rates charged for their services."

JUDGE ROSEN: Well, this is a more full, complete and robust explanation. More transparent, you might say.

I'll just ask the question.

You knew that in Bank of New York Judge Kaplan was very concerned

about these kinds of issues --

THE WITNESS: About fees and billing generally.

JUDGE ROSEN: Fees and billing.

Is that why your language was more robust in the BoNY case maybe?

THE WITNESS: I think we were just trying to give the judge as much comfort as possible that the rates we are charging are, in our view, reasonable. We also submitted a lengthy declaration from Professor Coffey in that case, that went to that point and then some.

JUDGE ROSEN: But your language in paragraph five of the BoNY declaration would have been -- well, let me ask you.

Would it not have been equally applicable to the State Street case --

THE WITNESS: Yes.

JUDGE ROSEN: -- and usable --

MR. HEIMANN: Wait until the finish, please.

JUDGE ROSEN: -- and usable in your declaration in State Street?

THE WITNESS: Sure. I think it would have been.

I will add that when I read the language in paragraph five in State Street, I did not have an issue with it because it jibed with my overall understanding of our rates, and the marketplaces in which we've worked, and the fact that our rates had regularly been accepted in class cases. It's definitely a shorter paragraph than what we used --

JUDGE ROSEN: You thought it captured what you needed to capture?

THE WITNESS: I did not have an issue with it. I thought it captured what we needed to convey, as far as Lieff Cabraser was concerned.

In retrospect, certainly I will -- would have included the longer version that we included in BoNY, but we were not lead counsel, we didn't

write the template, and I didn't have an issue with what was presented to me.

JUDGE ROSEN: Can we make both of these exhibits to the deposition?

THE WITNESS: Do you want a version with my signature page?

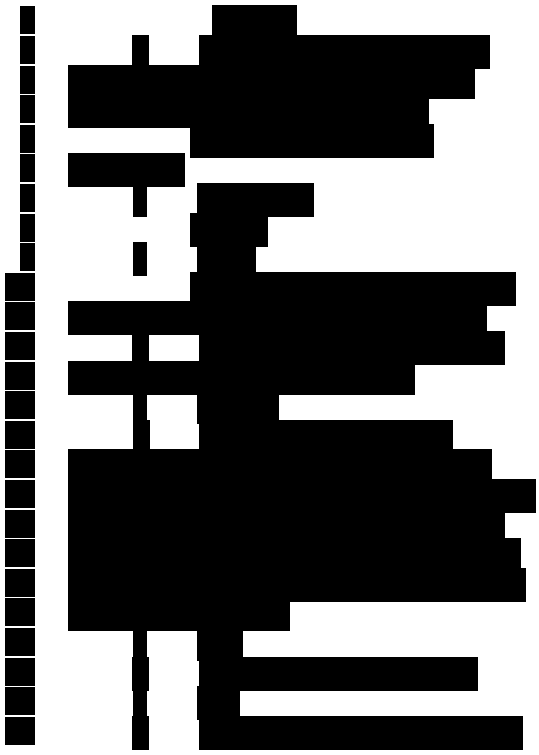
JUDGE ROSEN: For the deposition, yeah.

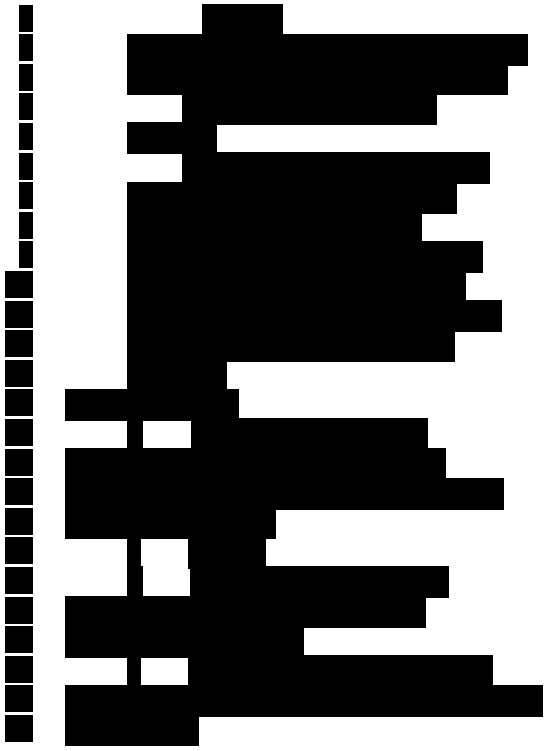
THE WITNESS: Okay, we'll get one to you.

MR. SINNOTT: Would you like these marked and entered?

JUDGE ROSEN: Yes, I think so.

MR. SINNOTT: If Madam Court Reporter would first have a document that was Exhibit 17 to the fee petition, and it's styled as "Declaration of Daniel P. Chiplock on Behalf of Lieff Cabraser Heimann & Bernstein, LLP in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses" in the Arkansas Teacher Retirement System, et al. case versus





Chiplock
would be helpful or appropriate in future fee petitions?
A Certainly.
JUDGE ROSEN: Maybe in conjunction with the same language that you used in the BoNY case?
THE WITNESS: Yeah. I mean, it's all intended to convey the same thing, but, yes, we could be even more explicit.
MR. HEIMANN: To clarify, I can tell you that those rates have also been accepted and applied in cases -- recent cases -- where the fee award was based on a lodestar and not as a simple cross-check.
MR. SINNOTT: Thanks, Richard.
BY MR. SINNOTT:
Q Let me ask you about Michael Bradley.
A Yes.
Q When did you first hear Michael Bradley's name, and in what context?
A Okay. So I will -- the first

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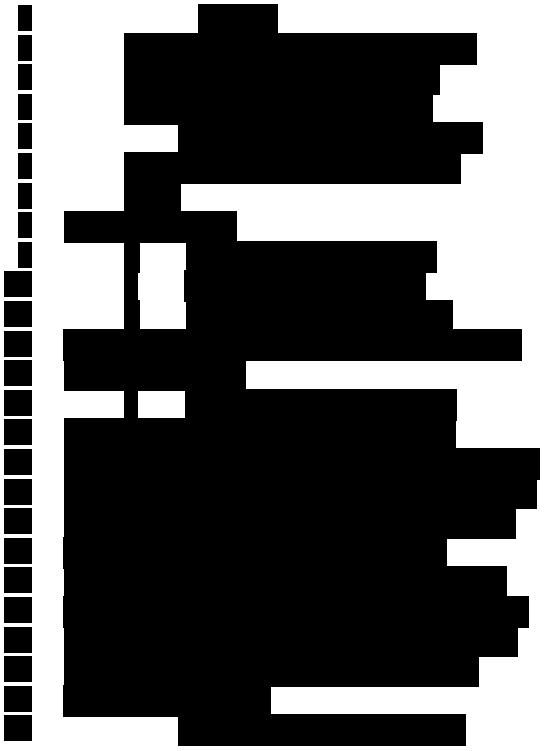
that I recalled hearing Michael Bradley's name was after November 10th, 2016. And the context was I was asked by e-mail by David Goldsmith whether it was possible to go back and check Catalyst to confirm that Michael did -- actually went online and did document review work on the platform. And that was the first time I recalled hearing Michael Bradley's name.

JUDGE ROSEN: Did you know who he was?

THE WITNESS: I actually did not. I did not make the connection with the last name at all.

And only subsequent to that -- and I don't remember how much later -- I found out it was Garrett's brother. But I -- I did not make that connection when I first heard the name, because Bradley's a common name.

As it turns out -- and we've given you the documents in preparation for today's testimony -- Kirti located an e-mail from way back in 2013 where Evan asked Kirti to set up an account



Chiplock

Bradley was.

Then I think Nicole wrote and said, "You know what, don't check, we'll just wait and see if anything comes of it."

But then the Thornton firm actually contacted Kirti directly and asked him the same question. So he checked, and determined, as David suspected, it was not possible to confirm whether or not Michael had worked on the platform because the Catalyst platform had been shut down for a year and a half at that point, and we had all of the documents and the coding on a hard drive, but there was no way to audit any individual user's work in retrospect by looking at that information.

JUDGE ROSEN: You could have -- I'm not suggesting you should have, but you could have paid to have the Catalyst platform reignited and gotten back into it, could you not have?

THE WITNESS: Ask Kirti this question.

The answer is yes, we could

Chiplock

have had it all put back on the Catalyst system, but I think even then it would not have been possible to do an audit of any individual user's work from years prior, because I just don't think the system was built to capture that.

BY MR. SINNOTT:

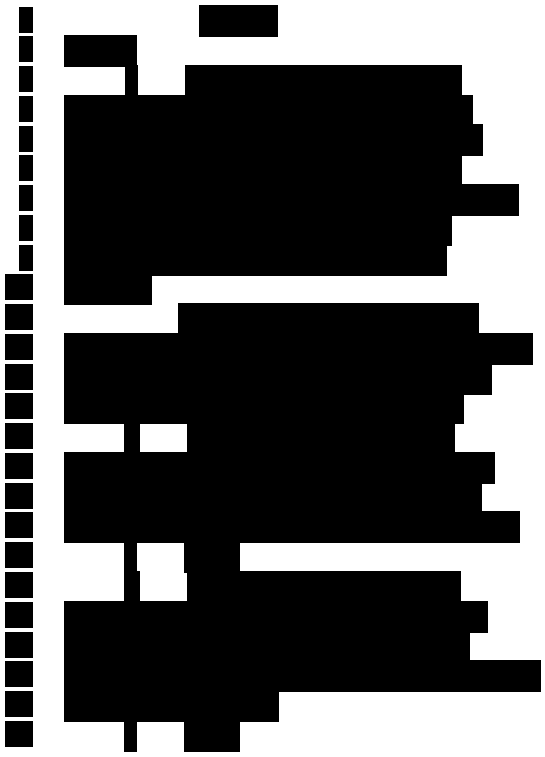
Q So to this date you're unaware whether there was any substantive entries in Catalyst by Michael Bradley?

A I'm personally unaware. All I know is, as I learned yesterday, we did set up a Catalyst account for him in 2013.

Q And were you aware of any other --

MR. SINNOTT: Strike that.

Q Outside of what would be required to -- if anything -- to capture entries by Bradley -- Michael Bradley -- in the Catalyst system, did any other documents ever come to your attention, or since that time, with Michael Bradley's name on them in the way of hot documents or work product relative to document



Chiplock
issue, I'm trying to figure out what happened." And I believe all that has been produced also. And essentially it's just retracing the essential communications from the January to May 2015 time frame that lay out who was doing what work for whom and when, and which hours were actually paid for, or otherwise covered, by Thornton.

Q All right, thank you.

A Yup.

Q Previously you've referred to the Thornton file or folder.

A Folders.

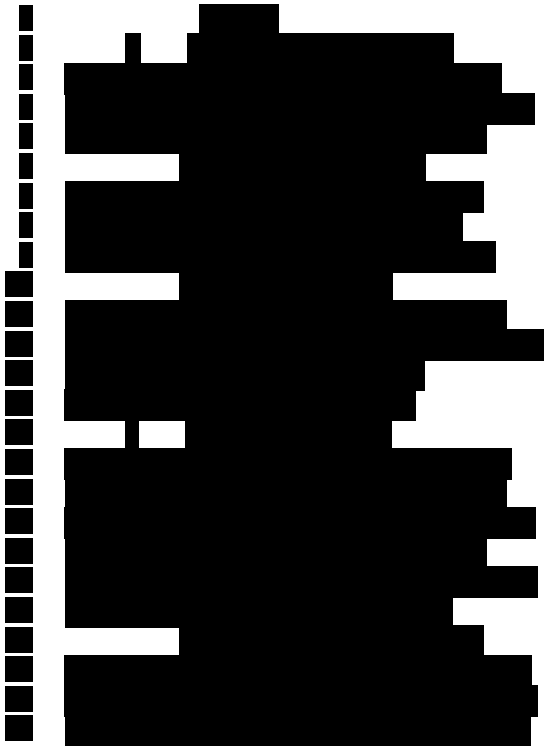
Q Folders.

What were you referring to?

A So when we agreed to allocate a certain chunk of the document review to staff attorneys who were Thornton's financial responsibility, Kirti created what he called Thornton folders -- or he might have called them Naumes folders. He used one of the names.

Q And the previous name of the firm was Thornton & Naumes?

A Was Thornton & Naumes, yeah.



Chiplock
So Kirti actually created these folders that were specifically delineated for review by attorneys who were Thornton & Naumes' financial responsibility, so that's why in some of our time records you see the occasional reference to a staff attorney working in a Thornton folder or a Naumes folder.

Q All right, thank you.

A Um-hum.

Q Did you participate in the letter that was ultimately -- and rather soon -- sent to the court?

A On November 10th, 2016? Yes, I reviewed it, and I'm sure I contributed, added some suggestions.

Q And showing you what the firm has provided, 50564, I see there's a message dated November 9th, 2016 at 8:42 p.m. from you to Garrett and David, with cc's to a number of other Thornton and Labaton attorneys, and you indicate, "I have some suggested redlines apart from what Garrett mentions. See attached."

A Uh-huh.

Q Do you recall what those

Chiplock

Q -- talked about everything of relevance in this case, but let me just ask you, is there anything that we haven't discussed that you think is relevant or helpful to our examination of the facts in this case?

A Well, we've been over a lot. All I can say is, on a personal level I'm extremely sorry that we're here, and I have regretted pretty consistently the oversights that led to the double counting that went into the fee petitions that were submitted in September of 2016, and I wish I could go back and change that. But I think going forward we will be extra careful, obviously, to ensure it doesn't happen again.

I think apart from that, I can just say I'm here to answer any more questions at a future date. If you have any, I'm happy to do it.

JUDGE ROSEN: Just one sort of very broad question that I sort of foreshadowed earlier.

One of the things that I'm going to be interested in recommending

Chiplock

to Judge Wolf, because I think he's interested in it, recommendations for best practices going forward on fees, recording of fees, fee petitions, relationships between multiple counsel in complex cases. Anything you want to tell us that you want me to consider as best practices?

THE WITNESS: Well, in terms of things we could have done better, and should have done in this case, I think there should have been more coordination and communication amongst the firms before the individual fee declarations were submitted, in order to assure that we did not confuse the court.

JUDGE ROSEN: How about on an ongoing basis during the gestation of the case itself?

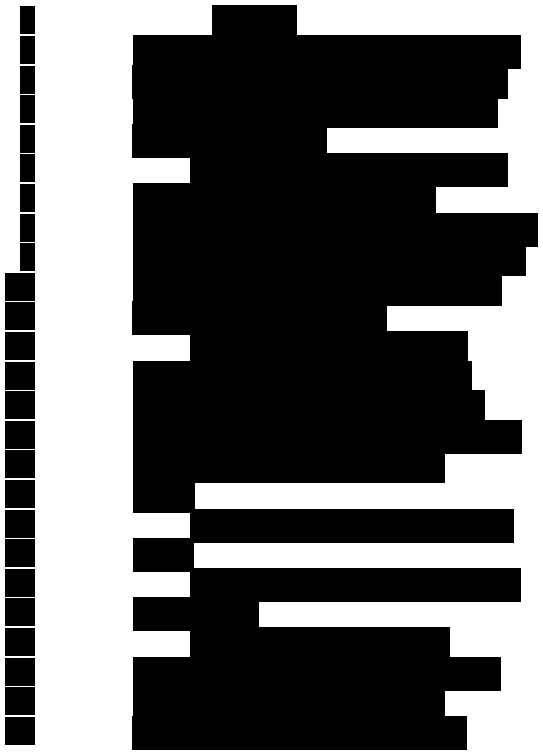
THE WITNESS: Well, there should also be, I think, more consistent sharing of lodestar over the life of a case in order to try to head

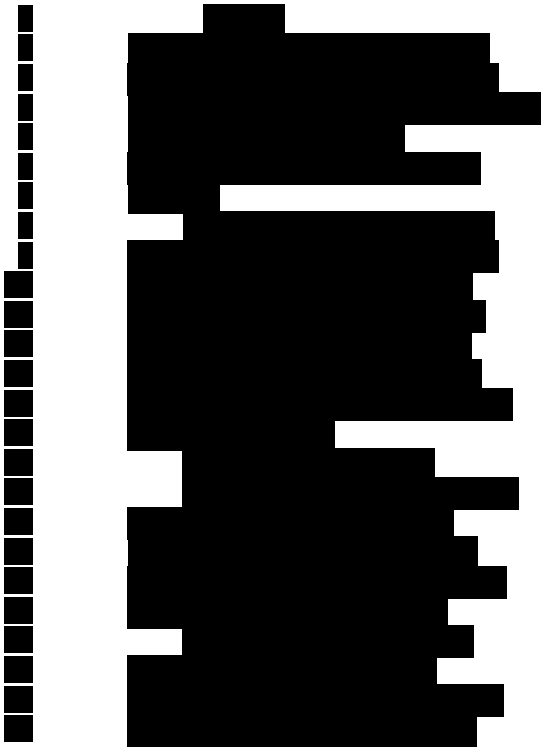
Chiplock

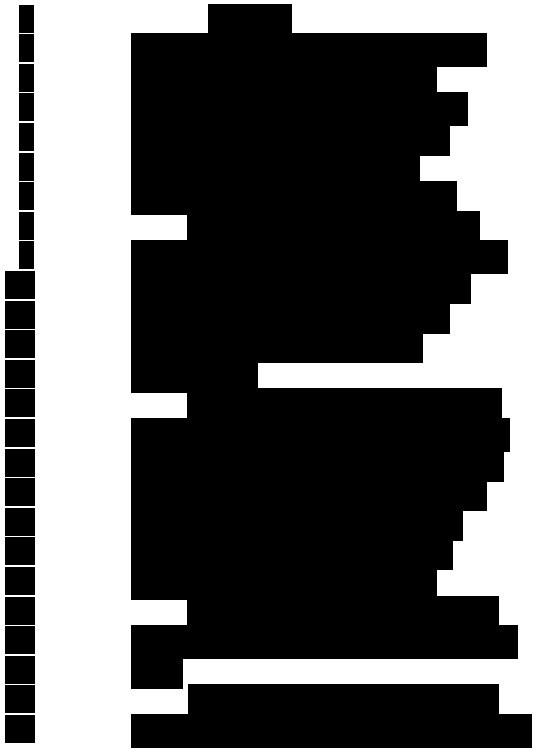
off mistakes like this from happening, and it should be at regular increments. And in many cases it has been. In this case it wasn't. There were -- there were several exchanges of lodestar during the life of the case, but it wasn't regularized. And if it had been, an error like this -- with very smart, capable lawyers, an error as silly as this I think would have been caught sooner had we done that.

So I think a better practice, a best practice, would be to exchange time regularly. And also to talk about our rates, and make sure we're being completely transparent about what our rates are, where -- you know, how they've been accepted in other courts and that sort of thing.

JUDGE ROSEN: One question occurred to me during the course of not only your deposition, but other depositions, and the interviews, is on a very large, complex case like this,







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failsafe.
Again, I do view it as an anomaly that it happened. I don't personally see a practice area recommendation coming out that would forestall something like this. I think it was -- I still look at it as an anomaly, a regrettable mistake, an anomaly.
I think that's the most I can say about it.
JUDGE ROSEN: Okay, thanks.
MR. SINNOTT: Richard.
EXAMINATION
BY MR. HEIMANN:
Q What was the impact on the rates for staff attorneys by using 2016 then current rates, rather than historical rates?
A So the rate was -- actually went down at Lieff Cabraser from 2016 -- or in 2016.
The rates that we used in 2015 in the Bank of New York Mellon case were actually generally higher for staff attorneys.

Chiplock
They were generally 425, which is the guidance that Thornton used when they submitted their declarations.
MR. SINNOTT: Anything else, Richard?
MR. HEIMANN: No.
MR. SINNOTT: Thank you.
Mike?
MR. STOCKER: Just a couple minor points.
EXAMINATION
BY MR. STOCKER:
Q I think it was your testimony earlier that in your view it was Labaton Sucharow that bore responsibility to ensure the accuracy of the fee petition that went in to the court. Do you remember that?
A Well, I don't know if I used those exact words.
Q Well, you can express it better, then.
A I think Labaton was the only one in a position to see all the fee declarations before they were filed.

Chiplock
Q And my short follow-up to that is, in your view is it Labaton Sucharow's responsibility or role to ensure the accuracy of the lodestar reported by Lieff in Lieff's small fee declaration?
A I don't view it as Labaton's ultimate responsibility to ensure that Lieff Cabraser's lodestar was reported accurately.
What I do think is that only one firm had access to all the fee declarations before they were filed. And if there was an opportunity to catch a mistake, that was it, in addition to the opportunities that I had and missed before my individual fee declaration was filed.
Q Fair enough.
And one other short question.
I think you had testified earlier to the existence of a general understanding between you and Garrett Bradley with respect to the idea that the time generated by the document reviewers paid for by Thornton, that that time would ultimately be reflected in Thornton's small fee declaration.

Chiplock
Do you remember that testimony?
A Yes.
Q Do you know whether anyone at Labaton was aware of that general understanding that existed between Thornton and your firm?
A I don't know that anybody -- it wouldn't have occurred to me that anyone at Labaton would question that, I guess is what I would say.
I know what people at Labaton were aware of, was that we were hosting some document reviewers for Thornton. And it seemed to me common sense that if a firm is paying for labor, they can get credit for that labor in their fee petition.
MR. STOCKER: That's all I have, thank you.
MR. SINNOTT: Hannah?
MS. BORNSTEIN: No questions.
MR. SINNOTT: Lynn, are you still on the line?
MR. SARKO: I am still on the line.
MR. SINNOTT: Do you have any

EX. 11

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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ARKANSAS TEACHER :
RETIREMENT SYSTEM, :
et al., :
Plaintiffs, : CA No. 11-10230-MLW
v. :
STATE STREET BANK :
AND TRUST COMPANY, :
Defendant. :

- - - - - - - - - - - - - - -x

July 7, 2017
Washington, D.C.

Deposition of:
J. BRIAN MCTIGUE,

called for oral examination by Counsel to the Special Master, pursuant to notice, at JAMS, 1155 F Street, Northwest, Suite 1150, Washington, D.C. 20004, before Christina S. Hotsko, RPR, of Veritext, a Notary Public in and for the District of Columbia, beginning at 3:30 p.m., when were present on behalf of the respective parties:

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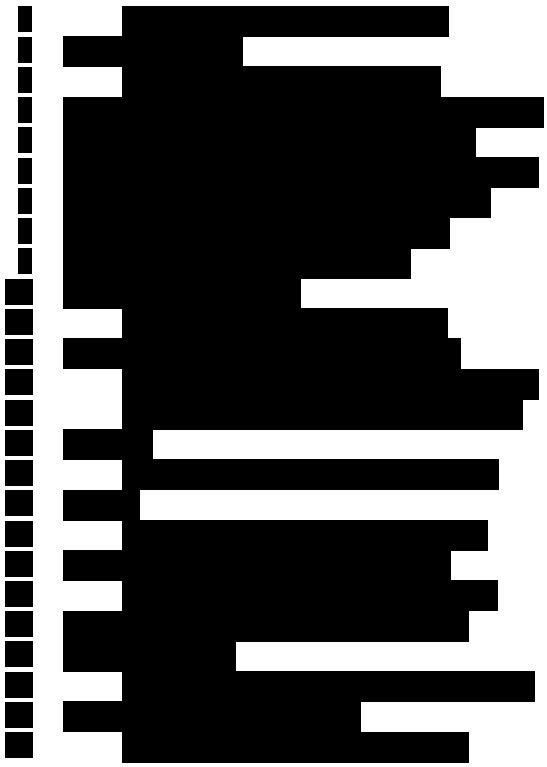

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MS. KEEVERS PALMER: Kimberly Keevers Palmer, Richardson, Patrick, Westbrook & Brickman.
MR. SINNOTT: Thank you. And Lynn?
MR. SARKO: Lynn Sarko from Keller Rohrback on behalf of the Andover plaintiffs.
MR. SINNOTT: Okay. Thank you, Lynn. Has anyone else joined us on the phone line?
(No response.)
MR. SINNOTT: I see no response, we'll proceed.
EXAMINATION BY COUNSEL FOR THE SPECIAL MASTER BY MR. SINNOTT:
Q. Brian, could you describe for us your background, beginning with your education?
A. I graduated the University of Notre Dame in 1968. I held a number of jobs between then --

which I set up, which is called the Public Pension Investment Project.
And then I became a reporter in Europe and Africa and the United States for a period of time. And then I became employed in the House and

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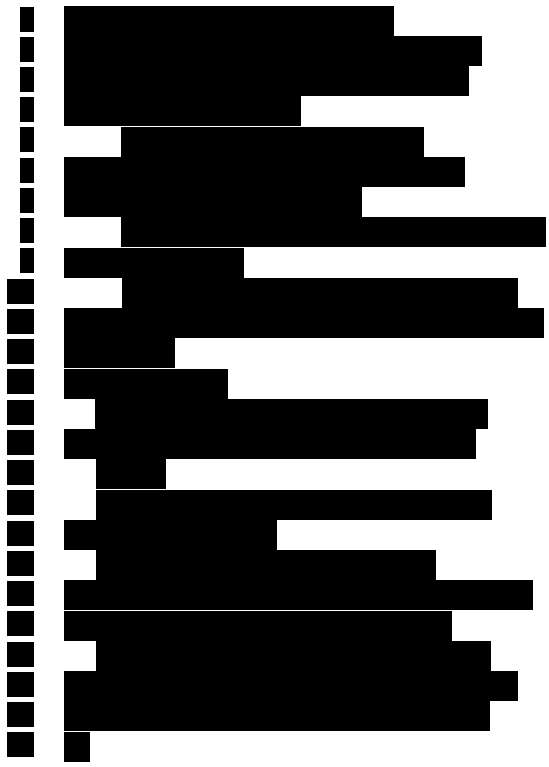

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A. Basically from the beginning I've been involved in what I will call malinvestment of ERISA plans. And they've been class actions pursuant to Rule 23 and ERISA.
Q. All right. And that is the predominant subject of your practice?
A. Very much predominant.
Q. All right, sir. Now, let me bring you forward to the State Street litigation to set the stage, but ask you if prior to that case, you had any experience in foreign currency transaction matters?
A. Other than a few foreign currency transactions, no. Personally, foreign currency transactions.
Q. At some point did you become involved in a California action?
A. Involving foreign currency transactions?
Q. Yes, sir.
A. No, not to my recollection.
Q. And how about the Bank of New York Mellon case?
A. I became involved in the Bank of New York Mellon case after filing the State Street Bank foreign currency case.

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Q. All right. And when was that that you became involved in BNY Mellon?
A. The exact date escapes me, but I think it was in the fall of 2012. I'm going to say October.
Q. And who did you represent in the BNY Mellon case and what were the allegations?
A. I represented participants in ERISA plans, both defined benefit and defined contribution, which is generally known as 401(k) plan. And the allegations were the defendant was the custodian or trustee of the plans that these participants took part in. Generally speaking, people say they were members of, but they're actually participants under the law. And the trustee and custodian engaged in transacted foreign currency exchanges for those plans in violation of federal pension law. Section -- prudent person rule and the prohibited transactions rule because these transactions were not exempt under any prohibited transactions exemptions issued by the Department of Labor, the two relevant ones are PTE9420 and PTE9854, or as subsequently enacted statute, 408B18 of ERISA.
Q. And what was the outcome of that case?

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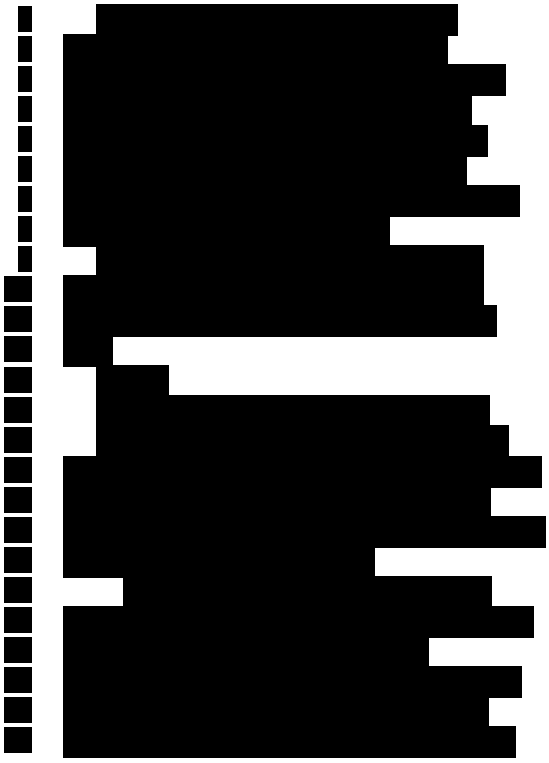

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rules and prohibited transaction rules.
Q. And are there any other FX cases that you've come to be involved in?
A. No.
Q. And what other firms have been frequently involved in ERISA litigation based on your experience?
A. Keller Rohrback. Jon Axelrod's firm, and members of the securities plaintiffs' bar who tend to take a portion of large securities class actions, the portion which might involve ERISA claims. And those firms -- Stull Stull & Brody would be an example in Manhattan.
Q. Okay.
A. I mean, there are various and sundry smaller firms. ERISA is a very large field. We do not bring what are called benefit claims. Jon Axelrod would bring such claims. We have typically not done benefit claims. And I'm not going to bore you here with the details of them, but there's a practice area out there for benefit claims.
Q. Okay.
A. Where a participant, you know, retires and they have a DB plan and they say they didn't

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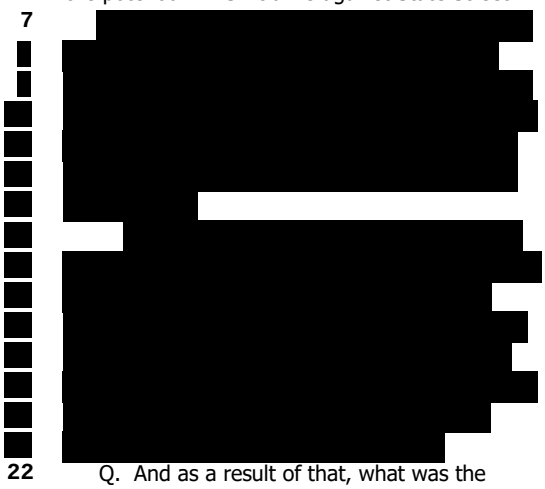
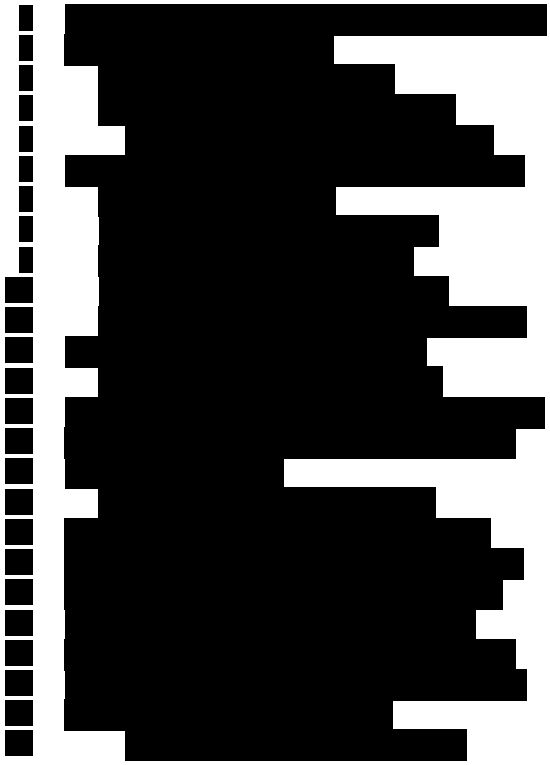
get enough. They expected to get $1500 a month and they got 1200 a month. That would be a benefit claim. Typically, those are not class actions.
Q. Okay. And how did you become aware of the potential ERISA claims against State Street?



Q. And as a result of that, what was the next thing you did with respect to State Street?
A. I don't know what the next thing I did was.

18 In fact, Mr. Sutherland was in both the Johnson &
19 Johnson defined benefits plan and the Johnson &
20 Johnson 401(k) plan. Mr. Taylor was a participant



settlement, which I think was fair because we had settled an almost similar case against Bank of New York Mellon a year before, which had involved over a hundred depositions. It was extremely hard fought, and we were quite involved in that. And that settled for about $330 million. And I think the ERISA set-aside was 70 million.

And so the State Street settlement at 300 million seemed to be fair in comparison. And the $60 million set-aside in the State Street settlement for ERISA plans -- by the way, it's no less than 60 million. It could be more. But the settlement agreement says no less than 60 million.

That is 20 percent of the recovery. And we now learn, subsequent to the settlement, that 60.75 percent of the FX volume was for ERISA plans. So we -- in terms of the ERISA plans, we got 20 percent of the recovery based on -- we didn't know it, but it turned out we got lucky -- 16.75 percent of the FX transactions.

So there was what we've called an ERISA premium, which I think is due because ERISA was a stronger case. National, uniform law with prohibited transaction exemptions that we believe would not have been met had we had discovery.

Q. So did you have any involvement in discussions about what portion of that fee award would go to ERISA counsel?

A. Yes, I did.

Q. And describe who was involved in those discussions and what was talked about.

A. Well, let me correct. When we had discussions of what part of the fee award would go to ERISA counsel, we didn't know that there would be a settlement and we didn't know the ERISA volume. All right? And these discussions took place in 2013. We settled in 2016.

Q. And who were the discussions in 2013 with? Who did they involve?

A. Lynn Sarko.

Q. So Lynn represented the ERISA firms in those discussions?

A. I don't know.

Q. Did you feel like you were not represented in those discussions?

A. Well, I was part of the discussions. But I was presented what I thought was a fiat. Out of the blue. Lynn called me up and said the state law claimants, not my term, the big three, not his term, but the consumer plaintiffs, want to split

the money now. The attorneys' fees award, if there is any.

And he said they were offering 6 percent, I think. Six percent would go to the ERISA firms -- basically Lynn's firm, Zuckerman, and my firm -- and the state law claimants would get 94 percent of any attorneys' fee award.

Q. And that was the initial proposal, correct?

A. Yes.

Q. All right. And what was your response to that?

A. Why? First of all, why that percentage? I knew that we probably would be wise to reach an agreement at some percentage. Precisely because I wanted my class to continue to be represented and not be harmed by fratricide on the plaintiffs' side. It's very important to stay in the case and represent your clients. If it costs me money, I can do that. But if it costs my clients, no.

I mean, there's a range of reason, you know. But I'm saying I can't deal with my clients in order to get me more.

So I knew that we'd probably arrive at an agreement. I was willing to in order to avoid

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what I call fratricide. Because boy, all we needed to do was show problems to the defendants -- or who knows what it would break out in terms of fratricide. And there were no women involved, so it was fratricide.

And so I said why. And Lynn said, well, the FX volume is 6 to 9 percent. And I had no idea where the FX volume came from because no one had ever given me anything in terms of discovery of the FX volume. So maybe the consumer plaintiffs' firms had the FX volume. Or maybe they didn't. But I said 9 percent -- well, actually, I said 11, and Lynn --

SPECIAL MASTER ROSEN: But you were just pulling a number from the air, too, weren't you?

THE WITNESS: Right. But I decided it was that or fratricide. So I said 11, accept less. And Lynn came back with 9.

SPECIAL MASTER ROSEN: I'm curious --

THE WITNESS: And I said yes.

SPECIAL MASTER ROSEN: I'm curious why you and the other ERISA lawyers felt you had to cut the deal early before you really knew where you stood through discovery in terms of the percentage of FX transactions in the ERISA -- on

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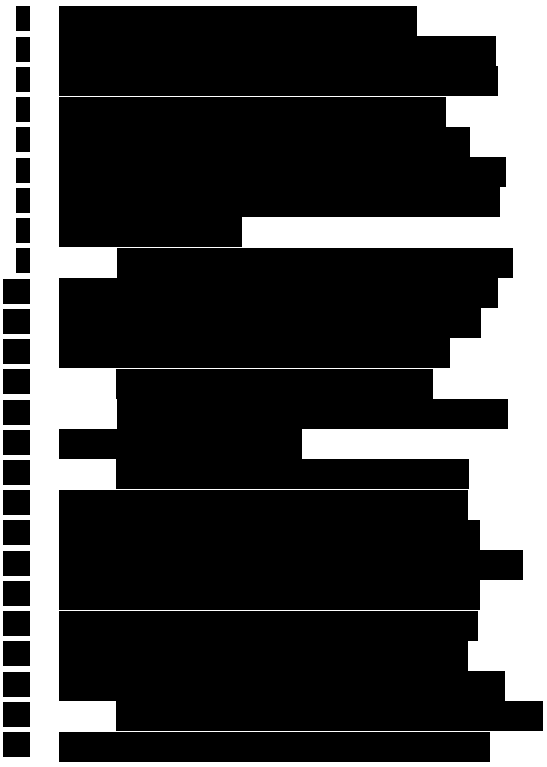

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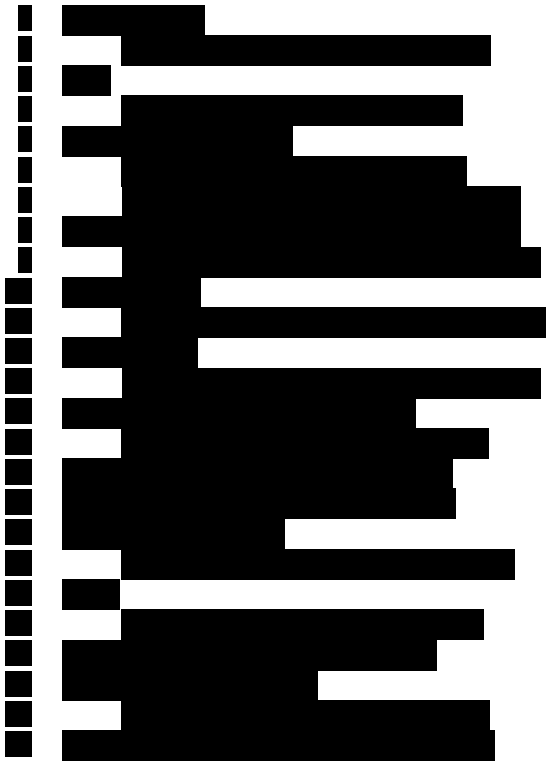

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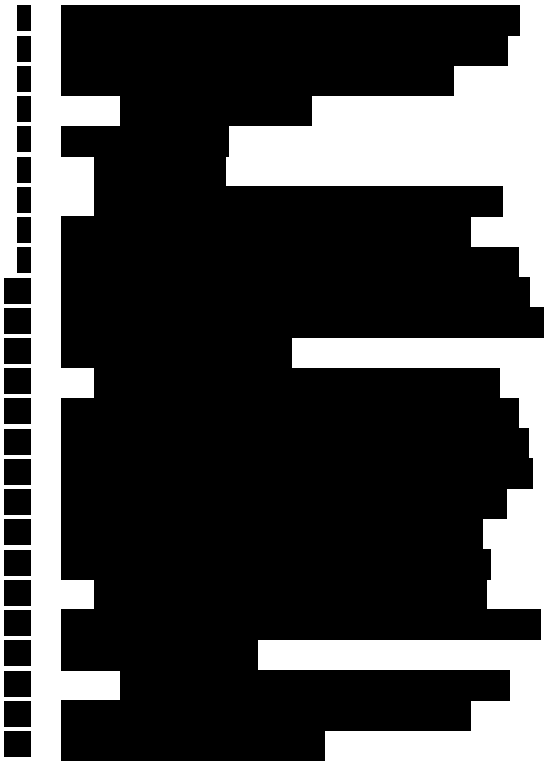

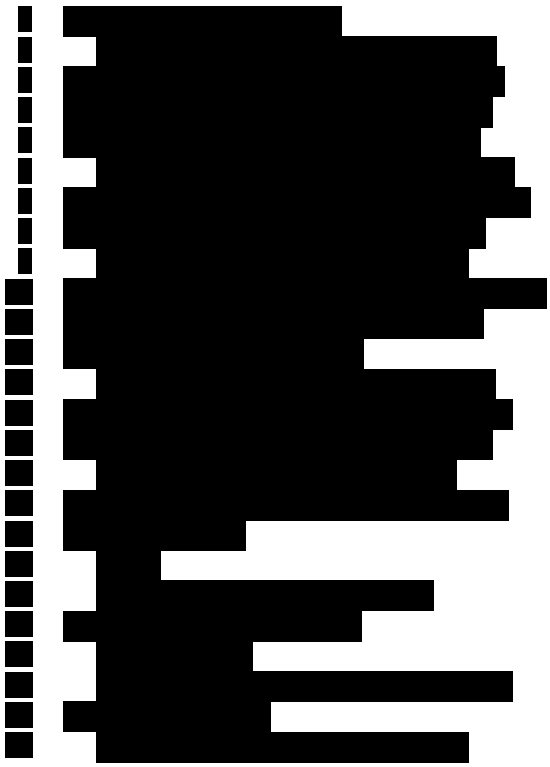

I think the way Labaton wanted, they wanted each individual to send their declaration directly to Labaton.

Q. Okay.

A. Maybe I'm wrong.

SPECIAL MASTER ROSEN: So Labaton controlled the flow --

THE WITNESS: Right.

SPECIAL MASTER ROSEN: -- and the process.

THE WITNESS: Right. It wasn't what I would call collaboration. You know, you can have collaboration. You don't have to have everybody agree. But, you know, one argument against that is it wastes time. And the other argument is people get educated, you know. I mean, there's several ways of looking at things.

BY MR. SINNOTT:

Q. Does McTigue Law Firm have clients who actually pay hourly rates?

A. Occasionally we do.

Q. And what types of clients are those, Brian?

A. Typically -- they're very few. We've got a plan client or had a plan client. We had a

person making the benefit claim, that rare benefit claim that we're talking about.

Those are the only two that come to mind.

Q. And how are rates in those cases determined?

A. Part of it is what we think they can pay. I mean, if we're asking more than they can afford to pay, then we try to see if we can make an adjustment. You know, it depends, you know. If we're getting a case that's different and we can learn something from it, that's a form of compensation to us.

We want to know more about ERISA, their ERISA cases. We want to know more about ERISA. And, you know, if somebody comes to us and presents an area where -- slightly outside of our area of experience -- I don't want to call it expertise -- we might want to do that. And if they can't afford to pay us a lot, we will take less compensation because we're getting another form of compensation from the case.

Q. Now, aside from those direct payment clients, if you will, how does the firm determine annual attorney billing rates?

A. We don't determine annual -- we're really

quite small. We will look in the cases that we're involved in that will settle and we'll look at counsel and co-counsel in cases, we'll look at the amounts that they bill. And then we'll try to figure out, well, you know, relatively what we should charge vis-a-vis their work. Because we know their work, we know our work, we know the case.

And, you know, we could go to the firms we work with and see what they're doing in cases not involved in, but we don't tend to do that.

Q. All right. And do you rely on any documents or resources, Valeo or Wells Fargo or other surveys in setting those rates?

A. No, we don't.

Q. Okay.

A. Now, maybe we will. Because I'm learning about Wells Fargo. Unfortunately, we sued them. I'm being facetious. We might search out one of these services, but we were not aware of them.

Q. Let's talk about regular rates charged. In your declaration in paragraph 20 -- do you have that?

A. I do.

Q. It indicates, "The hourly rates of the

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attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates otherwise charged for their services, which have been accepted in other complex class actions my firm has been involved in."

In that final clause, "my firm has been involved in," seems to be an addition from the Labaton language.

Why was that phrase added?

A. We set our rates in the State Street case looking at a prior case we had settled against Bank of New York Mellon for the same type of claim, almost identical claim, that we had settled the year before. There were a lot of firms in that case. And we looked at our rates because we knew those firms and their work. And we looked at our rates and we found they were dramatically lower. And we set the rates in the State Street case based on those -- on the rates billed and approved by Judge Kaplan in the Southern District of New York in the BNY FX case.

Q. But --

A. Those --

SPECIAL MASTER ROSEN: And is that why

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you added -- to call it -- to call out that aspect, is that why you added that phrase?

THE WITNESS: Yes, it is.

BY MR. SINNOTT:

Q. Do you think, Brian, that there's some lack of clarity, though, in the expression or the phrase "the same as my firm's regular rates otherwise charged for their services"?

Do you think that might lead a judge to believe that the references to amounts that were actually charged to a paying client?

A. I think it could. And I'm learning.

Q. What are you learning, Brian?

A. And I tell -- well, I tell associates don't always think from your point of view. Look from the point of view of the person who reads your work. And I'm doing that now. I'm learning that lesson here. Brooke is a former reporter, and she has -- as reporters have to figure out, look at it the way the reader looks at it. And lawyers tend to look at it the way they look at it. And I may be guilty.

Q. And how would this be changed, if at all, in order to make this more clear or accurate?

A. I think we could strike the phrase.

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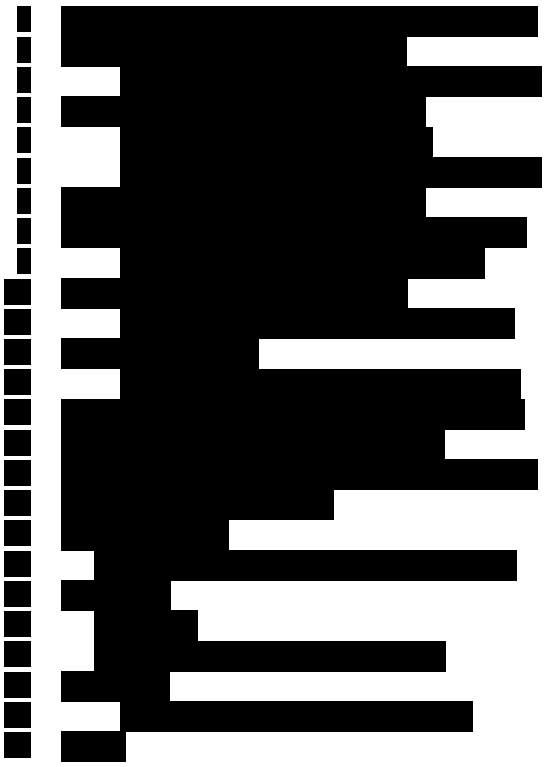

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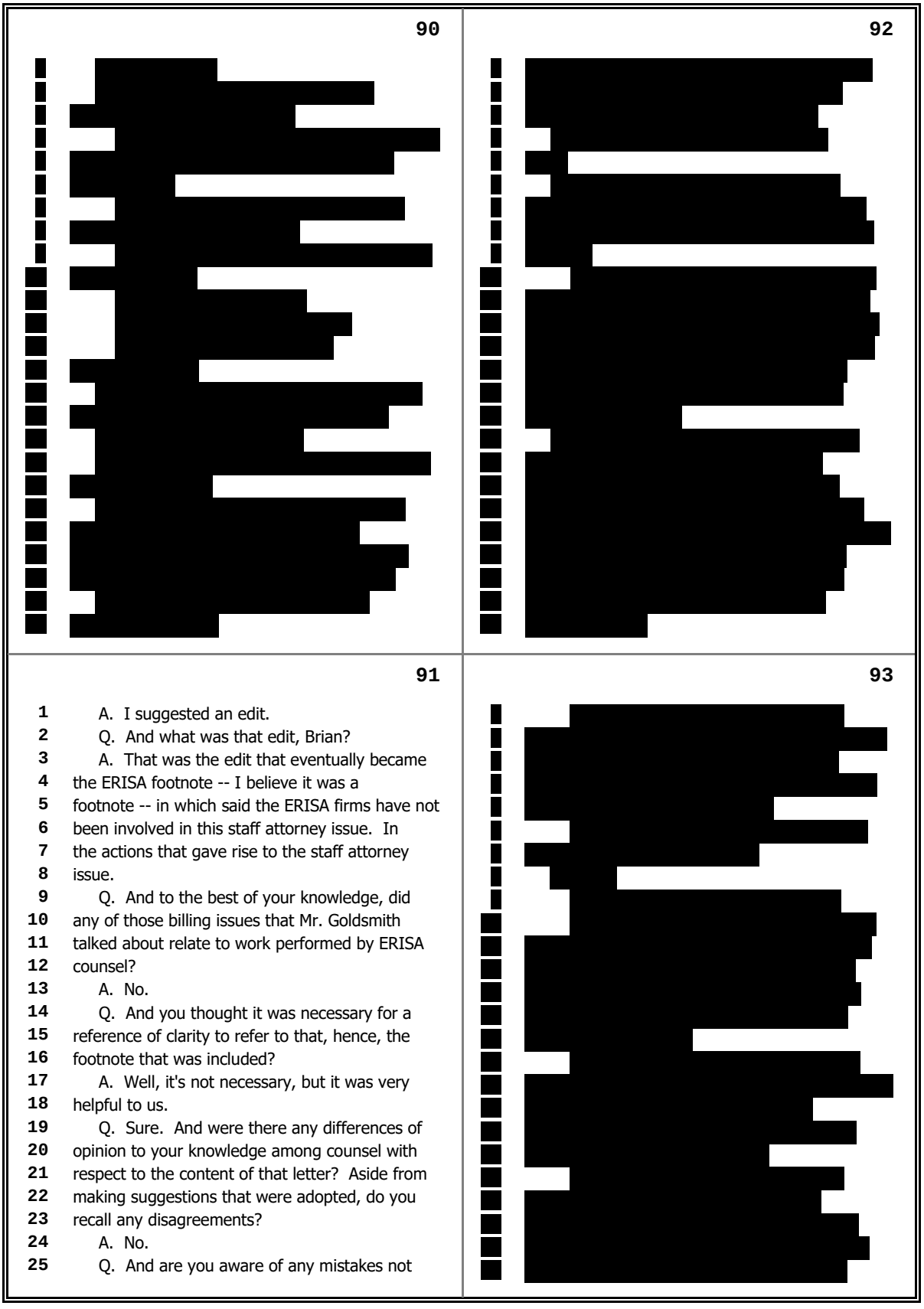

A. I suggested an edit.
Q. And what was that edit, Brian?
A. That was the edit that eventually became the ERISA footnote -- I believe it was a footnote -- in which said the ERISA firms have not been involved in this staff attorney issue. In the actions that gave rise to the staff attorney issue.
Q. And to the best of your knowledge, did any of those billing issues that Mr. Goldsmith talked about relate to work performed by ERISA counsel?
A. No.
Q. And you thought it was necessary for a reference of clarity to refer to that, hence, the footnote that was included?
A. Well, it's not necessary, but it was very helpful to us.
Q. Sure. And were there any differences of opinion to your knowledge among counsel with respect to the content of that letter? Aside from making suggestions that were adopted, do you recall any disagreements?
A. No.
Q. And are you aware of any mistakes not

EX. 12

Volume: 1

Pages: 1-115

JAMS

Reference No. 1345000011/C.A. No. 11-10230-MLW

In Re: STATE STREET ATTORNEYS FEES

BEFORE: Special Master Honorable Gerald Rosen,
United States District Court, Retired

DEPOSITION of GEORGE HOPKINS

September 5, 2017, 9:20-11:26 a.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

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relation -- that the procurement was stale, and I didn't have to enter it if I didn't want to. And I told 'em -- I figured four was enough at the time.

THE SPECIAL MASTER: George, could you remind us just what year did you become the executive director?

THE WITNESS: I became executive director December 29, 2008.

BY MR. SINNOTT:

Q. And, Mr. Hopkins, you took over for an executive director named Doane; is that correct?

A. Actually, there was a period of time when Mr. Doane left and I arrived that he resigned sometime in the fall, and the deputy -- the lady who was my deputy director at the time -- she's since had a stroke and works very part time -- became interim director.

So there was Paul Doane, Gail bold even as interim director, and then I -- I replaced the interim director.

Q. And --

A. I think she was there three or four months. I'm sorry to jump on top of you. I'll be better next time.

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[redacted]

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[redacted]

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to you. I don't know if it was in the deposition or in our more informal discussion.

After I got there, Bernstein brought to me a cert- -- I didn't know what it was at the time -- a certification to enter a case. I told him I was really just too busy to mess with that kind of thing and really wasn't interested in securities litigation. I was more focused on a bunch of things we had going on.

That was probably -- I don't even -- it was in the spring -- late winter, early spring of 2009, and that's when, you know -- you know, some of the legislative leaders called me over to the Capitol and said they thought we ought to be involved in securities litigation, and the other Retirement System was, and they thought we ought to be, too.

And so then I said, okay, I'll look at those and consider 'em, and I talked to my board chair. And he said, hey, you know, if it's -- if the legislature's interested and you have time to do it, hey, you know, just figure out what it's all about.

And so I started learning about how it

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worked. So probably within four to six months after I got there I became aware of the securities cases and how they worked.

BY MR. SINNOTT:

Q. And did the legislators that called you over indicate why they were interested in securities litigation?

A. I got the idea that, you know, they understood the Retirement System had a lot of, you know, financial issues. I mean, obviously, we did -- when I got there, our system was in deep trouble both operationally, I think politically because they thought that the system didn't have a strong board, didn't have strong leadership, and we were, obviously, in trouble actuarially, you know, when you have those kind of losses, and I think they thought, you know, part of my duty was to bring in all the money I could. That was sort of the message I got.

Q. Did any of the legislators indicate that they had contact with any law firms with respect to potential litigation?

A. You know, that -- they didn't -- the one thing I think I told you before in a later meeting I

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[redacted]

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we actually --

THE SPECIAL MASTER: Was that firm one of the monitoring counsel at the time?

THE WITNESS: No, no. They'd never -- they never monitored for us. They just applied to be one.

THE SPECIAL MASTER: I see.

THE WITNESS: No, they never -- they never made that cut.

BY MR. SINNOTT:

Q. Do you remember where that firm was out of?

A. Philadelphia.

Q. Out of Philadelphia?

A. Yeah. I remember that because -- 'cause my grandmother always had this saying, you know, he's dressed like a Philadelphia attorney.

And so I remember -- I walked in and thought, you know, my grandmother would be proud 'cause that guy was dressed to the nines. I'm sorry. That's my own little side.

Q. We appreciate the insights.

Were you aware that members of a law firm with a Little Rock office had introduced individuals that you later would come to know as

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Eric Belfi and Chris Keller to influential Arkansas officials in an effort to secure legal work with the state?

A. I had no idea.

Q. Are you familiar with the firm name of Chargois & Herron?

A. As of about two weeks, ten days ago.

Q. But you never encountered them to the best of your recollection years ago?

A. I had never heard of that firm before.

Q. Did Gail or Paul or the records that you examined when you became executive director reveal that firm's name anywhere?

A. As I told you, I never -- to this day I have not looked at the records about how Labaton became involved with us. The only records that relate back to that time I looked at was this Texarkana, Arkansas firm, and I won't tell you too much of the story, but these guys showed up at my office, demanded to meet with me I said about a year, maybe nine months after I got there.

And this guy said I'm a Harvard-educated lawyer and, you know, you've got to sign this contract because y'all agreed to do this, and

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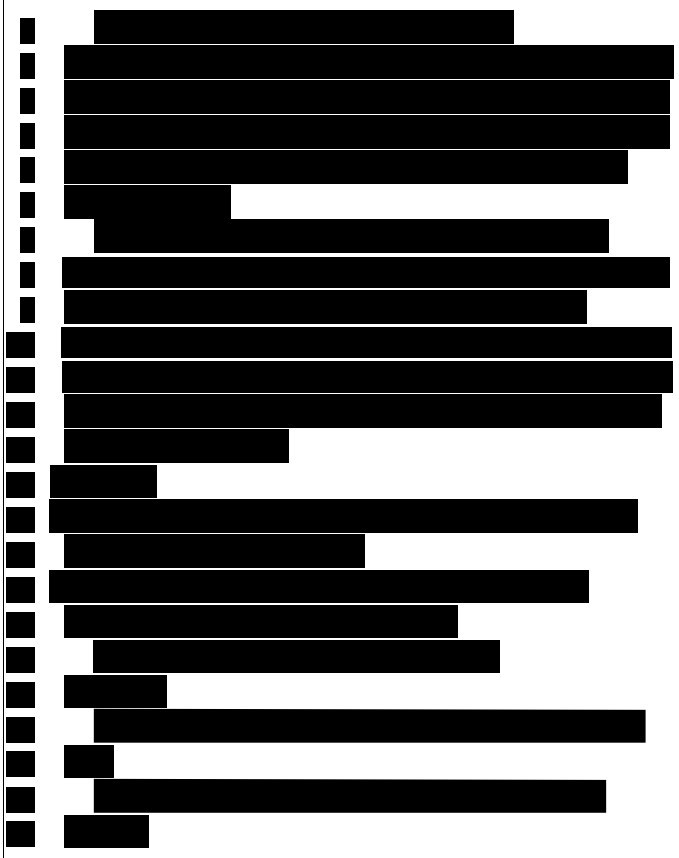

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THE SPECIAL MASTER: On Arkansas it says, "On Arkansas the senator is going to come visit us at the end of the month."

Assuming that's Arkansas Teachers, do you know what senator that would have been?

THE WITNESS: Well, I think from my discussions with, you know, my non-attorneys here I think that was probably a senator named Steve Farris.

THE SPECIAL MASTER: Was he at the time -- was he on the retirement system committee?

THE WITNESS: He was on -- it's on the retirement -- joint retirement committee legislature.

In fact, he was probably the longest-serving member of the retirement committee. He was, you know -- I will say this: Before I left the legislature, for better/for worse, I was known as the retirement expert in the legislature.

When I left, there was a pretty good-sized hole. Steve Farris had been on the retirement committee for two or three terms by then, and I think later -- I think he was -- he was cochair once when he was in the house, but he never

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-- he never chaired the committee but he was -- in the senate -- he ended up in the senate, and in the senate he was the one that handled almost all the hard, complex legislation for the retirement systems, and he was what I would call, you know, one of the -- leaders is not the -- you know, a benevolent leader to ensure the retirement systems had the resources they needed.

THE SPECIAL MASTER: So I assume you knew him from your service --

THE WITNESS: I did.

THE SPECIAL MASTER: -- in the house and the senate?

THE WITNESS: Right. I was never in the house but from his service in the house.

THE SPECIAL MASTER: I'm sorry. Yep.

BY MR. SINNOTT:

Q. And you were a chair of a committee in the senate, correct?

A. The only --

Q. Retirement committee?

A. Well, I may have chaired the rules committee or something. The senate is sort of a select committee, but the only -- I always chose the

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You know, when -- the first case I did with Labaton was Colonial Bank. And those were some egregious facts in Colonial Bank. Those -- if they didn't hang those guys up and put 'em in jail a long time, which I don't think they did, you know, justice was not served, and they took advantage of us and a bunch of others.

So, you know, the first time that Eric, you know, wanted to talk to me about doing this case, he wanted -- you know, he wanted me to understand everything about what all they were doing.

He asked me if I knew any local counsel in Alabama that I was interested in. You know, he was -- I think he asked if I wanted to hire Arkansas counsel that would help them assist me in understanding the case, and I told him that I expected the attorneys to handle the attorney stuff because, you know, once you become the gatekeeper of what law firms are hired, then suddenly I become the -- the last thing I wanted was to have any knowledge or power about what law firms were hired and what they did because once you have that, then the pressure comes.

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You know, I wanted the law firms that represent us to represent us and not -- and not pay -- not pay a price in order to -- that I determined saying, well, you've got to hire this firm over here this time as my local counsel; you've got to do this or that.

I wanted them to know I only had one focus. When I do these cases, I have one focus, and that is to get a good outcome. I'm not trying to be a referee. I'm not trying to be a bank teller. I'm not trying to be somebody that directs fees to one law firm or another, and I -- I didn't want that. And I don't want that.

Let me tell you since this thing came up, you would think the first thing I would do is maybe call the other four law firms I have and ask if they have a referring attorney agreement, and I haven't. And I won't. You know why?

Because the firms that we have are honest, and they're ethical. And I will believe that until they prove to me otherwise. I don't -- I want them to hire the best law firms in the states where we're litigating. I want them to have no obligation to hire people that I direct. I want

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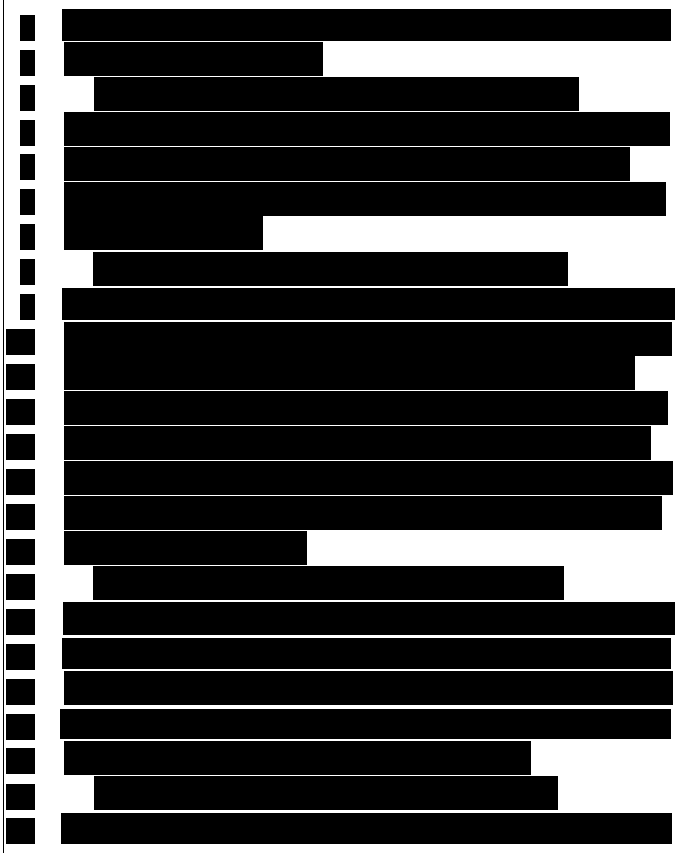

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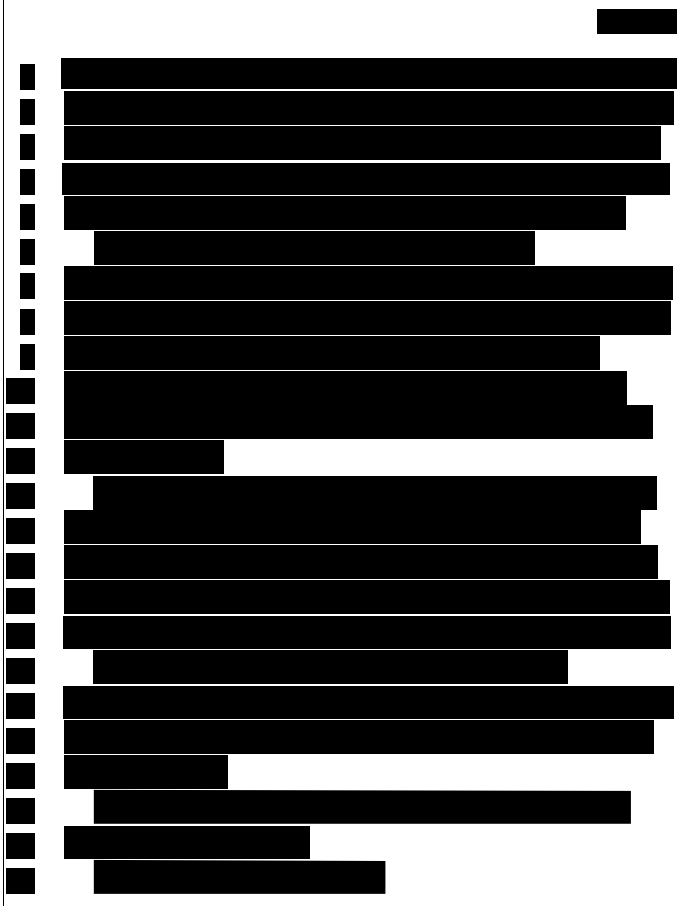
THE SPECIAL MASTER: Let's get down to brass tax here.
THE WITNESS: Okay.
THE SPECIAL MASTER: Were you aware that Labaton had this relationship going back to before you came with this firm Chargois Herron -- Chargois & Herron?
THE WITNESS: No.
THE SPECIAL MASTER: You weren't aware of that at all?
THE WITNESS: I was not aware of that at all.
THE SPECIAL MASTER: Were you aware that in every case in which you -- you Arkansas -- was a lead plaintiff or co-lead plaintiff that under this agreement Mr. Chargois and his firm would get 20 percent of whatever Labaton received in the event of a settlement or successful prosecution of the case? Were you aware of that?
THE WITNESS: I was not.
THE SPECIAL MASTER: Were you aware that in fact there were -- I don't know -- ten cases maybe? -- in which Mr. -- in which Mr. Chargois got 20 percent effectively of the Labaton fee?



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THE WITNESS: I was not. But let me go --
THE SPECIAL MASTER: Just a minute.
THE WITNESS: Okay.
THE SPECIAL MASTER: Okay? In any of these cases as the client representative, was it ever disclosed to you that Mr. Chargois was going to receive 20 percent of Labaton's fee?
THE WITNESS: No.
THE SPECIAL MASTER: And would that include the State Street case?
THE WITNESS: That would include State Street.
THE SPECIAL MASTER: So at no time was it disclosed to you that in the distribution of the fees Mr. Chargois would get, effectively, a referral fee of 20 percent of the Labaton fee?
THE WITNESS: It was never disclosed to me.
THE SPECIAL MASTER: Putting it more specifically, was it disclosed to you that in this case Mr. Chargois got 5.5 percent of the total attorneys' fees, the 75-million-dollar attorney fee?
THE WITNESS: No.

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THE SPECIAL MASTER: Was it disclosed to you that he received 4.1 million dollars?
THE WITNESS: Well, since this --
THE SPECIAL MASTER: Before -- before the fees were approved.
THE WITNESS: Let me --
THE SPECIAL MASTER: Just before the fees were approved was it disclosed to you?
THE WITNESS: No. My answer as to that qualification of those questions are correct.
THE SPECIAL MASTER: Was it disclosed to you that Mr. Chargois received this money, and it was not disclosed in the fee petition to the Court?
THE WITNESS: I've asked about -- I've asked about that.
THE SPECIAL MASTER: And?
THE WITNESS: Well, I asked Ms. -- I asked Miss Lukey was that a violation of any rule or law in Massachusetts. She told me no.
THE SPECIAL MASTER: That'll be in the first instance for me to decide.
THE WITNESS: Oh, I understand, but I'm just saying --
THE SPECIAL MASTER: But all I'm asking

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you, George, right now --
THE WITNESS: Okay.
THE SPECIAL MASTER: -- is was it disclosed to you that it was not disclosed to the Court?
THE WITNESS: No -- oh, it was -- let me --
THE SPECIAL MASTER: Before --
THE WITNESS: No. I want to make sure I -- it was not -- the fact that that fee -- that a referral fee was paid was not disclosed to me.
THE SPECIAL MASTER: Okay.
THE WITNESS: Before the last -- the last two weeks or something.
THE SPECIAL MASTER: Were you aware that there was this agreement dating back to 2007 that Mr. Doane had -- apparently, he was aware of -- that Mr. Doane had agreed to have Mr. Chargois receive 20 percent of every fee in which Arkansas was the lead plaintiff or co-lead plaintiff and Labaton was lead or co-lead counsel?
THE WITNESS: To this day I don't know --
THE SPECIAL MASTER: You've not seen --

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THE WITNESS: I'll take it upon your word that there's an agreement. I haven't seen it.
THE SPECIAL MASTER: You've not seen the agreement?
THE WITNESS: No. But if you say there is, I trust you.
THE SPECIAL MASTER: Did you know that there was a decision made not to disclose the existence of this agreement to other counsel in the case?
By "other counsel" I mean the ERISA counsel, the counsel that were representing the ERISA class.
THE WITNESS: I have -- I have no knowledge of that.
THE SPECIAL MASTER: So none of this was ever bounced off of you?
THE WITNESS: But, you know -- can I -- no.
THE SPECIAL MASTER: Okay. Now --
THE WITNESS: Can I qualify that now?
THE SPECIAL MASTER: Yes.
THE WITNESS: In the Colonial Bank case I told Eric if I ever want to know about your

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attorney fees and who all you hired, I'll ask you. And, you know, on any case because I intentionally didn't want to know a whole lot.
THE SPECIAL MASTER: And that's a good question. When you said if -- when you told Eric if I ever want to know about other attorneys that you hire, I'll ask you --
THE WITNESS: Well, I'm --
THE SPECIAL MASTER: -- Mr. Chargois did no work -- as far as we know, did no work on any of these cases.
What he did, according to the information we've been given, was at the very beginning of the relationship in 2007 he facilitated the relationship with Labaton in Labaton becoming one of the monitoring counsels.
And from what we've been able to see -- and I'll stand corrected if other witnesses correct this -- but from what we've been able to see, as a result of that relationship development and facilitation, he now is entitled to 20 percent of every single case in which Arkansas is -- 20 percent of Labaton's fee or an amount equivalent to that in which Arkansas is a lead plaintiff or co-lead

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first of all, let me tell you I don't -- you know, I haven't tried to get too deep into this because, you know, I'm going to let you get deep into it, but let me say I'm not sure whether Massachusetts law applies or Arkansas law or some other state law.

I mean there's a lot of conflicts of law issues --

THE SPECIAL MASTER: We're going to all kill a lot of trees finding that out.

THE WITNESS: Yeah, but I will say this: You know, that I don't -- I don't feel misled because I made it real clear to them I didn't want to be the gatekeeper on all this attorney relationship.

And I think if they thought that I wanted to know, they would have told me because Eric always said if you ever want to see how we do all these fees, just let me know. And I said that's fine.

THE SPECIAL MASTER: Then let me ask you this: As the representative of the lead plaintiff in this case, don't you think you had an obligation to know where all the money is going?

THE WITNESS: I sure don't.

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THE SPECIAL MASTER: Why?
THE WITNESS: Because -- well, first of all, where does it end? If the secretaries in the firm got a bonus do I need to know that? You know, if --
THE SPECIAL MASTER: Not quite the same as paying a lawyer for doing nothing 20 percent of a fee.
THE WITNESS: But let me finish, judge.
You know, first of all, you know, when you -- as I told you, when you become the gatekeeper, you know, the -- Judge Wolf for good, for right, wrong or indifferent, he set this attorney fee. And I'm not --
THE SPECIAL MASTER: He didn't know what he didn't know.
THE WITNESS: I understand, but, you know, to the extent that Labaton had a legal or a assumed legal or ethical obligation to pay this firm, you know, Labaton's fee would have been no different if they paid it or not paid it from what I can see.
You know, if Miss Lukey is right that in Massachusetts a referral fee does not have to be

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disclosed to the Court, then, you know -- you know, for me to -- for me to know how Labaton divided up their fees, I didn't ask how much Thornton got. I didn't ask how much anybody got because, you know what, law firms have a way -- you know, once you inject yourself into helping law firms divide up fees, that's not helping -- the class was not going to get one penny more.
The class was not going to get one penny more out of that case once the judge set the term --
THE SPECIAL MASTER: Let me ask you this, Mr. Hopkins.
THE WITNESS: Yeah?
THE SPECIAL MASTER: Had this relationship been disclosed to Judge Wolf, might he not have said, well, wait a minute, that's an awful lot of money to be going to a lawyer who hasn't done anything on the case, did no work, didn't refer this specific case at all, and maybe the class should get some of that money, or maybe the ERISA counsel should get some of that money rather than this lawyer in Texas who was not involved at all in this case?
Isn't that why disclosure to the Court

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in a non-adversary proceeding, which this was, is a better practice?
THE WITNESS: Let me say this: I've spent enough time with you now that I can feel your -- your passion's not the right word -- your --
THE SPECIAL MASTER: Skepticism.
THE WITNESS: -- skepticism or whatever you want to call it. Let me just say this: I have a feeling -- I have a feeling that from here on out Judge Wolf will probably have a line in his order that all referral fees shall be disclosed. And that eliminates the issue.
THE SPECIAL MASTER: You keep referring to this as a referral fee, but it is not at all in the nature of a referral fee that you described. I don't know what it is. We've had a lot of different names given to it.
THE WITNESS: Well, for the sake of this -- of this deposition, I will call it a referral fee. It might be some other kind of fee. I don't -- I don't know. You know, if you tell me what to call it, I will call it that.
THE SPECIAL MASTER: Well, you know, Mr. Sucharow used a term -- we've had local counsel.

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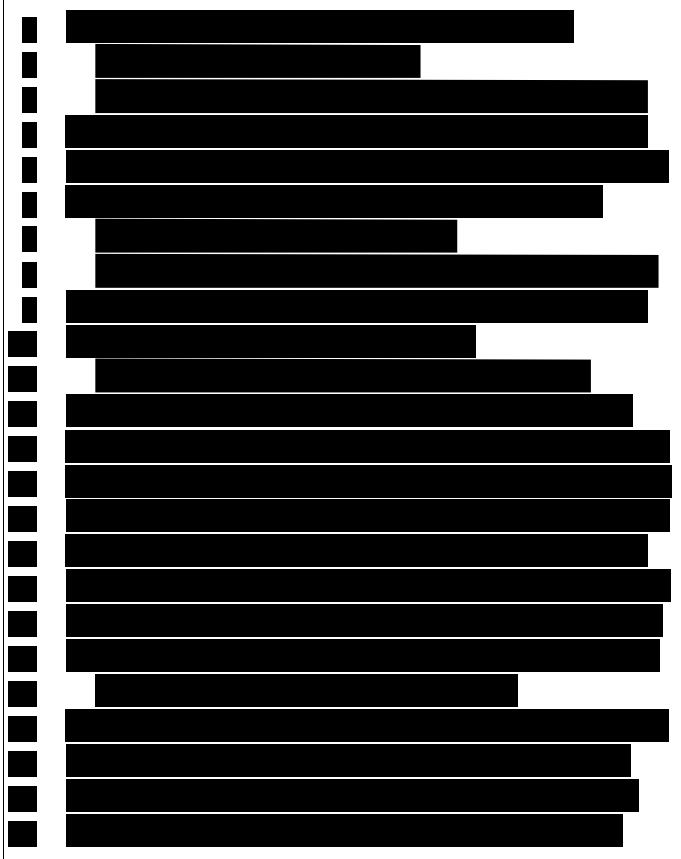

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THE SPECIAL MASTER: How can the judge decide, George, if he doesn't know?
THE WITNESS: Well, again, I -- I understand your point, but I can also understand the point that if it's coming out of their share and it's a share that the attorneys and everybody have no dispute over, you know, if the ERISA attorneys or somebody else had said we don't think they ought to get --
THE SPECIAL MASTER: George, let me ask you this. You're a lawyer.
THE WITNESS: I am.
THE SPECIAL MASTER: The judge has to decide in a fairness hearing determining whether the class is being treated fairly; if there are any objections, he has to rule on the objections; and as a part of that, the judge has to determine if the fee is a fair fee and whether the allocation within the fee is fair to all of the attorneys.
Now some judges care less about the allocation of fees, and other judges care a lot more.
How can a judge -- so my question to you is how can a judge decide these questions without

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having full information of where all of the money is going?
THE WITNESS: Well, first of all, I'm not sure the judge ever gets full information on how all the money is going.
Yeah, unless --
THE SPECIAL MASTER: Well, shouldn't he?
THE WITNESS: What?
THE SPECIAL MASTER: Or she?
THE WITNESS: What?
THE SPECIAL MASTER: Shouldn't the judge --
THE WITNESS: Well, I don't know --
THE SPECIAL MASTER: -- in a class action?
THE WITNESS: I mean what level of specificity would a judge want? Like how the partners who worked in the case versus not?
I -- you know, I'm not trying to be argumentative --
THE SPECIAL MASTER: This is somebody who did no work on the case. Never filed an appearance. Was never before the Court. Was never subject to the Court's jurisdiction. Was never

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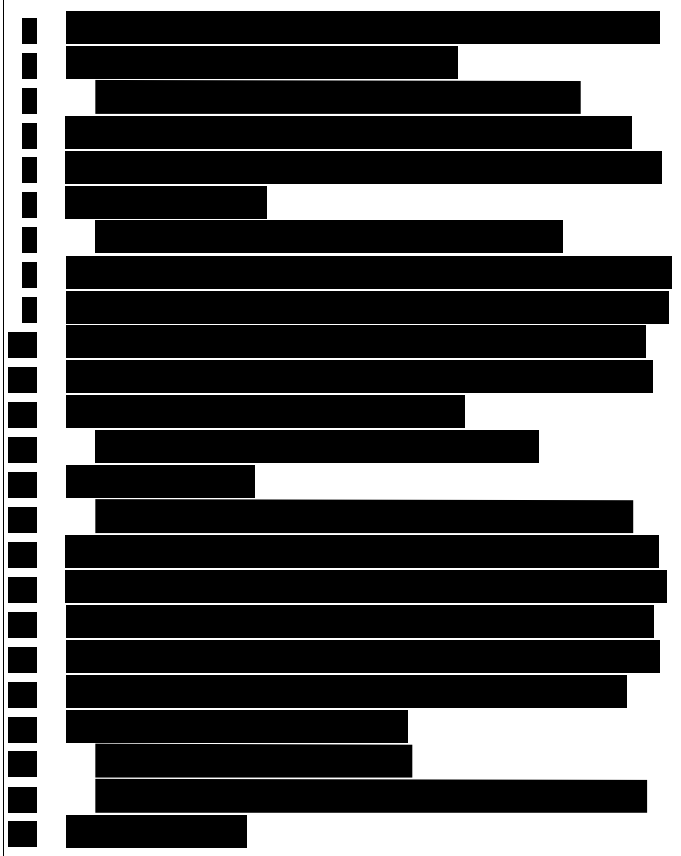

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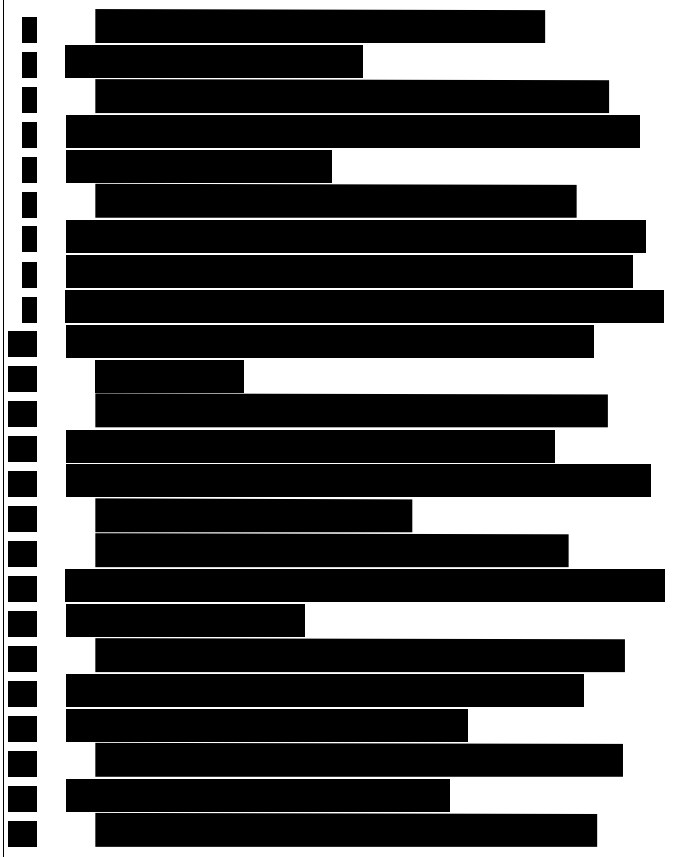

EX. 13

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, - against - STATE STREET CORPORATION, STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS, LLC, Defendants.	No. 11-CV-10230 (MLW)

PLAINTIFF'S ASSENTED-TO MOTION FOR APPOINTMENT OF INTERIM LEAD COUNSEL FOR THE PROPOSED CLASS

Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, Plaintiff Arkansas Teacher Retirement System ("ARTRS") respectfully moves for appointment of Labaton Sucharow LLP as Interim Lead Counsel for the proposed Class in this action.

In support of this motion, ARTRS relies on the memorandum of law and Declaration of Garrett J. Bradley, with exhibits, filed contemporaneously herewith, and all prior papers and proceedings in this action.

A proposed Order is submitted herewith for the Court's consideration.

Dated: April 7, 2011

Respectfully submitted,

THORNTON & NAUMES, LLP

By: */s/ Garrett J. Bradley*
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Attorneys for Plaintiff and the Class

Certification Pursuant to Local Rule 7.1(a)(2)

I certify that between March 16 and April 6, 2011, I and other attorneys from my Firm conferred on several occasions by telephone and e-mail with William H. Paine, Esq., counsel for Defendants, concerning the relief sought in this motion. Mr. Paine has advised that Defendants consent to the relief sought in this motion.

/s/ Joel H. Bernstein
Joel H. Bernstein

Certificate of Service

I hereby certify that the foregoing Plaintiff's Motion for Appointment of Interim Lead Counsel for the Class, with annexed proposed Order, accompanying supporting memorandum of law, and accompanying supporting Declaration of Garrett J. Bradley with annexed exhibits, were filed through the ECF system on April 7, 2011 and accordingly will be served electronically upon all registered participants identified on the Notice of Electronic Filing.

/s/ Garrett J. Bradley
Garrett J. Bradley

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, - against - STATE STREET CORPORATION, STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS, LLC, Defendants.	No. 11-CV-10230 (MLW)

[PROPOSED] ORDER FOR
APPOINTMENT OF INTERIM LEAD COUNSEL

WHEREAS, on February 10, 2011, Plaintiff Arkansas Teacher Retirement System ("Plaintiffs" or "ARTRS") commenced the above-titled class action asserting claims under Sections 2 and 11 of the Massachusetts Consumer Protection Act, M.G.L. c. 93A, asserting breach of duty of loyalty by Defendants and seeking declaratory relief under 28 U.S.C. § 2201, *et seq.*, arising out of Defendants' alleged deceptive acts and practices in connection with foreign exchange ("FX") transactions executed on behalf of their custodial clients; and

WHEREAS, to promote judicial economy and avoid duplication, the Court finds that it would be appropriate to provide for an organization of Plaintiff's counsel to coordinate the efforts of counsel in this action and any later-filed related actions;

ACCORDINGLY, after considering Plaintiff's memorandum of law submitted in support of its assented-to motion for appointment of Interim Lead Counsel, and for good cause shown,

IT IS HEREBY ORDERED as follows:

A. MASTER FILE AND CONSOLIDATION

1. This Order shall apply to each case that relates to the same subject matter that is subsequently filed in this Court or is transferred to this Court and is consolidated with this case.

2. A Master File is established for this proceeding. The Master File shall be Master File No. 11-CV-10230 (MLW). The Clerk shall file all pleadings in the Master File and note such filings on the Master Docket.

3. Every pleading filed in this case shall have the following caption:

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE STATE STREET BANK FOREIGN EXCHANGE TRANSACTIONS LITIGATION	Master File No. 11-CV-10230 (MLW)

4. When a case that arises out of the same subject matter of the Action is hereafter filed in this Court or transferred from another court, the Clerk of this Court shall:

(a) File a copy of this Order in the separate file for such action;

(b) Mail a copy of this Order to the attorneys for the plaintiff(s) in the newly filed or transferred case and to any new defendant(s) in the newly filed or transferred case; and

(c) Make the appropriate entry in the Master Docket for the Action.

5. Each new case that arises out of the subject matter of the Action which is filed in this Court or transferred to this Court, shall be consolidated with the Action, and this Order shall apply thereto, unless a party objects to consolidation, as provided for herein, or any provision of this Order, within ten (10) days after the date on which a copy of this Order is served on counsel

for such party, by filing an application for relief, and this Court deems it appropriate to grant such application. Nothing in the foregoing shall be construed as a waiver of the defendants' right to object to consolidation of any subsequently filed or transferred related action.

B. ORGANIZATION OF COUNSEL

6. Plaintiff's motion for appointment of Labaton Sucharow LLP as Interim Lead Counsel is ALLOWED. Pursuant to Fed. R. Civ. P. 23(g)(3), the Court designates Labaton Sucharow LLP as Interim Lead Counsel to act on behalf of all Plaintiffs and the proposed Class in the Action, with the responsibilities hereinafter described. Thornton & Naumes, LLP shall serve as liaison counsel for Plaintiff and the proposed Class, and Lieff, Cabraser, Heimann & Bernstein, LLP shall serve as additional attorneys for Plaintiff and the proposed Class.

7. The Court appoints Labaton Sucharow LLP to be responsible for

(a) ensuring that orders of the Court are served on all counsel;

(b) communicating with the Court on behalf of all counsel in each case as to scheduling matters; and

(c) maintaining a master service list of all parties and their respective counsel.

8. Interim Lead Counsel shall have sole authority over the following matters on behalf of all Plaintiffs:

(a) the initiation, response, scheduling, briefing and argument of all motions;

(b) the initiation and coordination of Plaintiffs' pretrial activities and plan for trial, including but not limited to the scope, order and conduct of all discovery proceedings and of all trial and post-trial proceedings;

(c) the delegation of work assignments to other Plaintiffs' counsel and arrangement of meetings of Plaintiffs' counsel as they may deem appropriate;

(d) designation of which attorneys may appear at hearings and conferences with the Court;

(e) the retention of experts;

(f) the timing and substance of any settlement negotiations with Defendants; and

(g) other matters concerning the prosecution and/or resolution of the Action.

9. Interim Lead Counsel shall have sole authority to communicate with Defendants' counsel and the Court on behalf of all Plaintiffs unless that authority is expressly delegated to other counsel. Defendants' counsel may rely on all agreements made with Interim Lead Counsel, and such agreements shall be binding on all other Plaintiffs' counsel.

10. Interim Lead Counsel is authorized to create committees of Plaintiffs' counsel as it deems appropriate for the efficient prosecution of this action. Any such committee shall operate under the direct supervision of Interim Lead Counsel.

11. Subject to any restrictions agreed upon or set forth in a protective order, all discovery obtained by any Plaintiff in these cases may be shared with any other Plaintiff. All discovery obtained by any Defendant in these cases shall be deemed discovered in each of these cases.

12. All counsel shall make best efforts to avoid duplication, inefficiency and inconvenience to the Court, the parties, counsel and witnesses. Interim Lead Counsel shall ensure that schedules are met and unnecessary expenditures of time and funds are avoided,

including the avoidance of unnecessary or duplicative communications among Plaintiffs' counsel. However, nothing stated herein shall be construed to diminish the right of any counsel to be heard on matters that are not susceptible to joint or common action, or as to which there is a genuine and substantial disagreement among counsel.

13. Nothing herein shall limit the requirements on Plaintiffs and Plaintiffs' counsel set forth in Fed. R. Civ. P. 23, or affect whether any of the current actions should be certified as a class action, whether Plaintiffs are adequate representatives of any class that may be certified, or whether Plaintiffs' counsel are adequate counsel for any such class.

14. All Plaintiffs' counsel shall keep contemporaneous time records and shall periodically submit summaries or other records of time and expenses incurred by their respective firms to Interim Lead Counsel in such manner as Interim Lead Counsel shall require. Failure to provide such documents and/or data on a timely basis may result in the Court's not considering non-compliant counsel's application for fees and expenses, should this litigation be resolved successfully for Plaintiffs.

C. <u>SERVICE OF COMPLAINT AND FILING OF AMENDED COMPLAINT</u>

15. By consent of the parties, service of the Class Action Complaint (Dkt. No. 1) upon Defendants is deemed complete as of March 16, 2011.

16. Defendants need not answer or otherwise respond to the Class Action Complaint (Dkt. No. 1).

17. Plaintiff shall file an Amended Class Action Complaint ("ACAC") no later than April 15, 2011.

18. Defendants shall answer or otherwise respond to the ACAC no later than June 3, 2011.

19. Plaintiff shall file submissions in opposition to any motion to dismiss by Defendants no later than July 20, 2011.

20. Defendants shall file reply submissions in further support of any motion to dismiss no later than August 19, 2011.

SO ORDERED:

HON. MARK L. WOLF
CHIEF UNITED STATES DISTRICT JUDGE

Dated: April _____, 2011.

EX. 14

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, - against - STATE STREET CORPORATION, STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS, LLC, Defendants.	No. 11-CV-10230 (MLW)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S ASSENTED-TO MOTION FOR APPOINTMENT OF INTERIM LEAD COUNSEL AND LIAISON COUNSEL FOR THE PROPOSED CLASS

Preliminary Statement

Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, Plaintiff Arkansas Teacher Retirement System ("ARTRS") respectfully submits this memorandum of law in support of its assented-to motion for the appointment of Labaton Sucharow LLP ("Labaton Sucharow" or "Proposed Interim Lead Counsel") as Interim Lead Counsel for the proposed Class in this action. Thornton & Naumes, LLP ("Thornton & Naumes") serves as liaison counsel for ARTRS here, and Lieff Cabraser Heimann & Bernstein, LLP ("LCHB") serves as additional attorneys for Plaintiff and the Class. Labaton Sucharow, Thornton & Naumes, and LCHB are referred to collectively herein as "Plaintiffs' Counsel."

Rule 23(g)(3) of the Federal Rules of Civil Procedure authorizes this Court to "designate interim counsel to act on behalf of a putative class before determining whether to certify the

action as a class action." Fed. R. Civ. P. 23(g)(3). The qualifications of Proposed Interim Lead Counsel, and indeed all Plaintiffs' Counsel, meet the requirements of Rule 23(g). Proposed Interim Lead Counsel and all Plaintiffs' Counsel have and are continuing to devote extensive time to investigating the claims in this action. Each Firm is experienced in complex commercial and class action litigation and well-versed in the applicable law, and has ample resources to devote to the prosecution of this action. Plaintiff accordingly and respectfully requests that this motion be granted.

Factual and Procedural Background

Plaintiff filed this action on February 10, 2011 on behalf of a Class defined as all public and private pension funds, mutual funds, endowment funds, investment manager funds, and other funds for whom State Street Bank and Trust Company served as the custodial bank and executed foreign exchange ("FX") trades on an "indirect" or "custody" basis since 1998, except those government pension funds that are covered by independent *qui tam* actions that have been or will be unsealed during the pendency of this action.

Plaintiff alleges that for more than a decade, State Street Corporation, State Street Bank and Trust Company, and State Street Global Markets, LLC (collectively, "Defendants" or "State Street") have maintained an unfair and deceptive practice whereby FX transactions are conducted so as to maximize profits to State Street at the expense of Plaintiff and the Class. State Street allegedly charged Plaintiff and the Class inflated FX rates when buying foreign currency for its customers and deflated FX rates when selling foreign currency for those customers, and illicitly pocketed the difference between the actual and reported rates. Plaintiff alleges that these unfair and deceptive practices generated as much as $500 million in profits annually for State Street.

By agreement with counsel for State Street, the Complaint was deemed served upon Defendants as of March 16, 2011. As proposed in the accompanying Proposed Order, Plaintiff intends to file an Amended Complaint pursuant to Rule 15(a) of the Federal Rules of Civil Procedure no later than April 15, 2011.

Legal Standards

Rule 23(g)(3) provides that a court may "designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action." In so doing, courts generally look to the factors used in determining the adequacy of class counsel under Rule 23(g)(1)(A):

> (i) the work counsel has done in identifying or investigation potential claims in the action;
>
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
>
> (iii) counsel's knowledge of the applicable law; and
>
> (iv) the resources that counsel will commit to representing the class[.]

Fed. R. Civ. P. 23(g)(1)(A). In addition, the Court "may consider any other matters pertinent to counsel's ability to fairly and adequately represent the interests of the class[.]" Fed. R. Civ. P. 23(g)(1)(B); *see, e.g.*, *In re Air Cargo Shipping Servs. Antitrust Litig.*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006) ("[I]t appears to be generally accepted that the considerations set out in [Rules 23(g)(1)(A) and (B)], which govern[] appointment of class counsel once a class is certified, apply equally to the designation of interim class counsel before certification."); *In re California Title Ins. Antitrust Litig.*, No. CV 08-01341, 2008 WL 4820752, at *1 (N.D. Cal. Nov. 3, 2008) ("When appointing interim class counsel, a court must find the applicant is adequate under [Rules 23(g)(1)(A) and (B)]."); *In re Hannaford Bros. Co. Consumer Data Sec. Breach Litig.*,

252 F.R.D. 66, 68 (D. Me. 2008). "No single factor should necessarily be determinative in a given case." Fed. R. Civ. P. 23 Advisory Committee Notes (2003).

ARGUMENT

A. Proposed Interim Lead Counsel and All Plaintiffs' Counsel Have Expended Substantial Resources Investigating and Preparing the Action

Appointing Labaton Sucharow as Interim Lead Counsel will enable the Court to designate the counsel responsible for: (1) preparation and filing of an amended complaint; (2) opposition to any motion to dismiss; (3) efficient management of the discovery phase of the litigation; (4) motion for class certification; and (5) conducting any potential settlement discussions that may occur in the future. *See Hannaford Bros.*, 252 F.R.D. at 68. Another benefit includes providing third parties with assurances that they are dealing with counsel authorized to negotiate document productions and preservation issues on behalf of the class.

The significant amount of time spent investigating the underlying facts and legal claims of this action supports the appointment of Labaton Sucharow as Interim Lead Counsel. *See* Fed. R. Civ. P. 23(g)(1)(A)(i). The investigatory and analytical efforts of counsel are important factors in appointing lead class counsel:

> In a case with a plaintiff class, the process of drafting the complaint requires some investigatory and analytical effort, tasks that strangers to the action most likely will not have undertaken. All other things being equal, when an attorney has performed these or other investigative and analytical tasks before making the application for appointment, he or she is in a better position to represent the class fairly and adequately than attorneys who did not undertake these tasks.

Moore's Federal Practice § 23.120[3][a] (3d ed. 2007), citing Advisory Committee Notes (2003).

Plaintiffs' Counsel have expended, and continue to expend, a significant amount of time investigating the underlying facts and analyzing the potential legal claims that can be brought on

behalf of the Class. Plaintiffs' Counsel have conducted substantial research related to FX trading and have consulted with experts. Plaintiffs' Counsel's investigation also includes interviews of several former State Street employees and other witnesses who have come forward on a confidential basis.

On behalf of Plaintiff, Plaintiffs' Counsel filed a detailed complaint pleading claims under Sections 2 and 11 of the Massachusetts Consumer Protection Act, M.G.L. c. 93A, asserting a breach of duty of loyalty by State Street and for declaratory relief under 28 U.S.C. § 2201, *et seq.* After filing, Plaintiffs' Counsel reached out to counsel for State Street to discuss service issues and begin a dialogue regarding the prosecution of the action. Plaintiffs' Counsel have continued their investigation since the complaint was filed, and, on February 16, 2011, served State Street with a letter in the form required by M.G.L. c. 93A, § 9, demanding that State Street make a reasonable offer of settlement to Plaintiff and the Class within 30 days.

The time spent developing the facts and legal theories and advancing the case at this early stage supports the appointment of Labaton Sucharow as Interim Lead Counsel.

B. Plaintiffs' Counsel Are Experienced in Efficiently Litigating Complex Cases and Have Extensive Knowledge of the Applicable Law

1. Labaton Sucharow

Labaton Sucharow, founded in 1963, consists of more than 60 attorneys and employs a professional support staff that includes, among others, certified public accountants, licensed private investigations, and resident securities analysts. Since its establishment, Labaton Sucharow has recovered, through trial and settlement, more than $3 billion for the benefit of investors who have been victimized by such diverse schemes as stock price manipulation, mismanagement, and fraudulent offerings of securities.

Labaton Sucharow has had a leading role in numerous important actions brought on behalf of defrauded investors in this and other courts. Labaton Sucharow served as lead counsel in *In re American Tower Corp. Securities Litigation*, No. 06-CV-10933 MLW (D. Mass.), a securities fraud class action concerning the alleged backdating of employee stock options. This Court approved a settlement of $14 million in June 2008.

In November 2010, Labaton Sucharow, as class counsel for a certified investor class, secured a favorable jury verdict in a securities fraud action brought against BankAtlantic and several of its officers in the Southern District of Florida. *See In re BankAtlantic Bancorp, Inc. Sec. Litig*., No. 07-CV-61542 (S.D. Fla. Nov. 18, 2010).

Labaton Sucharow is also lead counsel in *In re American International Group, Inc. Securities Litigation*, No. 04 Civ. 8141 (DAB) (S.D.N.Y.), in which it recently achieved settlements-in-principle for the recovery of approximately $1 billion. In addition, Labaton Sucharow is lead counsel in *In re Countrywide Financial Corp. Securities Litigation*, No. 07-CV-5295 MRP (MANx) (C.D. Cal.), which resulted in a settlement of $624 million, the largest subprime-related securities class action settlement achieved to date. Labaton Sucharow also served as lead counsel in the *Waste Management* securities litigation, which resulted in a settlement of $457 million, one of the largest common-fund securities class action settlements ever achieved up to that time. *See In re Waste Mgmt., Inc. Sec. Litig*., 128 F. Supp. 2d 401, 432 (S.D. Tex. 2000) (stating that Labaton Sucharow "ha[s] been shown to be knowledgeable about and experienced in federal securities fraud class actions"); *see also* Labaton Sucharow Firm Resume, Exhibit A to accompanying Declaration of Garrett J. Bradley ("Bradley Decl.").

Labaton Sucharow is currently serving as lead or co-lead counsel in major securities fraud cases against HealthSouth, Bear Stearns, Fannie Mae, Satyam Computer Services, and

other companies. Indeed, in *In re Monster Worldwide, Inc. Securities Litigation*, No. 07 Civ. 2237 (JSR) (S.D.N.Y. June 14, 2007), the court appointed Labaton Sucharow as lead counsel, stating that "the Labaton firm is very well known to . . . courts for the excellence of its representation." And in recent years, Labaton Sucharow has repeatedly been named to *The National Law Journal*'s Plaintiffs' "Hot List" of the top plaintiffs' oriented litigation firms in the nation with a history of high achievement and significant, groundbreaking cases.

2. Thornton & Naumes

Thornton & Naumes has been representing clients in complex litigation matters of local and national importance for the past three decades. Its lawyers have prosecuted actions for violations of securities, state trade practice and consumer protection laws, for defective products, personal injuries, and toxic exposure injuries and illnesses, and in the area of insurance bad faith litigation on an individual and class basis. In addition, Thornton & Naumes has significant experience in litigation under the False Claims Act representing the interests of individuals who report false claims and other wrongdoing that defrauds the government. Among other matters, Thornton & Naumes served as Liaison Counsel before this Court in *In re American Tower Corp. Securities Litigation*, which resulted in a settlement of $14 million. The firm also led a team of lawyers representing Massachusetts in a landmark lawsuit against the tobacco industry seeking to recover the cost of Medicaid payments made for tobacco-related diseases. The lawsuit resulted in a settlement which pays Massachusetts hundreds of millions of dollars each year for over two decades. *See* Thornton & Naumes Firm Resume, Bradley Decl. Ex. B.

3. LCHB

LCHB, founded in 1972, consists of more than 60 attorneys and employs a large and varied support staff. LCHB has extensive experience in class actions involving financial fraud

and deceptive trade activity, and has represented thousands of individuals, public pension funds, and institutional investors in such actions, including in this District in *In re Brooks Automation, Inc. Sec. Litig.*, No. 06-CV-11068 RWZ (D. Mass.) (securities fraud class action resulting in $7.75 million settlement). *See* LCHB Firm Resume, Bradley Decl. Ex. C. LCHB has been repeatedly recognized over the years as one of the top plaintiffs' law firms in the country by both *The National Law Journal* and *The American Lawyer*. *See, e.g., The Plaintiffs' Hot List,* National Law Journal (Oct. 4, 2010) (LCHB has received this same award each year from 2003 through 2010); J. Triedman, *A New Lieff*, The American Lawyer (Dec. 2006), at 13 ("one of the nation's premier plaintiffs' firms"); A. Frankel, *Sweet Sixteen*, Litigation 2004, Supplement to The American Lawyer & Corporate Counsel (Dec. 2004), at 8-10. LCHB has a proven track record of: (i) taking securities cases to trial and winning large verdicts, including punitive damages verdicts (e.g., $170 million in *Claghorn v. EDSACO, Ltd.*, No. 98-3039-SI (N.D. Cal.) and $25 million in *In re FPI/Agretech Sec. Litig.*, MDL No. 763 (D. Haw.)); and (ii) recovering a very high percentage of the class or client's losses (e.g., almost 100% recoveries in *In re Cal. Micro Devices Sec. Litig.*, No. C-94-2817-VRW (N.D. Cal.); *Kofuku Bank Ltd. v. Republic N.Y. Sec. Corp.*, No. 00 Civ. 3298 (S.D.N.Y.); *Alaska State Dep't of Revenue, et al. v. America Online, Inc., et al.*, No. 1JU-04-503 (Alaska Sup. Ct.); *Merrill Lynch Fundamental Growth Fund and Merrill Lynch Global Value Fund, Inc. v. McKesson HBOC, Inc., et al.*, No. 02-405792 (Cal. Sup. Ct.); and *Shinyo-Kumiai v. Republic N.Y. Sec. Corp.*, No. 00 Civ. 4114 (S.D.N.Y.)).

In addition to its securities fraud litigation experience, LCHB has also vindicated the rights of, and recovered hundreds of millions of dollars for, consumers and victims of deceptive trade practices in class litigation, including in cases against banks and credit card companies. For instance, in *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-5923 WHA (N.D. Cal.), a class

action alleging unfair practices and false representations by Wells Fargo in connection with its imposition of overdraft charges, LCHB obtained a $203 million class restitution award at trial for more than one million California consumers and a permanent injunction of the unfair practices at issue. LCHB also serves on the Plaintiffs' Executive Committee in *In re Checking Account Overdraft Litigation*, MDL No. 2036 (S.D. Fla.), against the nation's major banks for the collection of excessive overdraft fees, where discovery is ongoing following the denial of defendants' motions to dismiss.

C. Plaintiffs' Counsel Has the Staffing and Resources Necessary to Aggressively Prosecute This Case

The staffing and considerable resources that Labaton Sucharow brings to this action strongly supports its appointment as Interim Lead Counsel. *See* Fed. R. Civ. P. 23(g)(1)(A)(iv). The Class will be fairly and adequately represented because Labaton Sucharow, as well as Thornton & Naumes and LCHB, are qualified, experienced and able to conduct the litigation on Plaintiff's behalf. *See Tolan v. Computervision Corp*., 696 F. Supp. 771, 780 (D. Mass. 1988). Labaton Sucharow has the staffing and resources necessary to do so. Labaton Sucharow has prosecuted and financed some of the largest civil litigations in recent years and is well-staffed with paralegals, in-house investigators, and litigation support staff. Labaton Sucharow has the financial resources necessary to represent the Class, and will commit the resources necessary to litigate this matter vigorously to its conclusion. Thornton & Naumes and LCHB have similar qualifications, and their presence and past work will further aid in the prosecution of this action.

Conclusion

Labaton Sucharow, as well as Thornton & Naumes and LCHB, have expended significant time and effort developing this case, are fully committed to prosecuting it to its successful

conclusion on behalf of the Class, and have the experience and resources necessary to do so. Accordingly, it is respectfully submitted that the Court should appoint Labaton Sucharow as Proposed Interim Lead Counsel for the proposed Class, with Thornton & Naumes acting as liaison counsel for Plaintiff, and LCHB appearing as additional counsel for Plaintiff and the proposed Class.

Dated: April 7, 2011

Respectfully submitted,

THORNTON & NAUMES, LLP

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Attorneys for Plaintiff and the Class

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, - against - STATE STREET CORPORATION, STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS, LLC, Defendants.	No. 11-CV-10230 (MLW)

DECLARATION OF GARRETT J. BRADLEY IN SUPPORT OF PLAINTIFF'S ASSENTED-TO MOTION FOR APPOINTMENT OF INTERIM LEAD COUNSEL FOR THE PROPOSED CLASS

GARRETT J. BRADLEY declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner of the Boston law firm of Thornton & Naumes, LLP ("Thornton & Naumes"), liaison counsel for Plaintiff Arkansas Teacher Retirement System ("ARTRS") in the above-titled action. I am admitted to practice before this Court.

2. I respectfully submit this declaration in support of ARTRS's assented-to motion, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, for the appointment of Labaton Sucharow LLP as Interim Lead Counsel for the proposed Class in this action.

3. Annexed hereto as Exhibit A is a true and correct copy of the firm resume of Labaton Sucharow LLP.

4. Annexed hereto as Exhibit B is a true and correct copy of the firm resume of Thornton & Naumes, LLP.

5. Annexed hereto as Exhibit C is a true and correct copy of the firm resume of Lieff Cabraser Heimann & Bernstein, LLP.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 7, 2011.

/s/ Garrett J. Bradley
Garrett J. Bradley

Exhibit A

Labaton Sucharow

LABATON SUCHAROW LLP

INVESTOR PROTECTION LITIGATION

THE FIRM AND ITS ACHIEVEMENTS

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Founded in 1963, Labaton Sucharow LLP ("Labaton Sucharow") is an internationally respected law firm with offices in New York, New York and Wilmington, Delaware and has relationships throughout the U.S., Europe and the world. The Firm consists of more than 60 attorneys and a professional support staff that includes certified public accountants, licensed private investigators, resident securities analysts and 16 paralegals. The Firm prosecutes major complex litigation in the United States, and has successfully conducted a wide array of representative actions (principally class, mass and derivative) in the areas of securities, antitrust, merger/ acquisition, limited partnership, ERISA, product liability, and consumer litigation. Labaton Sucharow's Investor Protection Litigation Group offers comprehensive services for our institutional investor clients and has recovered, through trial and settlement, more than $3 billion for the benefit of investors who have been victimized by such diverse schemes as stock price manipulation, mismanagement, and fraudulent offerings of securities. Through its efforts, the litigation group has also obtained meaningful corporate governance reforms to minimize the likelihood of repetitive wrongful conduct. Visit our website at **www.labaton.com** for more information about our dynamic firm.

CORPORATE GOVERNANCE

Labaton Sucharow is committed to corporate governance reform. Through its leadership of membership organizations which seek to advance the interests of shareholders and consumers, Labaton Sucharow seeks to strengthen corporate governance and support legislative reforms which improve and preserve shareholder and consumer rights.

The Firm is a patron of the John L. Weinberg Center for Corporate Governance of the University of Delaware ("The Center"). The Center provides a forum for business leaders, directors of corporate boards, the legal community, academics, practitioners, graduate and undergraduate students, and others interested in corporate governance issues to meet and exchange ideas. One of Labaton Sucharow's senior partners, Edward Labaton, is a member of the Advisory Committee of The Center. Additionally, Mr. Labaton has served for more than 10 years as a member of the Program Planning Committee for the annual ALI-ABA Corporate Governance Institute, and serves on the Task Force on the Role of Lawyers in Corporate Governance of the Association of the Bar of the City of New York.

On April 1, 2009, Partner Ira Schochet began his two-year term as President of the National Association of Shareholder and Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms that practice class action and complex civil litigation. Through the aegis of NASCAT and other organizations, the Firm continues to advocate against those who would seek to weaken shareholder and consumer rights through ill-conceived legislative or regulatory action. Continuing its spirit of service, Mr. Schochet follows the path of Chairman Lawrence Sucharow who was privileged to be selected by his peers to serve as President of NASCAT in 2003-2005.

On behalf of its institutional and individual investor clients, Labaton Sucharow has achieved some of the largest precedent-setting settlements since the enactment of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and has helped avert future instances of securities fraud by negotiating substantial corporate governance reforms as conditions of many of its largest settlements.

Because of the depth of their experience and deep commitment to the principles of corporate governance, many Labaton Sucharow partners have served as featured speakers on topics relating to corporate governance and reform at various symposia and lectures.

As a result of Labaton Sucharow's extensive experience and commitment to corporate governance reform, the Firm's clients have secured meaningful reforms, in addition to substantial monetary recoveries, in significant settlements such as:

- ***In re Waste Management, Inc. Securities Litigation***, Civ. No. H-99-2183 (S.D. Tex.): Labaton Sucharow, acting as Lead Counsel for the State of Connecticut Retirement Plans & Trust Funds, caused the Company to present a binding resolution to declassify its board of directors, which was approved by its shareholders. As a consequence of Labaton Sucharow's efforts, the Company further agreed to amend its Audit Committee charter, which led to its enhanced effectiveness.
- ***In re Vesta Insurance Group Securities Litigation***, Civ. No. CV-98-W-1407-S (N.D. Ala.): Labaton Sucharow, acting as Lead Counsel for the Florida State Board of Administration, caused the Company to adopt provisions requiring that: (i) a majority of its Board members be independent; (ii) at least one independent director be experienced in corporate governance; (iii) the audit,

nominating and compensation committees be comprised entirely of independent directors; and (iv) the audit committee comply with the recommendations of the Blue Ribbon Panel on the effectiveness of audit committees.

- ***In re Orbital Sciences Corporation Securities Litigation***, Civ. No. 99-197-A (E.D. Va.): Labaton Sucharow, acting as Lead Counsel for the New York City Pension Funds, negotiated the implementation of measures concerning the Company's quarterly review of its financial results, the composition, role and responsibilities of its Audit and Finance committee, and the adoption of a Board resolution providing guidelines regarding senior executives' exercise and sale of vested stock options.
- ***In re Bristol-Myers Squibb Securities Litigation***, Civ. No. 00-1990 (D.N.J.): Labaton Sucharow, acting as Lead Counsel for the LongView Collective Investment Fund of the Amalgamated Bank, negotiated noteworthy corporate governance reforms. Bristol-Myers Squibb ("BMS") has agreed to publicly disclose the following information concerning all of its drugs marketed for at least one indication: a description of the clinical study design and methodology; results of the clinical trials; and safety results, including the reporting of adverse events seen during the clinical trials. The disclosures will be posted on BMS's website, *www.BMS.com*, as well as an industry website, *www.clinicalstudyresults.org*. BMS has agreed to post these disclosures for a 10-year period following approval of the settlement, and has further agreed that any modifications to the disclosure protocol must be approved by the Court, at the request of Labaton Sucharow as Lead Counsel, unless the modifications increase the scope of the disclosures. The

corporate reform measures obtained in this case exceed the scope of reforms obtained by the New York State Attorney General's office in the settlement of an action against GlaxoSmithKline ("GSK") arising from the sale of Paxil, an antidepressant. The Paxil settlement is limited to drugs sold in the United States, whereas as a result of the BMS settlement, the company must post the clinical trial results of drugs marketed in any country throughout the world.

- ***The Boeing Company,*** Civ. No. 03 CH 15039 and Civ. No. 03 CH 16301 (Cook Co., Ill, Ch. Div.): In 2006, Labaton Sucharow, acting as Lead Counsel for Plaintiffs in a derivative class action against the directors of The Boeing Company ("Boeing"), achieved a landmark settlement establishing unique and far-reaching corporate governance standards relating to ethics compliance, provisions that obligated Boeing to contribute significant funds over and above base compliance spending to implement the various prescribed initiatives. The terms were well designed to provide for early detection and prevention of corporate misconduct. They were comprehensive and integrated, enhancing effectiveness by providing for top-down oversight, direction and planning; and buttressed by extensive and coordinated bottom-up and horizontal reporting. They were also designed to enhance Board independence and effectiveness and, by creating a direct reporting role to the Board, the independence of the management level oversight functions.
- ***In re Take-Two Interactive Securities Litigation***, No. 06-CV-803-RJS (S.D.N.Y.): In 2009, Labaton Sucharow, acting as Lead Counsel for Lead Plaintiffs New York City Employees' Retirement System, New York City Police Pension Fund and New York City Fire Department Pension Fund in a securities

class action against Take-Two Interactive Software, Inc. ("Take-Two") and its officers and directors, achieved significant corporate governance reforms. Take-Two is required to adopt a policy, commonly referred to as "clawback" provision, providing for the recovery of bonus or incentive compensation paid to senior executives in the event that such compensation was awarded based on financial results later determined to have been erroneously reported as a result of fraud or other knowing misconduct by the executive. The Company also is required to adopt a policy requiring that its Board of Directors submit any stockholder rights plan (also commonly known as a "poison pill") that is greater than 12 months in duration to a vote of stockholders. Finally, Take-Two is required to adopt a bylaw providing that no business may be properly brought before an annual meeting of stockholders by a person other than a stockholder unless such matter has been included in the proxy solicitation materials issued by the Company.

NOTABLE LEAD COUNSEL APPOINTMENTS

Labaton Sucharow's institutional and individual investor clients are regularly appointed by federal courts to serve as lead plaintiffs in prominent securities litigations brought under the PSLRA. Since January 2003, dozens of state, city and county public pension funds and union funds have selected Labaton Sucharow to represent them in federal securities class actions and advise them as securities litigation/investigation counsel. Listed below are two of our current notable Lead Counsel appointments.

IN RE THE BEAR STEARNS COMPANIES INC. SECURITIES, DERIVATIVE AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION
NO. CV :08-MD-01963-RWS (S.D.N.Y.)

Representing Michigan Retirement Systems
as Co-Lead Plaintiff

CITY OF NEW ORLEANS EMPLOYEES' RETIREMENT SYSTEM V. PRIVATEBANCORP, INC., ET AL
NO.1:10-CV-06826 (N.D. ILL.)

Representing the State-Boston Retirement System
as Co-Lead Plaintiff

TRIAL EXPERIENCE

Few securities class action cases go to trial. But when it is in the best interests of its clients and the class, Labaton Sucharow repeatedly has demonstrated its willingness and ability to try these complex securities cases before a jury.

In the first financial-crisis-related securities class action case to go to jury verdict, the Firm, as Co-Lead Counsel on behalf of State-Boston Retirement System and the class, obtained a jury verdict against BankAtlantic Bancorp, Inc. and two senior officers for securities fraud after they lied about and failed to disclose the extent of risk in the company's troubled loan portfolio in 2007. The case was only the tenth securities fraud class action to go to trial since passage of the historic Private Securities Litigation Reform Act in 1995, and only the second successful plaintiff's verdict in a case brought on behalf of a public pension fund.

Labaton Sucharow's recognized willingness and ability to bring cases to trial significantly increases the ultimate settlement value for shareholders. For example, in *In re Real Estate Associates Limited Partnership Litigation*, when defendants were unwilling to settle for an amount Labaton Sucharow and its clients viewed as fair, we tried the case with co-counsel for six weeks and obtained a landmark $184 million jury verdict in November 2002. The jury

supported plaintiffs' position that defendants knowingly violated the federal securities laws, and that the general partner had breached his fiduciary duties to plaintiffs. The $184 million award was one of the largest jury verdicts returned in any PSLRA action and one in which the plaintiff class, consisting of 18,000 investors, recovered 100% of their damages.

NOTABLE SUCCESSES

Labaton Sucharow has achieved notable successes in major securities litigations on behalf of its clients and certified investor classes.

- Labaton Sucharow served as Co-Lead Counsel in ***In re HealthSouth Securities Litigation***, Civ. No CV-03-BE-1500-S (N.D. Ala.), a case stemming from the largest fraud ever perpetrated in the healthcare industry. In early 2006, Lead Plaintiffs negotiated a settlement of $445 million with defendant HealthSouth. This partial settlement, comprised of cash and HealthSouth securities to be distributed to the class, is one of the largest in history. On June 12, 2009, the Court also granted final approval to a $109 million settlement with defendant Ernst & Young LLP ("E&Y") believed to be the eighth largest securities fraud class action settlement with an auditor. In addition, on July 26, 2010, the Court granted final approval to a $117 million partial settlement with the remaining principal defendants in the case, UBS AG, UBS Warburg LLC, Howard Capek, Benjamin Lorello and William McGahan (the "UBS Defendants"). The total value of the settlements for Healthsouth stockholders and Healthsouth bondholders, who were represented by separate counsel, is $804.5 million, which

is the eleventh largest settlement filed after the passage of the PSLRA based on the SCAS 100 for the second quarter of 2010.

- In ***In re American International Group, Inc. Securities Litigation***, Master File No. 04 Civ. 8141 (JES) (AJP) (S.D.N.Y.), Lead Counsel Labaton Sucharow represents Lead Plaintiff Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund, along with the Attorney General of the State of Ohio. On October 3, 2008, a $97.5 million settlement between the Lead Plaintiff and PricewaterhouseCoopers LLP was announced. The settlement, which still must be approved by the Court, was the eighth largest at the time by an accounting firm to settle a securities fraud class action. On July 16, 2010, an agreement on the terms of a proposed $725 million settlement was announced, which, if approved by the Court, would resolve the Ohio Funds' claims against AIG and certain individual AIG directors and officers.
- On behalf of the New York State Common Retirement Fund and five New York City public pension funds, Labaton Sucharow serves as Lead Counsel in ***In re Countrywide Financial Corporation Securities Litigation***, No. CV 07-05295 MRP (MANx) (C.D. Cal.), for claims alleging that Countrywide, one of the nation's largest mortgage lenders, and other defendants violated the federal securities laws by making misstatements and omitting material facts about Countrywide's policies and procedures for underwriting loans that entailed greater risk than disclosed. The parties have agreed to a Settlement whereby Countrywide and its auditing firm, KPMG LLP, together have paid $624 million

in cash, with a portion set aside for up to two years to satisfy certain opt-out claims. This recovery is among the largest securities fraud settlements since the enactment of the Private Securities Litigation Reform Act of 1995. On March 10, 2011, the Settlement was granted final approval.

- ***In re Waste Management, Inc. Securities Litigation***, Civ. No. H-99-2183 (S.D. Tex.). In 2002, Judge Melinda Harmon approved an extraordinary settlement that provided for recovery of $457 million in cash, plus an array of far-reaching corporate governance measures. At that time, this settlement was the largest common fund settlement of a securities action achieved in any court within the Fifth Circuit and the third-largest achieved in any federal court in the nation. Judge Harmon noted, among other things, that Labaton Sucharow "obtained an outstanding result by virtue of the quality of the work and vigorous representation of the Class."
- In ***In re General Motors Corp. Securities Litigation***, No. 06-1749, (E.D. Mich.), Co-Lead Counsel Labaton Sucharow represented Lead Plaintiffs Deka Investment GmbH and Deka International S.A. Luxembourg in claims alleging that General Motors, and certain of GM's officers and directors (including CEO Rick Wagoner), issued a series of false and misleading statements to investors about the auto maker's financial health going back to 2000. On July 21, 2008, a settlement was reached whereby GM will make a cash payment of $277 million and Defendant Deloitte & Touche LLP, which served as GM's outside auditor during the period covered by the action, agreed to contribute an additional $26 million in cash.

- In ***In re PaineWebber Limited Partnerships Litigation***, Master File No. 94 Civ. 832/7 (SHS) (S.D.N.Y.), Judge Sidney H. Stein approved a settlement valued at $200 million and found "that Class Counsel's representation of the Class has been of high caliber in conferences, in oral arguments and in work product."
- ***Eastwood Enterprises, LLC v. Farha et al.***, 8:07-cv-1940-T-33EAJ (M.D. Fla.). On behalf of The New Mexico State Investment Council and the Public Employees Retirement Association of New Mexico, Co-Lead Counsel for the Class, Labaton Sucharow LLP, negotiated a $200 million settlement over allegations that WellCare Health Plans, Inc., a Florida-based managed healthcare service provider, disguised its profitability by overcharging state Medicaid programs. Under the terms of the settlement, which is still subject to approval by the Court, WellCare agreed to pay an additional $25 million in cash if, at any time in the next three years, WellCare is acquired or otherwise experiences a change in control at a share price of $30 or more after adjustments for dilution or stock splits.
- In ***In re El Paso Corporation Securities Litigation***, Civ. No. H-02-2717 (S.D. Tex.), Labaton Sucharow secured a $285 million class action settlement against the El Paso Corporation. The case involved a securities fraud stemming from the Company's inflated earnings statements, which cost shareholders hundreds of millions of dollars during a four-year span. The settlement was approved by the Court on March 6, 2007.
- ***In re Bristol-Myers Squibb Securities Litigation***, Civ. No. 00-1990 (D.N.J.). After prosecuting securities fraud claims against BMS for more than five years,

Labaton Sucharow reached an agreement to settle the claims for $185 million and significant corporate governance reforms. This settlement is the second largest recovery against a pharmaceutical company, and it is the largest recovery ever obtained against a pharmaceutical company in a securities fraud case involving the development of a new drug. Moreover, the settlement is the largest ever obtained against a pharmaceutical company in a securities fraud case that did not involve a restatement of financial results.

- On behalf of Lead Plaintiff New Mexico State Investment Council, Labaton Sucharow serves as Lead Counsel in ***In re Broadcom Corp. Securities Litigation***, No. CV-05036-R (C.D. Cal.), a case stemming from Broadcom Corp.'s $2.2 billion restatement of its historic financial statements for 1998-2005 - the largest restatement in history due to options backdating. In December 2009, New Mexico reached an agreement-in-principle with Broadcom and two individual defendants to resolve this matter for $160.5 million, the second largest up-front cash settlement ever recovered from a company accused of options backdating.
- In ***In re Mercury Interactive Corp. Securities Litigation***, Civ. No. 5:05-CV-3395 (N.D. Cal.), Labaton Sucharow reached an agreement to settle for $117.5 million, a figure representing one of the largest known settlements or judgments in an options backdating suit. The allegations in *Mercury* concern backdated option grants used to compensate employees and officers of the Company. Mercury's former CEO, CFO, and General Counsel actively participated in and benefited from the options backdating scheme, which came at the expense of Mercury shareholders and the investing public. Labaton Sucharow and Hewlett-Packard's

counsel executed a Stipulation of Settlement and the Court granted preliminary approval of the settlement on June 2, 2008. On September 25, 2008, the Court granted final approval of the settlement.

- In the well-known ***In re Prudential Securities Inc. Limited Partnership Litigation***, Civ. No. M-21-67 (S.D.N.Y.), the late Judge Milton Pollack cited the "Herculean" efforts of Labaton Sucharow and its Co-Lead Counsel and, in approving a $110 million partial settlement, stated that "this case represents a unique recovery – a recovery that does honor to every one of the lawyers on your side of the case."
- ***In re Vesta Insurance Group, Inc. Securities Litigation***, Civ. No. CV-98-AR-1407 (N.D. Ala.). After years of protracted litigation, Labaton Sucharow secured a settlement of $78 million on the eve of trial.
- ***In re St. Paul Traveler's II Securities Litigation***, Civ. No. 04-4697 (JRT/FLN) (D. Minn.), the second of two cases filed against St. Paul Travelers by Labaton Sucharow LLP, arose from the industry-wide insurance scandal involving American International Group, Marsh McClennan, the St. Paul Companies and numerous other insurance providers and brokers. On July 23, 2008, the Court granted final approval of the $77 million settlement and certified the settlement Class.
- In ***In re St. Paul Travelers Securities Litigation***, 04-CV-3801 (D. Minn.), Labaton Sucharow was able to successfully negotiate the creation of an all cash settlement fund to compensate investors in the amount of $67.5 million in

November 2005. This settlement is one of the largest securities class action settlements in the Eighth Circuit.

- In ***In re Monster Worldwide, Inc. Securities Litigation***, No. 07-CV-02237 (S.D.N.Y.), Labaton Sucharow represented Middlesex County Retirement System in claims alleging that Defendants engaged in a long-running scheme to backdate Monster's stock option grants to attract and retain employees without recording the resulting compensation expenses. On November 25, 2008, the Court granted final approval of the $47.5 million settlement.
- In ***Abrams v. VanKampen Funds, Inc.***, 01 C 7538 (N.D. Ill.), in January 2006 Labaton Sucharow obtained final approval of a $31.5 million settlement in an innovative class action concerning VanKampen's senior loan mutual fund, alleging that the fund overpriced certain senior loan interests where market quotations were readily available. The gross settlement fund constitutes a recovery of about 70% of the class's damages as determined by plaintiffs' counsel.
- In ***Desert Orchid Partners, L.L.C. v. Transactions Systems Architects, Inc.***, Civ. No. 02 CV 533 (D. Neb.), Labaton Sucharow represented the Genesee Employees' Retirement System as Lead Plaintiff in claims alleging violations of the federal securities laws. On March 2, 2007, the Court granted final approval to the settlement of this action for $24.5 million in cash.
- ***In re Orbital Sciences Corp. Securities Litigation***, Civ. No. 99-197-A (E.D. Va.). After cross-motions for summary judgment were fully briefed, defendants

(and Orbital's auditor in a related proceeding) agreed to a $23.5 million cash settlement, warrants, and substantial corporate governance measures.

- On September 9, 2008, the Court granted final approval of the $20 million settlement in ***In re International Business Machines Corp. Securities Litigation***, Civ. No. 1:05-cv-6279 (AKH) (S.D.N.Y.), in which Labaton Sucharow served as Lead Counsel. The action alleged that that International Business Machines Corp. ("IBM"), and its Chief Financial Officer, Mark Loughridge, made material misrepresentations and omissions concerning IBM's expected 2005 first quarter earnings, IBM's expected 2005 first quarter operational performance, and the financial impact of IBM's decision to begin expensing stock options on its 2005 first quarter financial statements.
- In ***In re Just for Feet Noteholder Litigation***, Civ. No. CV-00-C-1404-S (N.D. Ala.), Labaton Sucharow, as Lead Counsel, represents Lead Plaintiff Delaware Management and the Aid Association for Lutherans with respect to claims brought on behalf of noteholders. On October 21, 2005, Chief Judge Clemon of the U.S. District Court for the Northern District of Alabama preliminarily approved Plaintiffs' settlement with Banc of America Securities LLC, the sole remaining defendant in the case, for $17.75 million. During the course of the litigation, Labaton Sucharow obtained certification for a class of corporate bond purchasers in a ground-breaking decision, *AAL High Yield Bond Fund v. Ruttenberg*, 229 F.R.D. 676 (N.D. Ala. 2005), which is the first decision by a federal court to explicitly hold that the market for high-yield bonds such as those at issue in the action was efficient.

- In ***In re American Tower Corporation Securities Litigation***, Civ. No. 06 CV 10933 (MLW) (D. Mass.), Labaton Sucharow represented the Steamship Trade Association-International Longshoreman's Association Pension Fund (STA-ILA) in claims alleging that certain of American Tower Corporation's current and former officers and directors improperly backdated the Company's stock option grants and made materially false and misleading statements to the public concerning the Company's financial results, option grant policies and accounting, causing damages to investors. On June 11, 2008, the Court granted final approval of the $14 million settlement.
- In ***In re CapRock Communications Corp. Securities Litigation***, Civ. No. 3-00-CV-1613-R (N.D. Tex.), Labaton Sucharow represented a prominent Louisiana-based investment adviser in claims alleging violations of the federal securities laws. The case settled for $11 million in 2003.
- In ***In re SupportSoft Securities Litigation***, Civ. No. C 04-5222 SI (N.D. Cal.), Labaton Sucharow secured a $10.7 million settlement on October 2, 2007 against SupportSoft, Inc. The action alleged that the defendants had artificially inflated the price of the Company's securities by re-working previously entered into license agreements for the Company's software in order to accelerate the recognition of revenue from those contracts.
- In ***In re InterMune Securities Litigation***, Master File No. 03-2454 SI (N.D. Cal. 2005), Labaton Sucharow commenced an action on behalf of its client, a substantial investor, against InterMune, a biopharmaceutical firm, and certain of its officers, alleging securities fraud in connection with InterMune's sales and

marketing of a drug for off-label purposes. Notwithstanding higher pleading and proof standards in the jurisdiction in which the action had been filed, Labaton Sucharow utilized its substantial investigative resources and creative alternative theories of liability to successfully obtain an early, pre-discovery settlement of $10.4 million. The Court complimented Labaton Sucharow on its ability to obtain a substantial benefit for the Class in such an effective manner.

- Labaton Sucharow served as Lead Counsel in ***In re HCC Insurance Holdings, Inc. Securities Litigation***, Civ. No. 4:07-cv-801 (S.D. Tex.), a case alleging that certain of HCC's current and former officers and directors improperly backdated the Company's stock option grants and made materially false and misleading statements to the public concerning the Company's financial results, option grant policies and accounting, causing damages to investors. On June 17, 2008, the Court granted final approval of the $10 million settlement.
- In ***In re Adelphia Communications Corp. Securities & Derivative Litigation***, Civ. No. 03 MD 1529 (LMM) (S.D.N.Y.), Labaton Sucharow represents the New York City Employees' Retirement System (and certain other New York City pension funds) and the Division of Investment of the New Jersey Department of the Treasury in separate individual actions against Adelphia's officers, auditors, underwriters, and lawyers. To date, Labaton Sucharow has fully resolved certain of the claims brought by New Jersey and New York City for amounts that significantly exceed the percentage of damages recovered by the Class. New Jersey and New York City continue to prosecute their claims against the remaining defendants.

- In ***STI Classic Funds v. Bollinger Industries, Inc.***, No. 96-CV-0823-R (N.D. Tex.), Labaton Sucharow commenced related suits in both state and federal courts in Texas on behalf of STI Classic Funds and STI Classic Sunbelt Equity Fund, affiliates of the SunTrust Bank, the fifth-largest bank in the United States. As a result of Labaton Sucharow's efforts, the class of Bollinger Industries, Inc. investors on whose behalf the bank sued obtained the maximum recovery possible from the individual defendants and a substantial recovery from the underwriter defendants. Notwithstanding a strongly unfavorable trend in the law in the State of Texas, and strong opposition by the remaining accountant firm defendant, Labaton Sucharow has obtained class certification and continues to prosecute the case against that firm.
- In ***Rosengarten v. International Telephone & Telegraph Corp.***, Civ. No. 76-1249 (N.D.N.Y.), Judge Morris Lasker noted that the Firm "served the corporation and its stockholders with professional competence as well as admirable intelligence, imagination and tenacity."
- In ***In re Prudential-Bache Energy Income Partnerships Securities Litigation***, MDL No. 888, an action in which Labaton Sucharow served on the Executive Committee of Plaintiffs' Counsel, Judge Marcel Livaudais, Jr., of the United States District Court for the Eastern District of Louisiana, observed that:

> Counsel were all experienced, possessed high professional reputations and were known for their abilities. Their cooperative effort in efficiently bringing this litigation to a successful conclusion is the best indicator of their experience and ability . . . .
>
> The Executive Committee is comprised of law firms with national reputations in the prosecution of securities class action and derivative litigation. The biographical summaries submitted by

each member of the Executive Committee attest to the accumulated experience and record of success these firms have compiled.

Among the institutional investor clients Labaton Sucharow represents and advises are:

Academy Capital Management

Arkansas Carpenters Pension Fund

Asbestos Workers Local 24

Baltimore County Retirement System

State-Boston Retirement System

California Public Employees' Retirement System

Central Laborers' Pension Fund

Connecticut Retirement Plans and Trust Funds

Doubloon Capital LLC

Genesee County Employees' Retirement System

Iron Workers Local 16

Town of Jupiter Police Officer's Retirement Fund

Lawndale Capital Management

LongView Collective Investment Fund of the Amalgamated Bank

City of Macon

Commonwealth of Massachusetts Pension Reserves Investment Trust

Metropolitan Atlanta Rapid Transit Authority

Michigan Retirement Systems

Mississippi Public Employees' Retirement System

Division of Investment of the New Jersey Department of the Treasury

Office of the New Mexico Attorney General and several of its Retirement Systems

City of New Orleans Employees' Retirement System

Norfolk County Retirement System

Office of the Ohio Attorney General and several of its Retirement Systems

Robino Stortini Holdings LLC

San Francisco Employees' Retirement System

St. Denis J. Villere & Co.

Steamship Trade Association/International Longshoremen's Association

SunTrust Banks, Inc.

COMMENTS ABOUT OUR FIRM BY THE COURTS

Many federal judges have commented favorably on the Firm's expertise and results achieved in securities class action litigation. Judge John E. Sprizzo complimented the Firm's work in *In re Revlon Pension Plan Litigation*, Civ. No. 91-4996 (JES) (S.D.N.Y.). In granting final approval to the settlement, Judge Sprizzo stated that "[t]he recovery is all they could have gotten if they had been successful. I have probably never seen a better result for the class than you have gotten here."

Labaton Sucharow was a member of the Executive Committee of Plaintiffs' Counsel in *In re PaineWebber Limited Partnerships Litigation*, Master File No. 94 Civ. 8547 (SHS). In approving a class-wide settlement valued at $200 million, Judge Sidney H. Stein of the Southern District of New York stated:

> The Court, having had the opportunity to observe first hand the quality of Class Counsel's representation during this litigation, finds that Class Counsel's representation of the Class has been of high caliber in conferences, in oral arguments and in work product.

Judge Lechner, presiding over the $15 million settlement in *In re Computron Software Inc. Securities Class Action Litigation*, Civ. No. 96-1911 (AJL) (D.N.J.), where Labaton Sucharow served as Co-Lead Counsel, commented that

> I think it's a terrific effort in all of the parties involved . . . , and the co-lead firms . . . I think just did a terrific job.
>
> You [co-lead counsel and] Mr. Plasse, just did terrific work in the case, in putting it all together . . . .

In *Middlesex County Retirement System v. Monster Worldwide, Inc.*, No. 07-cv-2237 (S.D.N.Y.), Judge Rakoff appointed Labaton Sucharow as Lead Counsel, stating that "the Labaton firm is very well known to courts for the excellence of its representation."

In addition, Judge Rakoff commented during a final approval hearing that "the quality of the representation was superb" and "[this case is a] good example of how [the] securities class action device serves laudatory public purposes."

During a fairness hearing in the *In re American Tower Corporation Securities Litigation*, No. 06-CV-10933 (MLW) (D. Mass.), Chief Judge Mark L. Wolf stated:

> "[t]he attorneys have brought to this case considerable experience and skill as well as energy. Mr. Goldsmith has reminded me of that with his performance today and he maybe educated me to understand it better."

PRO BONO ACTIVITIES

Our attorneys devote substantial time to *pro bono* activities. Many of our attorneys participated in the Election Protection Program sponsored in 2004 by the Lawyers Committee for Civil Rights Under the Law to ensure that every voter could vote and every vote would count. In addition, the Firm's attorneys devote their time to *pro bono* activities in the fields of the arts, foundations, education, and health and welfare issues.

WOMEN'S INITIATIVE AND MINORITY SCHOLARSHIP

Labaton Sucharow founded a Women's Initiative to reflect the Firm's commitment to the advancement of women professionals. The goal of the initiative is to bring professional women together to collectively advance women's influence in business. Each event, two to three times annually, showcases a successful woman role model as a guest speaker. We actively discuss our respective business initiatives and hear the guest speaker's strategies for success. Labaton

Sucharow mentors and promotes the professional achievements of the young women in our ranks and others who join us for events. For more information regarding Labaton Sucharow's Women's Initiative, please visit http://www.labaton.com/en/about/women/Womens-Initiative.cfm

Further, as part of an effort to increase attorney diversity, the Firm has established an annual scholarship program at Brooklyn Law School that provides a $5,000 scholarship and a summer associate position at the Firm to a member of a minority group. Currently, there are two minority associates employed by Labaton Sucharow who were recipients of this scholarship.

ATTORNEYS

Among the attorneys at Labaton Sucharow who are involved in the prosecution of securities actions are partners Edward Labaton, Lawrence A. Sucharow, Martis Alex, Mark S. Arisohn, Christine S. Azar, Eric J. Belfi, Joel H. Bernstein, Javier Bleichmar, Thomas A. Dubbs, Joseph A. Fonti, Jonathan Gardner, David J. Goldsmith, Louis Gottlieb, James W. Johnson, Christopher J. Keller, Christopher J. McDonald, Jonathan M. Plasse, Hollis L. Salzman, Ira A. Schochet and Michael W. Stocker; senior counsel Richard T. Joffe and Joseph V. Sternberg; of counsel attorneys Dominic J. Auld, Mark S. Goldman, Terri Goldstone, Barry M. Okun, Brian D. Penny, Paul Scarlato, and Nicole M. Zeiss; and associates Rachel A. Avan, John Bockwoldt, Jason M. Butler, Joshua L. Crowell, Mindy S. Dolgoff, Alan I. Ellman, Iona M. Evans, Yoko Goto, Serena Hallowell, Nicholas R. Hector, Thomas G. Hoffman, Jr., Felicia Mann, Craig A. Martin, Matthew C. Moehlman, Angelina Nguyen, Michael H. Rogers, Erin H. Rump, Philip C. Smith, Stefanie J. Sundel, Stephen W. Tountas, Carol C. Villegas, and Michael L. Woolley. A short description of the qualifications and accomplishments of each follows.

LAWRENCE A. SUCHAROW, CHAIRMAN ***lsucharow@labaton.com***

Lawrence A. Sucharow, a nationally recognized leader of the securities class action bar, is the chairman of Labaton Sucharow. In this capacity, he participates in developing the litigation and settlement strategies for many of the class action cases Labaton Sucharow prosecutes.

For more than three decades, Mr. Sucharow has devoted his practice to counseling clients and prosecuting cases on complex issues involving securities, antitrust, business transaction, product liability, and other class actions. Mr. Sucharow has successfully recovered more than $1 billion on behalf of institutional investors such as state, city, county and union pension funds, shareholders of public companies, bondholders, purchasers of limited partnership interests, purchasers of consumer products and individual investors.

Mr. Sucharow obtained $225 million in savings for the class of In re CNL Resorts, Inc. Securities Litigation. In other recently settled actions, Mr. Sucharow undertook a lead role in obtaining benefits for class members of $200 million (*In re Paine Webber Incorporated Limited Partnerships Litigation*); $110 million partial settlement (*In re Prudential Securities Incorporated Limited Partnerships Litigation*); $91 million (*In re Prudential Bache Energy Income Partnerships Securities Litigation*); and more than $92 million (*Shea v. New York Life Insurance Company*). In approving the *Prudential* settlement, Judge Milton Pollack referred to the efforts of plaintiffs' counsel as "Herculean," stating: "…this case represents a unique recovery – a recovery that does honor to every one of the lawyers on your side of the case."

In addition, in 2002 Mr. Sucharow served as Co-Trial Counsel in a six-week trial of a federal securities law claim on behalf of 18,000 passive investors in the Real Estate Associates limited partnerships. That trial resulted in an unprecedented $182 million jury verdict.

Mr. Sucharow is the author of "Schapiro Takes Right Path On Market Reform, But Auditors, Lawyers and Shareholders Need Better Tools," *Pensions & Investments*, June 1, 2009. He is the co-author of "How Courts Analyze Guilty Pleas and Government Investigations When Considering the Plausibility of an Antitrust Conspiracy After Twombly," *BNA's Class Action Litigation Report*, March 26, 2010; "Death of the Worldwide Class?," *BNA's Securities Regulation & Law Report*, June 22, 2009, and "Executive Compensation: Despite reforms, pay is less transparent and shareholder-friendly than in the past," *New York Law Journal*, March 20, 2008.

Mr. Sucharow is a member of the Federal Bar Council's Committee on Second Circuit Courts, and the Federal Courts Committee of the New York County Lawyers' Association. He is also a member of the Securities Law Committee of the New Jersey State Bar Association and was the founding chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association from 1988-1994. He was honored by his peers by his election to serve a two-year term as President of the National Association of Shareholder and Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms which practice complex civil litigation including class actions.

Mr. Sucharow earned a B.B.A., *cum laude*, from Baruch School of the City College of the City University of New York in 1971 and a J.D., *cum laude*, from Brooklyn Law School in 1975.

Mr. Sucharow is admitted to practice in New York and New Jersey as well as before the United States District Courts for the Southern and Eastern Districts of New York, the District of New Jersey, the District of Arizona, the United States Court of Appeals for the Second Circuit, and the United States Supreme Court.

As a result of his career accomplishments, Mr. Sucharow is one of only four plaintiff's securities lawyers in the United States independently selected by *Chambers and Partners USA* to be in its highest category, Band 1, (Plaintiffs Securities Class Actions). In August 2010, he was recognized by *Law360* as one the ten Most Admired Securities Attorneys in the United States. Mr. Sucharow has received a rating of AV from the publishers of the Martindale-Hubbell directory.

EDWARD LABATON, SENIOR PARTNER ***elabaton@labaton.com***

An accomplished trial lawyer and Senior Partner with the Firm, Edward Labaton has devoted his 50 years of practice to representing a full range of clients in class action and complex litigation matters in state and federal court. Mr. Labaton has played a lead role as plaintiffs' class counsel in a number of successfully prosecuted high profile cases, involving companies such as PepsiCo, Dun & Bradstreet, Financial Corporation of America, ZZZZ Best, Revlon, GAF Co., American Brands, Petro Lewis and Jim Walter, as well as several Big Eight (now Four) accounting firms. He has also argued appeals in state and federal courts, achieving results with important precedential value.

Mr. Labaton has been President of the Institute for Law and Economic Policy since its founding in 1996. The Institute co-sponsors at least one annual symposium with a major law school dealing with issues relating to the civil justice system. In 2010 he was appointed to the newly formed Advisory Board of George Washington University's Center for Law, Economics, & Finance (C-LEAF), a think tank within the Law School, for the study and debate of major issues in economic and financial law confronting the United States and the globe. Mr. Labaton is also a member of the Advisory Committee of the Weinberg Center for Corporate Governance of the University of Delaware, a Director of the Lawyers' Committee for Civil Rights under Law, a

member of the American Law Institute, and a life member of the ABA Foundation. In addition, he has served on the Executive Committee and has been an officer of the Ovarian Cancer Research Fund since its inception in 1996.

Mr. Labaton is the past Chairman of the Federal Courts Committee of the New York County Lawyers Association, and was a member of the Board of Directors of that organization. He is an active member of the Association of the Bar of the City of New York, where he was Chair of the Senior Lawyers' Committee and served on its Task Force on the Role of Lawyers in Corporate Governance. He has also served on its Federal Courts, Federal Legislation, Securities Regulation, International Human Rights and Corporation Law Committees. He also served as Chair of the Legal Referral Service Committee, a joint committee of the New York County Lawyers' Association and the Association of the Bar of the City of New York. He has been an active member of the American Bar Association, the Federal Bar Council and the New York State Bar Association, where he has served as a member of the House of Delegates.

Mr. Labaton is the co-author of "It's Time to Resuscitate the Shareholder Derivative Action," *The Panic of 2008: Causes, Consequences, and Implications for Reform*, Lawrence Mitchell and Arthur Wilmarth, Jr., eds, (Edward Elgar, 2010).

For more than 30 years, he has lectured in the areas of federal civil litigation, securities litigation and corporate governance. Mr. Labaton graduated *cum laude* with a B.B.A. from Baruch College, City College of New York in 1952 and earned his LL.B. from Yale University in 1955.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York; the Central District of Illinois; the United

States Courts of Appeals for the Second, Fifth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits; and the United States Supreme Court.

Mr. Labaton has received a rating of AV from the publishers of the Martindale-Hubbell directory.

JOEL H. BERNSTEIN, SENIOR PARTNER ***jbernstein@labaton.com***

With more than 30 years' experience in the area of complex litigation, Joel H. Bernstein concentrates his practice in the protection of investors who have been victimized by securities fraud and breach of fiduciary duty. His expertise in the area of shareholder litigation has resulted in the recovery of hundred of millions of dollars in damages to wronged investors.

Mr. Bernstein advises numerous large public pension funds, hedge funds, other institutional investors and individual investors with respect to securities litigation in the federal and state courts as well as in arbitration proceedings before the New York Stock Exchange, the National Association of Securities Dealers and other self-regulatory organizations.

Mr. Bernstein has played a central role in numerous high profile cases, including *In re Paine Webber Incorporated Limited Partnerships Litigation*, $200 million settlement; *In re Prudential Securities Incorporated Limited Partnerships Litigation*, $130 million settlement; *In re Prudential Bache Energy Income Partnerships Securities Litigation*, $91 million settlement; *Shea v. New York Life Insurance Company*, $92 million settlement; and, *Saunders et al. v. Gardner*, $10 million -- then the largest punitive damage award in the history of the NASD. Most recently, Mr. Bernstein was instrumental in securing a $117.5 million settlement in *In re Mercury Interactive Securities Litigation*, a figure representing one of the largest known settlements or judgments in a securities fraud litigation based upon options backdating.

A leading figure in his area of practice, Mr. Bernstein is frequently sought out by the press to comment on securities law and also has authored numerous articles on related issues, including "Stand Up to Your Stockbroker, Your Rights As An Investor." He is a member of the American Bar Association and the New York County Lawyers' Association.

Mr. Bernstein earned a J.D. from Brooklyn Law School in 1975 and received his undergraduate degree from Queens College in 1971.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second and Third Circuits. He is a member of the American Bar Association and the New York County Lawyers' Association.

Mr. Bernstein has received a rating of AV from the publishers of the Martindale-Hubbell directory.

THOMAS A. DUBBS, SENIOR PARTNER ***tdubbs@labaton.com***

Thomas A. Dubbs specializes in the representation of institutional investors including pension funds in securities fraud and other types of litigation. A recognized leader in the field, Mr. Dubbs represented the first major private institutional investor to become a lead plaintiff in a class action under the Private Securities Litigation Reform Act.

Mr. Dubbs currently serves as Lead or Co-Lead Counsel in federal securities class actions against AIG, Wellcare and Bear Stearns, among others.

Most recently, Mr. Dubbs has played a central role in numerous high profile cases, including *In re HealthSouth Securities Litigation*, $804.5 million settlement; *In re Broadcom Corp. Securities Litigation*, $160.5 million settlement; *In re Vesta Insurance Group, Inc.*

Securities Litigation, $79 million settlement; and *In re St. Paul Travelers II Securities Litigation*, $77 million settlement.

Representing an affiliate of the Amalgamated Bank, the largest labor-owned bank in the United States, a Labaton Sucharow team led by Mr. Dubbs successfully litigated a class action against Bristol-Myers Squibb, which resulted in a settlement of $185 million and major corporate governance reforms.

Mr. Dubbs is the author of "Shortsighted?," *Investment Dealers' Digest*, May 29, 2009; "A Scotch Verdict on 'Circularity' and Other Issues," 2009 *Wis. L. Rev.* 455 n.2 (2009); and several columns in UK-wide pensions publications focusing on securities class actions and corporate governance. He also is the co-author of the following articles: "In Debt Crisis, An Arbitration Alternative," *The National Law Journal*, March 16, 2009; "The Impact of the LaPerriere Decision: Parent Companies Face Liability," *Directors Monthly*, February 1, 2009; "Auditor Liability in the Wake of the Subprime Meltdown," *BNA's Accounting Policy & Practice Report*, November 14, 2009; and "US Focus: Time for Action," *Legal Week*, April 17, 2008.

Mr. Dubbs frequently lectures to institutional investors and other groups such as the Government Finance Officers Association, the National Conference on Public Employee Retirement Systems and the Council of Institutional Investors.

Prior to joining Labaton Sucharow, Mr. Dubbs was Senior Vice President & Senior Litigation Counsel for Kidder, Peabody & Co. Incorporated where he represented the firm in many class actions, including the First Executive and Orange County litigations. Before joining Kidder, Mr. Dubbs was head of the litigation department at Hall, McNicol, Hamilton & Clark,

where he was the principal partner representing Thomson McKinnon Securities Inc. in litigation matters including class actions such as the *Petro Lewis* and *Baldwin United* litigations.

Mr. Dubbs earned a B.A. and a J.D. from the University of Wisconsin-Madison in 1969 and 1974, respectively. He received an M.A. from the Fletcher School of Law & Diplomacy, Tufts University in 1971.

Mr. Dubbs is admitted to practice in New York as well as before the United States District Court for the Southern District of New York; the United States Courts of Appeals for the Second, Ninth and Eleventh Circuits; and the United States Supreme Court. He is a member of the New York State Bar Association, the Association of the Bar of the City of New York, and the American Society of International Law.

Mr. Dubbs has been recognized by *The National Law Journal*, *Chambers and Partners USA* and the *Lawdragon 500*. Mr. Dubbs has received a rating of AV from the publishers of the Martindale-Hubbell directory.

JONATHAN M. PLASSE, SENIOR PARTNER ***jplasse@labaton.com***

An accomplished litigator, Jonathan M. Plasse has devoted over 30 years of his practice to the prosecution of complex cases involving securities class action, derivative, transactional, and consumer litigation. Currently, he is prosecuting securities class actions against Shering-Plough, Fannie Mae and Morgan Stanley.

Most recently, Mr. Plasse was an integral member of the team representing the New York State Common Retirement Fund and the New York City Pension Funds as lead plaintiffs in *In re Countrywide Financial Corporation Securities Litigation*. The $624 million settlement is one of the largest securities fraud settlements in U.S. history. His other recent successes include serving as Co-Lead Counsel in *In re General Motors Corp. Securities Litigation* ($303 million

settlement) and *In re El Paso Corporation Securities Litigation* ($285 million settlement). Mr. Plasse also served as Lead Counsel in *In re Waste Management Inc. Securities Litigation*, where he represented the Connecticut Retirement Plans and Trusts Funds, and obtained a settlement of $457 million.

Mr. Plasse serves as the Chair of the Securities Litigation Committee of the Association of the Bar of the City of New York. He has also chaired and been a regular speaker at continuing legal education seminars relating to securities class action litigation.

Mr. Plasse received a B.A. degree, *magna cum laude*, from the State University of New York in Binghamton in 1972. He received a J.D. from Brooklyn Law School in 1976, where he served as a member of the *Brooklyn Journal of International Law*.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Second Circuit.

Mr. Plasse has received a rating of AV from the publishers of the Martindale-Hubbell directory.

MARTIS ALEX, PARTNER ***malex@labaton.com***

Martis Alex concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors. She has extensive experience managing complex nationwide litigation, including securities class actions as well as product liability and consumer fraud litigation. She has successfully represented investors and consumers in cases that achieved cumulative recoveries of hundreds of millions of dollars for plaintiffs.

Ms. Alex was an integral part of the team that successfully litigated *In re Bristol Myers Squibb Securities Litigation*, where Labaton Sucharow was able to secure a $185 million

settlement on behalf of investors, as well as meaningful corporate governance reforms that will affect future consumers and investors alike. She is currently litigating *In re American International Group, Inc. Securities Litigation*, a major securities class action brought by Lead Plaintiff Ohio (comprised of several of Ohio's retirement systems). Ms. Alex was Lead Trial Counsel and Chair of the Executive Committee in *Zenith Laboratories Securities Litigation*, a federal securities fraud class action which settled during trial, and achieved a significant recovery for investors. She also was Chair of the Plaintiffs' Steering Committee in *Napp Technologies Litigation*, where Labaton Sucharow won substantial recoveries for families and firefighters injured in a chemical plant explosion.

Ms. Alex served as Co-Lead Counsel or in a leadership role in several securities class actions that achieved substantial awards for investors, including *Cadence Design Securities Litigation*, *Halsey Drug Securities Litigation*, *Slavin v. Morgan Stanley, Lubliner v. Maxtor Corp.* and *Baden v. Northwestern Steel and Wire*. She also served on the Executive Committee or in other leadership roles in national product liability actions against the manufacturers of breast implants, orthopedic bone screws, and atrial pacemakers, and was a member of the Plaintiffs' Legal Committee in the national litigation against the tobacco companies.

Ms. Alex is the author of "Women in the Law: Many Mentors, Many Lessons: A Baby Boomer's Perspective," *New York Law Journal*, November 8, 2010; and the co-author of "Role of the Event Study in Loss Causation Analysis," *New York Law Journal*, August 20, 2009.

Prior to entering private practice, Ms. Alex was a trial lawyer with the Sacramento, California District Attorney's Office. She is a frequent speaker at national conferences on product liability and securities fraud litigation, and is a recipient of the American College of Trial Lawyers' Award for Excellence in Advocacy.

Ms. Alex earned a J.D. from McGeorge Law School and a Masters Degree in Psychology from California State College. She is admitted to practice in New York, California, the United States Supreme Court, and in Federal Courts in several jurisdictions.

MARK S. ARISOHN, PARTNER ***marisohn@labaton.com***

Mark S. Arisohn concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors.

For the past 33 years, Mr. Arisohn specialized in complex criminal and civil litigation with an emphasis on white collar criminal matters. He has appeared in the state and federal courts nationwide, and appeared before the United States Supreme Court in the landmark insider trading case of *Chiarella v. United States.*

Mr. Arisohn brings his extensive trial experience to the prosecution of securities class actions. He has defended individuals and corporations accused of bank fraud, mail and wire fraud, securities fraud and RICO violations. He has represented public officials, individuals and companies in the construction and securities industries as well as professionals accused of regulatory offenses and professional misconduct. He also has appeared as trial counsel for both plaintiffs and defendants in civil fraud matters and corporate and business commercial matters, including shareholder litigation, breach of contract claims, and cases involving such business torts as unfair competition and misappropriation of trade secrets.

A prominent trial lawyer, Mr. Arisohn has also authored numerous articles including "Electronic Eavesdropping," *New York Criminal Practice*, LEXIS - Matthew Bender, 2005; "Criminal Evidence," *New York Criminal Practice*, Matthew Bender, 1986; and "Evidence," *New York Criminal Practice*, Matthew Bender, 1987. He was a contributing author of *Business Crime*, Matthew Bender, 1981.

Mr. Arisohn is an active member of the Association of the Bar of the City of New York and has served on its Judiciary Committee, the Committee on Criminal Courts, Law and Procedure, the Committee on Superior Courts and the Committee on Professional Discipline. He serves as a mediator for the Complaint Mediation Panel of the Association of the Bar of the City of New York and as a hearing examiner for the New York State Commission on Judicial Conduct.

He earned his B.S. and M.S. degrees from Cornell University in 1968 and 1969 and received his J.D. from Columbia University School of Law in 1972.

Mr. Arisohn is admitted to practice in New York and the District of Columbia as well as before the United States District Courts for the Southern, Eastern and Northern Districts of New York; the Northern District of Texas; the Northern District of California; the United States Court of Appeals for the Second Circuit; and the United States Supreme Court.

Mr. Arisohn has received a rating of AV from the publishers of the Martindale-Hubbell directory.

CHRISTINE S. AZAR, PARTNER ***cazar@labaton.com***

A seasoned litigator of investor rights, Christine S. Azar is the partner in charge of Labaton Sucharow LLP's Delaware office.

Prior to joining Labaton Sucharow, Ms. Azar practiced corporate litigation at Blank Rome LLP with a primary focus on corporate governance, shareholders' rights and other disputes in courts nationwide as well as in the Delaware Court of Chancery.

Ms. Azar began her career at Grant & Eisenhofer, P.A., where she specialized in the representation of institutional investors in complex federal and state securities and corporate governance actions.

Ms. Azar is the co-author of the following articles: "Running on Empty," *The Deal Magazine*, February 18, 2011; "Appointment of Lead Plaintiff Under the Private Securities Litigation Reform Act: Update 2001", 1269 PLI/Corp 689 (September 2001); and "Appointment of Lead Plaintiff Under the Private Securities Litigation Reform Act: Update 2000", 199 PLI/Corp 455 (September 2000).

Ms. Azar earned a B.S., *cum laude*, from James Madison University in 1988. She earned a J.D., *cum laude*, from the University of Notre Dame Law School in 1991.

Ms. Azar is admitted to practice in Delaware, New Jersey and Pennsylvania.

ERIC J. BELFI, PARTNER ***ebelfi@labaton.com***

Eric J. Belfi is an accomplished litigator in a broad range of commercial matters. He concentrates his practice in the investigation and initiation of securities and shareholder class actions, with an emphasis on the representation of major international and domestic pension funds and other institutional investors.

Prior to entering private practice, Mr. Belfi served as an Assistant Attorney General for the State of New York and an Assistant District Attorney for the County of Westchester. As a prosecutor, Mr. Belfi investigated and prosecuted numerous white-collar criminal cases, including securities law violations and environmental crimes. In this capacity, he presented hundreds of cases to the grand jury and obtained numerous felony convictions after jury trials.

Mr. Belfi is a regular speaker and author on issues involving shareholder litigation, particularly as it relates to international institutional investors. He co-authored *The Proportionate Trading Model: Real Science or Junk Science?* 52 Cleveland St. L. Rev. 391 (2004-05) and "International Strategic Partnerships to Prosecute Securities Class Actions," *Investment & Pensions Europe*. Over the last several years, Mr. Belfi has served as a panelist at

programs on U.S. class actions in numerous European countries. He also participated in a panel discussion regarding socially responsible investments for public pension funds during the New England Public Employees' Retirement Systems Forum.

Mr. Belfi received a B.A. from Georgetown University in 1992 and a J.D. from St. John's University School of Law in 1995. He is an associate prosecutor for the Village of New Hyde Park, and is also a member of the Federal Bar Council and the Association of the Bar of the City of New York.

Mr. Belfi is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Michigan, the District of Colorado, the District of Nebraska, and the Eastern District of Wisconsin.

JAVIER BLEICHMAR, PARTNER ***jbleichmar@labaton.com***

Javier Bleichmar concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Since joining Labaton Sucharow, Mr. Bleichmar was instrumental in securing a $77 million settlement in the *In re St. Paul Travelers Securities Litigation II* on behalf of the Lead Plaintiff, the Educational Retirement Board of New Mexico. Most recently, he has been a member of the team prosecuting securities class actions against British Petroleum and The Bear Stearns Companies, Inc.

Mr. Bleichmar is very active in educating European institutional investors on developing trends in the law, particularly the ability of international investors to participate in securities class actions in the United States. Through these efforts, many of Mr. Bleichmar's European clients were able to join the Foundation representing investors in the first securities class action settlement under a recently enacted Dutch statute against Royal Dutch Shell.

Prior to joining Labaton Sucharow, Mr. Bleichmar practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP, where he prosecuted securities actions on behalf of institutional investors. He was actively involved in the *In re Williams Securities Litigation*, which resulted in a $311 million settlement, as well as securities cases involving Lucent Technologies, Inc., Conseco, Inc. and Biovail Corp.

Mr. Bleichmar graduated from Phillips Academy, Andover in 1988, earned a B.A. from the University of Pennsylvania in 1992 and a J.D. from Columbia University Law School in 1998. He was a managing editor of the *Journal of Law and Social Problems*. Additionally, he was a Harlan Fiske Stone Scholar. As a law student, Mr. Bleichmar served as a law clerk to the Honorable Denny Chin, United States District Court Judge for the Southern District of New York.

After law school, Mr. Bleichmar authored the article "Deportation As Punishment: A Historical Analysis of the British Practice of Banishment and Its Impact on Modern Constitutional Law,"*14 Georgetown Immigration Law Journal* 115 (1999).

Mr. Bleichmar is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second Circuit.

Mr. Bleichmar is a native Spanish speaker and fluent in French.

JOSEPH A. FONTI, PARTNER ***jfonti@labaton.com***

Joseph A. Fonti concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Mr. Fonti is actively involved in prosecuting *In re HealthSouth Securities Litigation*, *In re Broadcom Corp. Securities Litigation*, *In re Celestica Inc. Securities Litigation* and *Caisse de Depot du Quebec v. Vivendi et al*.

Mr. Fonti has successfully litigated complex civil and regulatory securities matters, including obtaining a favorable judgment after trial. Prior to joining Labaton Sucharow, Mr. Fonti was an attorney at Bernstein Litowitz Berger & Grossmann LLP, where he prosecuted securities class actions on behalf of institutional investors, including class actions involving WorldCom, Bristol-Myers, Omnicom, Biovail, and the mutual fund industry scandal. Mr. Fonti's work on these cases contributed to historic recoveries for shareholders, including the $6.15 billion recovery in the WorldCom litigation and the $300 million recovery in the Bristol-Myers litigation, alleging accounting fraud and improper inventory practices.

Mr. Fonti began his legal career at Sullivan & Cromwell, where he represented several Fortune 500 corporations, focusing on securities matters and domestic and international commercial law. Mr. Fonti also represented clients in complex investigations conducted by federal regulators, including the U.S. Securities and Exchange Commission. Over the past several years, he has represented victims of domestic violence in affiliation with inMotion, an organization that provides *pro bono* legal services to indigent women.

Mr. Fonti earned a B.A., cum laude, from New York University in 1996 and a J.D. from New York University School of Law in 1999, where he was active in the Marden Moot Court Competition and served as a Student Senator-at-Large of the NYU Senate. As a law student, he served as a law clerk to the Honorable David Trager, United States District Court Judge for the Eastern District of New York.

Mr. Fonti is admitted to practice in New York, as well as before the United States District Courts for the Southern and Eastern Districts of New York, the United States Courts of Appeals for the Ninth and Eleventh Circuits and the United States Supreme Court.

JONATHAN GARDNER, PARTNER ***jgardner@labaton.com***

Jonathan Gardner concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Mr. Gardner has participated in many of the Firm's significant matters including *In re MF Global Securities Litigation*, which resulted in a recovery of $90 million for investors. Mr. Gardner also represented the Successor Liquidating Trustee of Lipper Convertibles, a convertible bond hedge fund, in an action against the Fund's former independent auditor and a member of the Fund's general partner as well as numerous former limited partners who received excess distributions. He has successfully recovered over $5.2 million for the Successor Liquidating Trustee from overwithdrawn limited partners and $29.9 million from the former auditor.

Mr. Gardner has been responsible for prosecuting several of the Firm's options backdating cases, including *In re Monster Worldwide, Inc. Securities Litigation* ($47.5 million settlement), *In re SafeNet, Inc. Securities Litigation* ($25 million settlement), and *In re Semtech Securities Litigation* ($20 million settlement). He also was involved in *In re Mercury Interactive Corp. Securities Litigation*, which settled for $117.5 million, a figure representing one of the largest known settlements or judgments in a securities fraud litigation based upon options backdating.

In 2005, Mr. Gardner litigated claims of securities fraud, common law fraud, breach of contract, defamation, and civil RICO violations against CFI Mortgage Inc. and its principals in federal court. Following a five-day jury trial, Mr. Gardner secured a verdict of over $50 million.

Prior to practicing securities litigation, Mr. Gardner was actively involved in litigating all aspects of commercial and business disputes from pre-dispute investigation and settlement to trials and appeals before state and federal courts, as well as arbitration and mediation forums.

Mr. Gardner is the co-author of "Pre-Confirmation Remedies to Assure Collection of Arbitration Rewards," *New York Law Journal*, October 12, 2010.

Mr. Gardner earned a B.S.B.A. from American University in 1987 and a J.D. from St. John's University Law School in 1990.

Mr. Gardner is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Wisconsin, and the United States Court of Appeals for the Ninth Circuit. He is a member of the New York State Bar Association and the Association of the Bar of the City of New York.

DAVID J. GOLDSMITH, PARTNER ***dgoldsmith@labaton.com***

David J. Goldsmith has more than ten years of experience representing institutional and individual investors in securities litigation.

Most recently, Mr. Goldsmith was an integral member of the team representing the New York State Common Retirement Fund and the New York City Pension Funds as lead plaintiffs in *In re Countrywide Financial Corporation Securities Litigation*. The $624 million settlement is one of the largest securities fraud settlements in U.S. history.

Mr. Goldsmith also represents the Genesee County (Mich.) Employees' Retirement System as a lead plaintiff in several securities matters including actions against Spectranetics Corporation, Merck & Co., and CBeyond, Inc., and previously against Transaction Systems Architects, Inc. He was instrumental in achieving a significant settlement in an action alleging stock option backdating at American Tower Corporation, and was a member of the team representing the Connecticut Retirement Plans and Trust Funds in an action against Waste Management, Inc. that resulted in one of the largest securities class action settlements ever achieved up to that time.

Mr. Goldsmith played a key role in a series of cases alleging that mutual funds sold by Van Kampen, Morgan Stanley and Eaton Vance defrauded investors by overpricing senior loan interests. Mr. Goldsmith obtained a decision in one of these actions excluding before trial certain opinions of a nationally recognized economist who regularly serves as a defense expert in such cases. In 2001, Mr. Goldsmith obtained one of the earliest decisions finding that a class action had been improperly removed under the Securities Litigation Uniform Standards Act of 1998.

Mr. Goldsmith has lectured frequently on class actions and securities litigation for continuing legal education programs and investment symposia.

Mr. Goldsmith earned B.A. and M.A. degrees from the University of Pennsylvania. He received a J.D. from the Benjamin N. Cardozo School of Law, where he was managing editor of the *Cardozo Arts & Entertainment Law Journal*. Mr. Goldsmith served as a judicial intern to the Honorable Michael B. Mukasey, then a United States District Judge for the Southern District of New York.

He is admitted to practice in New York and New Jersey as well as before the United States District Courts for the Southern and Eastern Districts of New York; the District of New Jersey; the District of Colorado, the Western District of Michigan; and the United States Courts of Appeals for the First, Second, Fifth, Eighth and Ninth Circuits.

LOUIS GOTTLIEB, PARTNER ***lgottlieb@labaton.com***

Lou Gottlieb has successfully represented institutional and individual investors in numerous securities and consumer class action cases, resulting in cumulative settlements well in excess of $500 million.

Mr. Gottlieb was an integral part of the Firm's representation of the Connecticut Retirement Plans and Trust Funds in *In re Waste Management, Inc. Securities Litigation*, which resulted in a $457 million settlement, one of the largest settlements ever achieved in a securities class action. The settlement also included corporate governance enhancements, including an agreement by management to support a campaign to obtain shareholder approval of a resolution to declassify its board of directors, and a resolution to encourage and safeguard whistleblowers among the company's employees.

Mr. Gottlieb has led litigation teams in the *Metromedia Fiber Networks*, *Maxim Pharmaceuticals*, and *PriceSmart* securities fraud class action litigations as well as a consumer breach of contract class action against New York Life Annuities. He is also helping to lead major class action cases against the company and related defendants in *In re American International Group Inc. Securities Litigation*, *In re Royal Bank of Scotland Group plc Securities Litigation*, and in *In re Satyam Computer Services, Ltd. Securities Litigation*.

Mr. Gottlieb has made presentations on punitive damages at Federal Bar Association meetings and has often spoken on securities class actions for institutional investors.

Mr. Gottlieb graduated first in his class from St. John's School of Law. Prior to joining Labaton Sucharow, he clerked for the Hon. Leonard B. Wexler of the Eastern District of New York, and he was a litigation associate with Skadden Arps Slate Meagher & Flom. He has also enjoyed a successful career as a public school teacher and as a restaurateur.

Mr. Gottlieb is admitted to practice in New York and Connecticut as well as before the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Fifth and Seventh Circuits.

JAMES W. JOHNSON, PARTNER ***jjohnson@labaton.com***

James W. Johnson specializes in complex litigation, with primary emphasis on class actions involving securities fraud.

Mr. Johnson has successfully litigated a number of high profile securities and RICO class actions, including: *In re Bristol-Myers Squibb Co. Securities Litigation*, in which the Court, after approving a settlement of $185 million coupled with significant corporate governance reforms, recognized plaintiffs' counsel as "extremely skilled and efficient"; *In re HealthSouth Corp. Securities Litigation*, which resulted in a total settlement of $804.5 million; *In re Vesta Insurance Group, Inc. Securities Litigation*, which resulted in a recovery of almost $80 million for the plaintiff class; and *Murphy v. Perelman*, which, along with a companion federal action, *In re National Health Laboratories, Inc. Securities Litigation*, brought by Co-Counsel, resulted in a recovery of $80 million. *In County of Suffolk v. Long Island Lightning Co.*, Mr. Johnson represented the plaintiff in a RICO class action, securing a jury verdict after a two-month trial, which resulted in a $400 million settlement. The Second Circuit, in awarding attorneys' fees to Plaintiff, quoted the trial judge, Honorable Jack B. Weinstein, as stating "counsel [has] done a superb job [and] tried this case as well as I have ever seen any case tried."

Mr. Johnson also assisted in prosecuting environmental damage claims on behalf of Native Americans resulting from the Exxon Valdez oil spill.

He is the co-author of "The Impact of the LaPerriere Decision: Parent Companies Face Liability," *Directors Monthly*, February 2009.

Mr. Johnson received a B.A. from Fairfield University in 1977 and a J.D. from New York University School of Law in 1980.

He is admitted to practice in New York and Illinois as well as before the United States District Courts for the Southern, Eastern and Northern Districts of New York; the Northern

District of Illinois; the U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Seventh and Eleventh Circuits; and the United States Supreme Court.

He is a member of the American Bar Association and the Association of the Bar of the City of New York, where he served on the Federal Courts Committee.

Mr. Johnson has received a rating of AV from the publishers of the Martindale-Hubbell directory.

CHRISTOPHER J. KELLER, PARTNER ***ckeller@labaton.com***

Christopher J. Keller concentrates his practice in sophisticated securities class action litigation in federal courts throughout the country.

Mr. Keller has served as lead counsel in over a dozen options backdating class actions filed under the federal securities laws. He was instrumental in securing a $117.5 million settlement in *In re Mercury Interactive Securities Litigation*, which is one of the largest settlements to date in an options backdating class action. He also serves as Co-Lead Counsel in *In re Satyam Computer Services, Ltd. Securities Litigation*.

Mr. Keller was a member of the trial team that successfully litigated the *In re Real Estate Associates Limited Partnership Litigation* in the United States District Court for the Central District of California. The six-week jury trial resulted in a landmark $184 million plaintiffs' verdict, which is one of the largest jury verdicts since the passage of the Private Securities Litigation Reform Act of 1995.

Mr. Keller is very active in investigating and initiating securities and shareholder class actions. He also concentrates his efforts on educating institutional investors on developing trends in the law and new case theories. Mr. Keller is a regular speaker at institutional investor

gatherings as well as a frequent speaker at continuing legal education seminars relating to securities class action litigation.

Mr. Keller is the co-author of the following articles: "SEC Contemplating Governance Reforms," *Executive Counsel*, December 2010; "Is the Shield Beginning to Crack?," *New York Law Journal*, November 15, 2010; "Say What? Pay What? Real World Approaches to Executive Compensation Reform," *Corporate Counsel*, August 5, 2010; "Reining in the Credit Ratings Industry," *New York Law Journal*, January 11, 2010; "Japan's Past Recession Provides a Cautionary Tale," *The National Law Journal*, April 13, 2009; "Balancing the Scales: The Use of Confidential Witnesses in Securities Class Actions," BNA's *Securities Regulation & Law Report*, January 19, 2009; "Eyeing Executive Compensation," *The National Law Journal*, November 17, 2008; and "Tellabs: PSLRA Pleading Test Comparative, Not Absolute," *New York Law Journal*, October 3, 2007.

Mr. Keller earned a B.S. from Adelphi University in 1993 and a J.D. from St. John's University School of Law in 1997.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Wisconsin, the District of Colorado and the United States Supreme Court. Mr. Keller is a member of several professional groups, including the New York State Bar Association and the New York County Lawyers' Association.

CHRISTOPHER J. MCDONALD, PARTNER ***cmcdonald@labaton.com***

Christopher J. McDonald, a member of the Firm's Antitrust Practice Group, represents businesses, associations and individuals injured by anticompetitive activities. Mr. McDonald's

practice also involves prosecuting complex securities fraud cases on behalf of institutional investors.

In the antitrust field, Mr. McDonald currently represents end-payors (e.g., union health and welfare funds and consumers) of the prescription drug TriCor® in the *In re TriCor Indirect Purchaser Antitrust Litigation*. The drug's manufacturer and U.S. marketer are alleged to have unlawfully impeded the introduction of lower-priced generic alternatives in violation of federal and state antitrust laws. The case is set to go to trial in early November 2008.

In the securities field, Mr. McDonald is currently prosecuting *In re Schering-Plough Corporation/ENHANCE Securities Litigation* to recover losses investors suffered after the disclosure of negative clinical trial data for Vytorin®, a fixed-dose combination pill comprised of ezitimibe (Schering-Plough's Zetia®) and simvastatin (Merck & Co., Inc.'s Zocor®). He was also part of the team that litigated *In re Bristol-Myers Squibb Securities Litigation*, where Labaton Sucharow was able to secure a $185 million settlement and meaningful corporate governance reforms on behalf of Bristol-Myers Squibb shareholders following negative disclosures about omapatrilat, an experimental hypertension drug. The settlement with BMS is the largest ever obtained against a pharmaceutical company in a securities fraud case that did not involve a restatement of financial results.

A litigator for most of his career, Mr. McDonald also has in-house and regulatory experience. As a senior attorney with a telecommunications company he regularly addressed legal, economic and public policy issues before state public utility commissions.

Mr. McDonald received his undergraduate degree, *cum laude*, from Manhattan College in 1985, and a J.D. from Fordham University School of Law in 1992, where he was on the *Law Review*.

Mr. McDonald is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York; the Western District of Michigan; and the United States Courts of Appeals for the Second, Third and Federal Circuits. He is a member of the New York State Bar Association and the Association of the Bar of the City of New York.

HOLLIS SALZMAN, PARTNER ***hsalzman@labaton.com***

Hollis Salzman is Managing Chair of the Firm's Antitrust Practice Group. She primarily represents clients in cases involving federal antitrust law violations. Her work in the area of antitrust law has been recognized in the 2008 Plaintiffs' Hot List published by *The National Law Journal*. She is also involved in the Firm's securities litigation practice group where she represents institutional investors in portfolio monitoring and securities litigation. Some of Ms. Salzman's clients include MARTA and the City of Macon, Georgia.

Ms. Salzman is actively engaged in the prosecution of major antitrust class actions pending throughout the United States. She is presently Co-Lead Counsel in many antitrust cases, including: *In re Air Cargo Shipping Services Antitrust Litigation*, *In re Marine Hoses Antitrust Litigation*, and *In re Puerto Rican Cabotage Antitrust Litigation*.

She also served as Co-Lead Counsel in several antitrust class actions which resulted in extraordinary settlements for class members, such as *In re Air Cargo Shipping Services Antitrust Litigation* ($85 million partial settlement from certain defendants); *In re Abbott Labs Norvir Antitrust Litigation* ($10 million settlement); *In re Buspirone Antitrust Litigation* ($90 million settlement); *In re Lorazepam & Clorazepate Antitrust Litigation* ($135.4 million settlement) and *In re Maltol Antitrust Litigation* and *Continental Seasonings Inc. v. Pfizer, Inc., et al.*, ($18.45 million settlement). Additionally, she was principally responsible for administering a

$65 million settlement with certain brand-name prescription drug manufacturers where their conduct allegedly caused retail pharmacy customers to overpay for their prescription drugs.

Ms. Salzman is the co-author of the following articles: "Iqbal And The Twombly Pleading Standard," *CompLaw 360*, June 15, 2009; "Analysis of Abbott Laboratories Antitrust Litigation," *Pharmaceutical Law & Industry Report*, June 20, 2008; and "The State of State Antitrust Enforcement," NYSBA *NYLitigator*, Winter 2003, Vol. 8, No. 1.

She is a Co-Chair of the New York State Bar Association, Commercial & Federal Litigation Section – Antitrust Committee, and a member of the Association of the Bar of the City of New York Antitrust Committee and Women's Antitrust Bar Association. Ms. Salzman also provides *pro bono* representation to indigent and working-poor women in matrimonial and family law matters.

Ms. Salzman received a J.D. from Nova University School of Law in 1992 and a B.A. in Economics from Boston University in 1987.

Ms. Salzman is admitted to practice in New York, New Jersey, and Florida as well as before the United States District Courts for the Southern and Eastern Districts of New York; the Southern and Middle Districts of Florida; and the United States Court of Appeals for the Eleventh Circuit.

IRA A. SCHOCHET, PARTNER ***ischochet@labaton.com***

Ira A. Schochet has over 20 years of experience in commercial litigation, with primary emphasis on class actions involving securities fraud. Currently, Mr. Schochet serves as Lead Counsel in *In re Countrywide Securities Litigation*.

Mr. Schochet has played a leading role in litigation resulting in multimillion dollar recoveries for class members in cases such as those against Caterpillar, Inc., Spectrum

Information Technologies, Inc., InterMune, Inc., and Amkor Technology, Inc. In *Kamarasy v. Coopers & Lybrand*, a securities fraud class action, Mr. Schochet led a team that won a settlement equal to approximately 75% of the highest possible damages that class members could have recovered. The Court in that case complimented him for "the superior quality of the representation provided to the class." In approving the settlement he achieved in the *InterMune* litigation, the Court complimented Mr. Schochet's ability to obtain a significant cash benefit for the class in a very efficient manner, saving the class from additional years of time, expense and substantial risk. Mr. Schochet represented one of the first institutional investors acting as a Lead Plaintiff in a post-Private Securities Litigation Reform Act case, *STI Classic Funds v. Bollinger, Inc.*, and obtained one of the first rulings interpreting that statute's intent provision in a manner favorable to investors.

On April 1, 2009, Mr. Schochet began his two-year term as President of the National Association of Shareholder and Consumer Attorneys (NASCAT), a trade organization and public policy voice for lawyers interested in a strong system of federal and state legal protections for investors and consumers. NASCAT consists of approximately 100 law firms committed to the vigorous prosecution of corporate fraud.

Since 1996, Mr. Schochet has acted as chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association. In that capacity, he has served on the Executive Committee of the Section and was the primary author of articles and reports on a wide variety of issues relating to class action procedure. Such issues include revisions to that procedure proposed over the years by both houses of the United States Congress and the Advisory Committee on Civil Procedure of the United States Judicial Conference. Examples include "Proposed Changes in Federal Class Action Procedure," "Opting

Out On Opting In," and "The Interstate Class Action Jurisdiction Act of 1999." He also has lectured extensively on securities litigation at continuing legal education seminars.

Mr. Schochet earned a B.A., *summa cum laude*, from the State University of New York at Binghamton in 1977, and a J.D. from Duke University School of Law in 1981.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the Central District of Illinois, the Northern District of Texas, and the United States Court of Appeals for the Second Circuit.

Mr. Schochet has received a rating of AV from the publishers of the Martindale-Hubbell directory.

MICHAEL W. STOCKER, PARTNER ***mstocker@labaton.com***

Michael W. Stocker represents clients in commercial litigation, with a primary focus on sophisticated antitrust and securities class action matters.

Earlier in his career, Mr. Stocker worked as a senior staff attorney with the United States Court of Appeals for the Ninth Circuit, and completed a legal externship with United States Magistrate Judge (now District Judge) Phyllis J. Hamilton of the Northern District of California.

Mr. Stocker's recent publications include: "Running on Empty," *The Deal Magazine*, February 18, 2011; "SEC Contemplating Governance Reforms," *Executive Counsel*, December 2010; "SEC paper focuses on proxy voting shortcomings," *The National Law Journal*, November 15, 2010; "Is the Shield Beginning to Crack?," *New York Law Journal*, November 15, 2010; "What Wall Street Can Learn From the BP Spill," *Institutional Investor*; November 1, 2010; "Automated Trading Leaving Retail Investors In The Dust," (Opinion), *Forbes.com*, October 15, 2010; "Toyota Debacle Spurs Reform Questions," *Directorship*, August 9, 2010; "Say What? Pay What? Real World Approaches to Executive Compensation Reform,"

Corporate Counsel, August 5, 2010; "SEC Measures To Prevent Flash Crashes Are Sensible, But Are They Enough?" (Opinion), *Forbes.com*, May 20, 2010; "A Recall for Toyota's Corporate Governance?" (Opinion), *Pensions & Investments*, April 5, 2010,"Reining in the Credit Ratings Industry," *New York Law Journal*, January 11, 2010; and "It's Time to Resuscitate the Shareholder Derivative Action," *The Panic of 2008: Causes, Consequences, and Implications for Reform*, Lawrence Mitchell and Arthur Wilmarth, Jr., eds, (Edward Elgar, 2010).

Mr. Stocker has offered financial commentary and analysis to BBC4 Radio and on the Canadian Broadcasting Corporation's Lang & O'Leary Exchange, and is a frequent speaker and panelist on topics relating to financial reform.

Mr. Stocker is also the Chief Contributor to "Eyes On Wall Street" (www.eyesonwallstreet.com), Labaton Sucharow's blog on economics, corporate governance, and other issues of interest to investors.

Mr. Stocker earned a B.A. from the University of California, Berkeley, in 1989, a J.D. from the University of California, Hastings College of Law, in 1995, and a Master of Criminology degree from the Law Department of the University of Sydney in 2000.

He is admitted to practice in California and New York as well as before the United States District Courts for the Northern and Central Districts of California, the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second, Eighth and Ninth Circuits.

RICHARD T. JOFFE, SENIOR COUNSEL ***rjoffe@labaton.com***

Richard Joffe's practice focuses on class action litigation, including securities fraud, antitrust and consumer fraud cases. Since joining the Firm, Mr. Joffe has represented such varied clients as institutional purchasers of corporate bonds, Wisconsin dairy farmers, and

consumers who alleged they were defrauded when they purchased annuities. He played a key role in shareholders obtaining a $303 million settlement of securities claims against General Motors and its outside auditor.

Prior to joining Labaton Sucharow, Mr. Joffe was an associate at Gibson, Dunn & Crutcher LLP, where he played a key role in obtaining a dismissal of claims against Merrill Lynch & Co. and a dozen other of America's largest investment banks and brokerage firms, who, in *Friedman v. Salomon/Smith Barney, Inc.*, were alleged to have conspired to fix the prices of initial public offerings.

Mr. Joffe also worked as an associate at Fried, Frank, Harris, Shriver & Jacobson where, among other things, in a case handled *pro bono*, he obtained a successful settlement for several older women who alleged they were victims of age and sex discrimination when they were selected for termination by New York City's Health and Hospitals Corporation during a city-wide reduction in force.

He co-authored "Protection Against Contribution and Indemnification Claims" in *Settlement Agreements in Commercial Disputes* (Aspen Law & Business, 2000).

Mr. Joffe earned a B.A., *summa cum laude*, from Columbia University in 1972, and a Ph.D. from Harvard University in 1984. He received a J.D. from Columbia Law School in 1993.

Mr. Joffe is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second, Third, Ninth and Eleventh Circuits. He is a member of the Association of the Bar of the City of New York and the American Bar Association.

Long before becoming a lawyer, Mr. Joffe was a founding member of the internationally famous rock and roll group, Sha Na Na.

JOSEPH V. STERNBERG, SENIOR COUNSEL ***jsternberg@labaton.com***

Joseph V. Sternberg is a trial and appellate lawyer with more than 35 years of experience in the areas of civil and class action litigation. He has prosecuted cases that have resulted in the return of hundreds of millions of dollars to class members. Among the numerous landmark cases in which Mr. Sternberg has participated are *Limmer v. Medallion Group, Inc.*, *Koppel v. Wien*, *In re Energy Systems Equipment Leasing Securities Litigation*, *Koppel v. 4987 Corp.*, *Gunter v. Ridgewood Energy Corp.*, and *In re Real Estate Associates Limited Partnership Litigation*.

Mr. Sternberg authored "Using and Protecting Against Rule 12(b) and 9(b) Motions," *The Practical Litigator*, September 1993.

Mr. Sternberg earned a B.A. from Hofstra University in 1963 and a J.D. from New York University School of Law in 1966.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second and Third Circuits.

He has received a rating of AV from the publishers of the Martindale-Hubble Directory.

DOMINIC J. AULD, OF COUNSEL ***dauld@labaton.com***

Dominic J. Auld joined Labaton Sucharow with over seven years of experience in the area of securities class action litigation. He has also worked in the areas of environmental and antitrust litigation. Mr. Auld is primarily responsible for working with the client and case development departments in identifying meritorious securities fraud cases and presenting them to the institutional investors harmed by the conduct at issue. Mr. Auld focuses on the Firm's existing relationships with institutional investors from his home country of Canada, and is also part of the Firm's outreach to other institutions worldwide.

Prior to joining Labaton Sucharow, Mr. Auld practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP, where he began his career as a member of the litigation team responsible for prosecuting the landmark WorldCom action which resulted in a settlement of over $6 billion. He also has a great deal of experience in working directly with institutional clients affected by securities fraud and worked extensively with the Ontario Teachers' Pension Plan in their actions *In re Nortel Networks Corporation Securities Litigation*, *In re Williams Securities Litigation*, and *In re Biovail Corporation Securities Litigation* - cases that settled for a total of over $1.7 billion. In the last two years, Mr. Auld has focused his practice on client relationships and development, and regularly advises large worldwide institutional investors on their rights and avenues of recovery available in the U.S. Courts and elsewhere.

He is a regular speaker at law and investment conferences and recently published an article on executive compensation in *Benefits Canada* magazine.

Mr. Auld earned a B.A. (hons) from Queen's University in Kingston, Ontario, Canada in 1992 and a J.D. from Lewis and Clark Law School in Portland, Oregon in 1998 where he was an annual member of the Dean's List. As a law student, he served as a founding member of the law review, *Animal Law*, which explores legal and environmental issues relating to laws such as the Endangered Species Act.

Mr. Auld is admitted to practice in New York.

MARK S. GOLDMAN, OF COUNSEL ***mgoldman@labaton.com***

Mark S. Goldman has 22 years' experience in commercial litigation, primarily litigating class actions involving securities fraud, consumer fraud, and violations of federal and state antitrust laws.

Mr. Goldman is currently prosecuting securities fraud claims on behalf of institutional and individual investors against a pharmaceutical company alleged to have misrepresented the status of clinical drug trials, hedge funds that misrepresented the net asset value of investors' shares, and a high tech company that did not disclose declining sales in its initial public offering materials. In addition, Mr. Goldman is participating in litigation brought against international air cargo carriers charged with conspiring to fix fuel and security surcharges, and domestic manufacturers of air filters, OSB, flat glass and chocolate, also charged with price fixing.

Recently, Mr. Goldman successfully litigated a number of consumer fraud cases brought against insurance companies challenging the manner in which they calculated life insurance premiums. He also prosecuted a number of insider trading cases brought against company insiders who, in violation of Section 16(b) of the Securities Exchange Act, engaged in short swing trading. In addition, Mr. Goldman participated in the prosecution of *In re AOL Time Warner Securities Litigation*, a massive securities fraud case that settled for $2.5 billion.

Mr. Goldman earned a B.A. from The Pennsylvania State University in 1981 and a J.D. from the University of Kansas School of Law in 1986.

He is admitted to practice in Pennsylvania.

Mr. Goldman has received a rating of AV from the publishers of the Martindale-Hubbell directory.

TERRI GOLDSTONE, OF COUNSEL ***tgoldstone@labaton.com***

Terri Goldstone concentrates her practice on prosecuting complex securities litigations on behalf of institutional investors.

Prior to joining Labaton Sucharow, Ms. Goldstone worked as an associate at Schwartz Goldstone & Campisi LLP. During her time there, she litigated personal injury cases and was the liaison to union members injured in the course of their employment.

Ms. Goldstone began her career as an Assistant District Attorney at the Bronx County District Attorney's Office.

Ms. Goldstone earned a B.A., *cum laude*, from American University in 1994. She earned a J.D. from Emory University School of Law in 1998, where she was a member of the Dean's List. During law school, Ms. Goldstone was a member of the International Law Society and was a semi-finalist in the Emory Appellate Advocacy Competition.

Ms. Goldstone is admitted to practice in New York.

BARRY M. OKUN, OF COUNSEL ***bokun@labaton.com***

Barry Michael Okun is a seasoned trial and appellate lawyer with more than 20 years' experience in a broad range of commercial litigation. Mr. Okun has litigated several leading commercial law cases, including the first case in which the United States Supreme Court ruled on issues relating to products liability.

Mr. Okun has argued appeals before the United States Court of Appeals for the Second Circuit and the Appellate Divisions of three out of the four judicial departments in New York State. He has appeared in numerous trial courts throughout the country.

Mr. Okun received a B.A. from the State University of New York at Binghamton and is a *cum laude* graduate of the Boston University School of Law, where he was Articles Editor of the *Law Review*.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the United States Courts of Appeals for the First, Second, Seventh and Eleventh Circuits, and the United States Supreme Court.

BRIAN D. PENNY, OF COUNSEL ***bpenny@labaton.com***

Brian D. Penny concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Mr. Penny is actively involved in prosecuting a number of the firm's options backdating cases, as well as other securities fraud cases against public companies. Mr. Penny played significant roles in prosecuting *In re Monster Worldwide, Inc. Securities Litigation* ($47.5 million settlement), as well as *In re Mercury Interactive Securities Litigation* ($117.5 million settlement), which is one of the largest known settlements in a securities options backdating class action.

In addition, Mr. Penny participated in the prosecution of *In re AOL Time Warner Securities Litigation*, a massive securities fraud case that settled for $2.5 billion, and *In re Broadcom Corporation Securities Litigation*, SA CV 01-0275(C.D. Cal.), which was a class action lawsuit against Broadcom Corp., its CEO, and CFO, alleging defendants violated Section 10(b) of the Exchange Act by using a series of acquisitions to hide expenses and materially inflate revenue. The case settled in 2005 for $150 million.

Mr. Penny earned a B.A. from Davidson College in 1997, and a J.D. from Dickinson School of Law of the Pennsylvania State University in 2000. While in law school, he clerked for the Honorable John T.J. Kelly, Senior Judge on the Pennsylvania Superior Court.

Mr. Penny is admitted to practice in Pennsylvania.

PAUL SCARLATO, OF COUNSEL ***pscarlato@labaton.com***

Paul Scarlato has over 20 years' experience litigating complex commercial matters, primarily in the prosecution of securities fraud and consumer fraud class actions and shareholder derivative actions.

Mr. Scarlato has litigated numerous cases on behalf of institutional and individual investors involving companies in a broad range of industries, many of which involved financial statement manipulation and accounting fraud. Mr. Scarlato was one of three lead attorneys for the class in *Kaufman v. Motorola, Inc.*, a securities-fraud class action case that recovered $25 million for investors just weeks before trial and, was one of the lead counsel in *Seidman v. American Mobile Systems, Inc.*, a securities-fraud class action case that resulted in a favorable settlement for the class on the eve of trail. Mr. Scarlato also served as co-lead counsel in *In re: Corel Corporation Securities Litigation*, and as class counsel in *In re AOL Time Warner Securities Litigation*, a securities fraud class action that recovered $2.5 billion for investors.

After law school, Mr. Scarlato served as law clerk to Judge Nelson Diaz of the Court of Common Pleas of Philadelphia County, and Justice James McDermott of the Pennsylvania Supreme Court. Thereafter, he worked in the tax department of a "big-six" accounting firm prior to entering private practice.

Mr. Scarlato earned a B.A. in Accounting from Moravian College in 1983 and a J.D. from Delaware Law School of Widener University in 1986.

He is admitted to practice in Pennsylvania and New Jersey.

NICOLE M. ZEISS, OF COUNSEL ***nzeiss@labaton.com***

Nicole M. Zeiss works principally in the area of securities class action litigation. Before joining Labaton Sucharow, Ms. Zeiss worked for MFY Legal Services, practicing in the area of

poverty law and at Gaynor & Bass doing general complex civil litigation, particularly representing the rights of freelance writers seeking copyright enforcement.

Ms. Zeiss was part of the team that successfully litigated *In re Bristol-Myers Squibb Securities Litigation*. Labaton Sucharow was able to secure a $185 million settlement on behalf of investors, as well as meaningful corporate governance reforms that will affect future consumers and investors alike. She has also litigated on behalf of investors who have been damaged by fraud in the telecommunications, hedge fund and banking industries.

Ms. Zeiss maintains a commitment to *pro bono* legal services by continuing to assist mentally ill clients in a variety of matters—from eviction proceedings to trust administration.

Ms. Zeiss earned a B.A. from Barnard College in 1991 and a J.D. from Benjamin N. Cardozo School of Law in 1995. She is admitted to practice in New York.

RACHEL A. AVAN, ASSOCIATE ***ravan@labaton.com***

Rachel A. Avan concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors, in addition to focusing on new case development.

Prior to joining Labaton Sucharow, Ms. Avan was an associate at Lippes Mathias Wexler Friedman LLP where she counseled clients regarding compliance with federal and state securities laws, helped draft securities filings, and assisted with the preparation of responses to the United States Securities and Exchange Commission and the Financial Industry Regulatory Authority.

Ms. Avan earned a B.A., *cum laude*, from Brandeis University in 2000, and an M.A. from Boston University in 2002. She received a J.D. from Benjamin N. Cardozo School of Law in 2006.

Prior to entering law school, Ms. Avan was an editorial assistant at a Boston-based publishing company.

Ms. Avan is admitted to practice in New York and Connecticut as well as before the United States District Court for the Southern District of New York.

Ms. Avan is proficient in Hebrew.

JOHN BOCKWOLDT, ASSOCIATE ***jbockwoldt@labaton.com***

John B. Bockwoldt concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Labaton Sucharow, Mr. Bockwoldt worked as an attorney in private practice, where he primarily litigated copyright and trademark infringement actions.

Mr. Bockwoldt received a B.A., *cum laude*, from the State University of Albany in 2003 and earned a J.D. from Brooklyn Law School in 2007. During law school, he served as a judicial intern to the Honorable Kiyo A. Matsumoto, former Magistrate Judge, and currently a United States District Judge for the Eastern District of New York.

Mr. Bockwoldt is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York. Mr. Bockwoldt is a member of the New York State Bar Association, the Association of the Bar of the City of New York, and the New York County Lawyers' Association.

JASON M. BUTLER, ASSOCIATE ***jbutler@labaton.com***

Jason M. Butler concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Labaton Sucharow, Mr. Butler served as a senior securities litigation associate at Arnold & Porter LLP. During his time there, he defended a national accounting firm

in multiple state and federal actions against allegations of fraud in origination and securitization of subprime loans. Mr. Butler began his career as a litigation associate at Sullivan & Cromwell LLP, where he represented Microsoft in its defense of consumer fraud and private antitrust damages actions around the country.

Mr. Butler earned a B.A. from the University of Maryland in 1993 and a J.D., *magna cum laude*, from New York Law School in 1998. During law school, he was the executive editor of the *New York Law School Review*. Mr. Butler served as a law clerk to the Honorable Ariel A. Rodriguez in New Jersey Superior Court, Appellate Division.

Mr. Butler is admitted to practice in New York and New Jersey.

JOSHUA L. CROWELL, ASSOCIATE ***jcrowell@labaton.com***

Joshua L. Crowell concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Labaton Sucharow, Mr. Crowell served as a litigation associate at Paul, Hastings, Janofsky & Walker LLP, where he represented clients primarily in the areas of financial, securitization, environmental, and class action litigation. Mr. Crowell began his career at Ernst & Young LLP, where he worked as a senior economics consultant by pricing intercompany transactions and calculating the value of intellectual property.

Mr. Crowell maintains a strong commitment to *pro bono* work. He received the Sanctuary for Families "Above and Beyond" award for *pro bono* representation of battered women, and most recently represented a woman in a civil suit brought by her abusive ex-husband's father.

Mr. Crowell earned a B.A. from Carleton College in 1999, and received a J.D., *cum laude*, from The George Washington University Law School in 2006. During law school, he was

an associate of *The George Washington Law Review* where he published the casenote: *Jurisdiction over Interlocutory Appeals Under the Federal Arbitration Act Absent an Arbitration Agreement*, 73 Geo.Wash.L.Rev. 767 (2005). In addition to being a member of the Mock Trial Board, he also served as a law intern for Chief Judge Edward J. Damich, United States Court of Federal Claims.

Mr. Crowell is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

MINDY S. DOLGOFF, ASSOCIATE ***mdolgoff@labaton.com***

Mindy S. Dolgoff concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors. Ms. Dolgoff is actively involved in *Hubbard v. BankAtlantic, et al.*

Prior to joining Labaton Sucharow, Ms. Dolgoff was an attorney at Dewey & LeBoeuf LLP, where she represented clients in connection with all aspects of complex litigation practice including securities fraud class action and shareholder derivative suits.

Ms. Dolgoff received a B.A. from Emory University in 2001, where she was an annual member of the Dean's List. She received a J.D. from New York University School of Law in 2004. During law school, Ms. Dolgoff served as the senior staff editor of the *Environmental Law Journal*.

She is admitted to practice in New York.

ALAN I. ELLMAN, ASSOCIATE ***aellman@labaton.com***

Alan I. Ellman concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Mr. Ellman is actively involved in prosecuting *In re Kingate Management Limited Securities Litigation*. Since joining Labaton Sucharow, Mr.

Ellman has been responsible for prosecuting *In re Satyam Computer Services Ltd. Securities Litigation* and *In re Bear Stearns Companies, Inc. Securities Litigation*.

Mr. Ellman was a member of the team that successfully litigated the stock options backdating case *In re Mercury Interactive Corp. Securities Litigation*, which resulted in a $117.5 million settlement. Mr. Ellman is also experienced in lead plaintiff motion practice and new case development.

In September 2006, Mr. Ellman received a Volunteer and Leadership Award from Housing Conservation Coordinators (HCC) for his *pro bono* service defending a client in Housing Court against a non-payment action, arguing an appeal before the Appellate Term, and staffing HCC's legal clinic. Mr. Ellman also successfully appealed a *pro bono* client's criminal sentence before the Appellate Division.

Mr. Ellman authored the article "US Focus: Time for Action" in the U.K.'s *Legal Week*.

Prior to joining Labaton Sucharow, Mr. Ellman practiced securities litigation and regulatory enforcement defense as an associate at Chadbourne & Parke LLP.

Mr. Ellman received B.S. and B.A. degrees, *cum laude*, from Binghamton University in 1999, and earned a J.D. from Georgetown University Law Center in 2003.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the District of Colorado, and the Eastern District of Wisconsin. He is a member of the Association of the Bar of the City of New York.

IONA M. EVANS, ASSOCIATE ***ievans@labaton.com***

Iona M. Evans concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Labaton Sucharow, Ms. Evans was a securities litigation group attorney with Kaplan Fox & Kilsheimer LLP, where she evaluated potential litigation regarding securities laws violations. Ms. Evans began her legal career as an associate in the securities and complex litigation group at Wolf Haldenstein Adler Freeman & Herz LLP. During her tenure at Wolf Haldenstein, Ms. Evans engaged in motion practice, discovery, trials, appeals, and settlement of cases and arbitrations in federal and state courts, as well as before the American Arbitration Association. Ms. Evans also volunteered as a Guardian Ad Litem for children on behalf of the Court Appointed Special Advocate Program.

A recipient of the Outstanding Undergraduate Award, Ms. Evans earned a B.A. in psychology with honors from the University of New Hampshire in 1999. She received a J.D. from the Boston University School of Law in 2004. During law school, Ms. Evans served as Executive Editor and Staff Writer of the *Boston University International Law Journal*, as well as President of the International Law Society.

Ms. Evans is admitted to practice in New York, Massachusetts, and New Hampshire. She is a member of the Association of the Bar of the City of New York and the American Bar Association.

YOKO GOTO, ASSOCIATE ***ygoto@labaton.com***

Yoko Goto concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Ms. Goto is the co-author of "A Recall for Toyota's Corporate Governance?" (Opinion), *Pensions & Investments*, April 5, 2010. She is a regular contributor to "Eyes On Wall Street" (www.eyesonwallstreet.com), Labaton Sucharow's blog on economics, corporate governance, and other issues of interest to investors.

While at Brooklyn Law School, Ms. Goto interned at the New York City Housing Development Corporation, the Department of Consumer Affairs and the Office of General Counsel for Merrill Lynch.

She is a member of the New York State Bar Association, the Association of the Bar of the City of New York and the New York County Lawyers' Association.

Prior to law school, Ms. Goto taught Japanese language at Cornell University and New York University.

Ms. Goto has a B.A. in Economics from Hokkaido University and is fluent in Japanese and conversational in Chinese.

SERENA HALLOWELL, ASSOCIATE ***shallowell@labaton.com***

Serena Hallowell concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Most recently, Mrs. Hallowell had been actively involved in the matter of *In re BankAtlantic Bancorp Inc. Securities Litigation*, and was a member of the trial team for the shareholder class. After a four-week trial in the federal court in Miami, the jury found BankAtlantic and its two senior officers liable for securities fraud because they intentionally lied about and failed to disclose the extent of the bank's lending risk. This was only the 10th securities fraud class action to go to trial since passage of the Private Securities Litigation Reform Act in 1995 and is the first securities class action case arising out of the financial crisis to go to jury verdict.

Prior to joining Labaton Sucharow, Ms. Hallowell was an attorney at Ohrenstein & Brown LLP, where she participated in various federal and state commercial litigation matters. During her time there, she also defended financial companies in regulatory proceedings and

assisted in high-profile coverage litigation matters in connection with mutual funds trading investigations.

During her time at Boston University School of Law, Ms. Hallowell served as the Note Editor for the *Journal of Science & Technology Law*.

She is conversational in Urdu/Hindi.

NICHOLAS R. HECTOR, ASSOCIATE ***nhector@labaton.com***

Nicholas R. Hector concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Mr. Hector is actively involved in *Medoff v. CVS Caremark Corporation et al.* and *In re In re Schering-Plough Corporation / ENHANCE Securities Litigation*.

Mr. Hector was a member of the team prosecuting *In re Broadcom Corp. Securities Litigation*, which resulted in a $160.5 million settlement. At the time of the 2009 settlement, this represented the second largest up-front cash settlement ever recovered from a company accused of options backdating.

Mr. Hector is a regular contributor to "Eyes on Wall Street" (www.eyesonwallstreet.com), Labaton Sucharow's blog on economics, corporate governance, and other issues of interest to investors.

Mr. Hector, a full tuition trustee scholar, earned a B.S. in Mechanical Engineering from the University of Southern California in 2004. He graduated on the dean's list. Mr. Hector received a J.D. from Brooklyn Law School in 2008. During law school, he was an active member of the Student Bar Association, and acted as the student representative for the American Bar Association. Mr. Hector also served as a legal intern at the Legal Aid Society of New York, Criminal Division, Spring 2008.

Mr. Hector is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

THOMAS G. HOFFMAN, JR., ASSOCIATE ***thoffman@labaton.com***

Thomas G. Hoffman, Jr. concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Labaton Sucharow, Mr. Hoffman served as a litigation associate at Latham & Watkins LLP, where he practiced complex commercial litigation in federal and state courts. While at Latham & Watkins, Mr. Hoffman's areas of practice included audit defense and securities litigation. He has represented clients in several significant securities class actions, including *In re Scottish Re Group Ltd. Securities Litigation* and *In re UnitedHealth Group Inc. PSLRA Litigation*.

Mr. Hoffman maintains a strong commitment to *pro bono* work. He received the Outstanding Pro Bono Service award from The Legal Aid Society for work on a Special Immigrant Juvenile Status matter, and he also supervised the Courtroom Advocates Program, in which summer associates act as advocates for victims of domestic violence.

Mr. Hoffman earned a B.F.A., with honors, from New York University in 1995, and a J.D. from UCLA School of Law in 2004. During law school he was Editor-in-Chief of the *UCLA Entertainment Law Review* and a Moot Court Executive Board Member. In addition, he served as a Judicial Extern to the Honorable William J. Rea, United States District Court for the Central District of California.

Mr. Hoffman is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

FELICIA MANN, ASSOCIATE ***fmann@labaton.com***

Felicia Mann concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Ms. Mann received a B.S. in Finance and International Business from Georgetown University in 2001 and a J.D. from Brooklyn Law School in 2009. During her time at law school, she earned the CALI Award for Excellence in Legal Drafting. She also served as a summer associate at Labaton Sucharow, where she drafted memoranda related to securities and antitrust law. Additionally, she served as a Judicial Intern in the U.S. District Court of the Eastern District of New York for the Honorable Dora Irizarry, and was an intern for the Bureau of Securities in the New Jersey Attorney General's Office.

Prior to practicing law, Ms. Mann was a financial analyst and assistant vice president at Marsh Inc. in its market security group where she evaluated and monitored the financial condition of U.S. and European insurers.

Ms. Mann is admitted to practice in New Jersey and New York as well as before the United States District Courts for the District of New Jersey and the Southern and Eastern Districts of New York. She is a member of the American Bar Association.

CRAIG A. MARTIN, ASSOCIATE ***cmartin@labaton.com***

Craig A. Martin concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Mr. Martin specializes in securities cases involving auditors and accounting related fraud. Currently, Mr. Martin represents the Successor Liquidating Trustee of Lipper Convertibles, L.P. and Lipper Fixed Income Fund, L.P., failed hedge funds, in actions against the Fund's former auditors, overdrawn limited partners and management team.

He has helped recover $5.2 million from overdrawn limited partners and $30 million from the Fund's former auditors.

Mr. Martin was part of a team that secured a $109 million settlement in *In re HealthSouth Securities Litigation* against Ernst & Young LLP. This is believed to be the eighth largest securities fraud class action settlement with an auditor.

Mr. Martin is the co-author of "Undermining Accounting Rules," *Investment Week*, October 19, 2009. He also is a contributor to "Eyes on Wall Street" (www.eyesonwallstreet.com), Labaton Sucharow's blog on economics, corporate governance, and other issues of interest to investors.

Prior to practicing law, Mr. Martin, a Certified Public Accountant, worked in auditing, accounting and finance positions at certain Fortune 500 companies. Mr. Martin began his professional career at a Big Four accounting firm, where, for almost five years, he specialized in auditing financial services companies. Mr. Martin's previous business experience adds further depth to the Labaton Sucharow team in prosecuting complex securities fraud cases.

Mr. Martin earned a B.S. in Accounting from Ithaca College in 1990 and an M.B.A. from New York University's Leonard N. Stern School of Business in 2004. He earned a J.D. from Seton Hall University's School of Law in 2004. While in law school, Mr. Martin was a participant in the Eugene Gressman Moot Court Competition, was appointed a member of the Appellate Advocacy Moot Court Board, and was awarded Best Brief and Best Oralist in his Appellate Advocacy class.

Mr. Martin is admitted to practice in New York and New Jersey, as well as before the United States District Courts for the District of New Jersey and the Southern and Eastern Districts of New York.

MATTHEW C. MOEHLMAN, ASSOCIATE ***mmoehlman@labaton.com***

Matthew C. Moehlman concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. He is currently a member of the litigation teams prosecuting *In re Banco Santander Securities-Optimal Litigation* and *In re Colonial BancGroup, Inc. Securities Litigation.*

Prior to joining Labaton Sucharow, Mr. Moehlman practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP, where he was a member of the teams on several of the firm's high profile cases, including the securities class action against the Federal Home Loan Mortgage Corporation ("Freddie Mac"), in which a $410 million settlement was obtained for defrauded investors and *In re Delphi Corporation Securities Litigation*, which resulted in a settlement with a potential value of over $322 million in cash and stock. He was also a member of the teams that successfully prosecuted *In re SFBC International, Inc. Securities & Derivatives Litigation*, resulting in a settlement of $28.5 million and *In re Suprema Specialties, Inc. Securities Litigation*, resulting in a settlement of $19 million in cash. Mr. Moehlman began his career as an associate at Strasburger & Price, LLP and has experience in commercial litigation.

Mr. Moehlman earned an A.B. from Harvard College in 1992 and received a J.D. from the University of Virginia School of Law in 2003. During college, he was the Editor of *The Harvard Lampoon* magazine and *The Harvard Crimson* newspaper.

Mr. Moehlman is admitted to practice in New York and Texas.

ANGELINA NGUYEN, ASSOCIATE ***anguyen@labaton.com***

Angelina Nguyen concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Labaton Sucharow, Ms. Nguyen was an associate at Quinn, Emanuel, Urquhart, Oliver & Hedges LLP. Ms. Nguyen began her career as an associate at Skadden, Arps, Slate, Meagher & Flom LLP, where she worked on the *Worldcom Securities Litigation*.

Ms. Nguyen earned a B.S. in Chemistry and Mathematics, with first class honors, from the University of London, Queen Mary and Westfield College, in 1996. She received a J.D. from Harvard Law School in 2003.

Ms. Nguyen is admitted to practice in New York.

MICHAEL H. ROGERS, ASSOCIATE ***mrogers@labaton.com***

Michael H. Rogers concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Mr. Rogers is actively involved in *In re Countrywide Securities Litigation* and *In re HealthSouth Securities Litigation*. He was a member of a team that secured a $117.5 million settlement in *In re Mercury Interactive Securities Litigation*, which is one of the largest settlements to date in an options backdating class action.

Prior to joining Labaton Sucharow, Mr. Rogers was an attorney at Kasowitz, Benson, Torres & Friedman LLP, where he practiced securities and antitrust litigation, representing international banking institutions bringing federal securities and other claims against major banks, auditing firms, ratings agencies and individuals in complex multidistrict litigation. He also represented an international chemical shipping firm in arbitration of antitrust and other claims against conspirator ship owners.

Mr. Rogers began his career as an attorney at Sullivan & Cromwell, where he was part of Microsoft's defense team in the remedies phase of the Department of Justice antitrust action against the company.

Mr. Rogers received a B.A., *magna cum laude*, from Columbia University in 1995, and a J.D., *magna cum laude*, from the Benjamin N. Cardozo School of Law in 2001, where he was a member of the *Cardozo Law Review*.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

Mr. Rogers is proficient in Spanish.

ERIN H. RUMP, ASSOCIATE ***erump@labaton.com***

Erin H. Rump concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, she is a member of the Lead Counsel team litigating a consolidated securities class action against British Petroleum.

Ms. Rump was actively involved in prosecuting *In re NovaGold Resources Inc. Securities Litigation*, which resulted in a global settlement of C$28 million (approximately $26 million U.S.) The settlement was one of the largest cross-border securities class action settlements in 2010.

Ms. Rump earned a B.A. from Villanova University in 2004 and received a J.D. from Brooklyn Law School in 2008. While in law school, Ms. Rump worked as a Judicial Intern in the U.S. District Court for the Eastern District of New York for Magistrate Judge Cheryl Pollak.

Ms. Rump is admitted to practice in New York as well as before the United States District Courts for the Southern District of New York and the District of Colorado, and the United States Court of Appeals for the Ninth Circuit. She is a member of the New York State Bar Association, the Association of the Bar of the City of New York, the American Bar Association, and the Federal Bar Council.

PHILIP C. SMITH, ASSOCIATE ***psmith@labaton.com***

Philip C. Smith concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Labaton Sucharow, Mr. Smith was an associate at Sidley Austin LLP, where he engaged in all aspects of complex commercial, securities, and employment litigation and counseling. During his tenure at Sidley Austin, Mr. Smith also represented victims of domestic violence in affiliation with inMotion, an organization that provides *pro bono* legal services to indigent women. For that work, he received the inMotion Commitment to Justice Award. Mr. Smith began his legal career as a labor and employment associate at Morgan, Lewis & Bockius LLP.

Mr. Smith earned a B.A. from Hobart and William Smith Colleges in 1995, an M.A. from Columbia University in 1998, and completed his Ph.D. coursework in classics at the University of Virginia in 2001. He received his J.D. from the University of Pennsylvania Law School in 2004, where he was the Comment Editor for the *Journal of Constitutional Law*.

Mr. Smith is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York. He is a member of the Association of the Bar of the City of New York and the American Bar Association.

STEFANIE J. SUNDEL, ASSOCIATE ***ssundel@labaton.com***

Stefanie J. Sundel concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors, with a particular emphasis on litigation strategy and new case development.

Since joining Labaton Sucharow, Ms. Sundel has been responsible for prosecuting several of the Firm's cases, including *In re Satyam Computer Services Ltd. Securities Litigation*,

In re Countrywide Financial Corp. Securities Litigation, *In re Mercury Interactive Securities Litigation*, and the securities litigations against BP and Vivendi.

Ms. Sundel has the unique experience of participating in one of only eleven securities class action trials since the passage of the Private Securities Litigation Reform Act of 1995.

Having completed her undergraduate studies in Lugano, Switzerland, Ms. Sundel is active in educating European institutional investors on developing trends in the law, particularly the ability of international investors to participate in securities class actions in the United States.

Ms. Sundel is a regular contributor to "Eyes On Wall Street" (www.eyesonwallstreet.com), Labaton Sucharow's blog on economics, corporate governance, and other issues of interest to investors. She is the author of "Women In The Law: Many Mentors, Many Lessons: From The Alpha Girl," *New York Law Journal*, November 8, 2010; and is the co-author of "Corporate Democracy in Action After 'Citizens United'," *New York Law Journal*, March 8, 2010.

Ms. Sundel is a member of the NASCAT Women's Initiative, and also devotes time to *pro bono* matters affecting women's rights.

Prior to joining Labaton Sucharow, Ms. Sundel was an associate at New York City-based law firm where she was a member of the team litigating *In re Adelphia Communications Corp. Securities & Derivative Litigation*, arising out of one of the most egregious financial frauds ever uncovered at a public company.

An active member of the New York State Bar Association's Committee on Ethics and Professionalism, Ms. Sundel published an article in the New York Litigator's Spring 2008 Newsletter discussing revisions to the rules promulgated by the Committee on Standards of Attorney Conduct ("COSAC"), and also co-authored a Report on Proposed COSAC Rules & Revised Rules of Lawyer Advertising.

Ms. Sundel is a member of the American Bar Association, the New York State Bar Association, the Association of the Bar of the City of New York, and the New York County Lawyers' Association.

She is fluent in Italian.

STEPHEN W. TOUNTAS, ASSOCIATE ***stountas@labaton.com***

Stephen W. Tountas concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Mr. Tountas is actively involved in prosecuting *In re Schering-Plough Corp. /ENHANCE Securities Litigation*, *In re Satyam Computer Services, Ltd. Securities Litigation*, and two individual actions related to *In re Adelphia Communications Corp. Securities & Derivative Litigation*.

Since joining Labaton Sucharow, Mr. Tountas has been responsible for prosecuting several of the Firm's options backdating cases, including *In re Broadcom Corp. Securities Litigation* ($160.5 million settlement), *In re Amkor Technologies Inc. Securities Litigation* ($11.25 million settlement), *In re HCC Insurance Holdings, Inc. Securities Litigation* ($10 million settlement), and *In re American Tower Corp. Securities Litigation* ($14 million settlement). Among other matters, Mr. Tountas was also a member of the team responsible for prosecuting *In re VERITAS Software Corp. Securities Litigation*, which settled for $21.5 million.

Prior to joining Labaton Sucharow, Mr. Tountas practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP. During his time there, he prosecuted the *In re OM Group, Inc. Securities Litigation*, which resulted in a settlement of $92.4 million, as well as securities cases involving Biovail Corp., MasTec, Inc., Collins & Aikman Corp. and Scottish Re Group. His work on the securities class action against Biovail Corp. contributed to a settlement of $138 million.

Mr. Tountas earned a B.A. from Union College in 2000 and a J.D. from Washington University School of Law in 2003. As a law student, he served as Editor-in-Chief of the *Washington University Journal of Law & Policy* and was a finalist in the Environmental Law Moot Court Competition. Additionally, Mr. Tountas worked as Research Assistant to Joel Seligman, one of the country's foremost experts on securities law. In May 2003, he received the Scribe's Award in recognition of his Note entitled, *Carnivore: Is the Regulation of Wireless Technology a Legally Viable Option to Curtail the Growth of Cybercrime?*, 11 Wash. U. J.L. & Pol'y 351.

Mr. Tountas is admitted to practice in New York and New Jersey as well as before the United States District Courts for the Southern District of New York, the District of New Jersey, and the United States Court of Appeals for the Ninth Circuit.

CAROL C. VILLEGAS, ASSOCIATE ***cvillegas@labaton.com***

Carol C. Villegas concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Ms. Villegas is actively prosecuting *In re Briarwood Investments, Inc. v. Care Investment Trust, Inc., et al.* and *Lancer Funds Securities Class Action*.

Ms. Villegas is a regular contributor to "Eyes on Wall Street," Labaton Sucharow's blog on economics, corporate governance, and other issues of interest to investors.

Prior to joining Labaton Sucharow, Ms. Villegas served as the Assistant District Attorney in the Supreme Court Bureau, for the Richmond County District Attorney's Office. During her tenure at the District Attorney's Office, Ms. Villegas took several cases to trial. Ms. Villegas began her career at King & Spalding LLP where she worked as an associate in the Intellectual Property practice group.

Ms. Villegas earned a B.A. from New York University in 1999, and received a J.D. from the New York University School of Law in 2002. She was the recipient of The Irving H. Jurow Achievement Award for the Study of Law, and was awarded the Association of the Bar of the City of New York Minority Fellowship. Ms. Villegas served as the Staff Editor, and later the Notes Editor, of the *Environmental Law Journal*.

Ms. Villegas is admitted to practice in New York and New Jersey as well as before the United States District Courts for the Southern and Eastern Districts of New York, and the District of New Jersey. Ms. Villegas is a member of the Association of the Bar of the City of New York and the New York State Bar Association.

She is fluent in Spanish.

MICHAEL L. WOOLLEY, ASSOCIATE ***mwoolley@labaton.com***

Michael L. Woolley concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Labaton Sucharow, Mr. Woolley was a litigation associate at Seward & Kissel LLP, where he practiced commercial litigation in federal and state courts. Mr. Woolley also has extensive experience representing investment managers, hedge funds, and broker-dealers in arbitrations and regulatory investigations. He began his career as an associate at Husch Blackwell Sanders in Kansas City, Missouri.

Mr. Woolley earned a B.S. from the University of Nebraska in 1995 and a J.D. from Georgetown University Law Center in 1998. During law school, he was a Foreign Lawyer Law Fellow and a staff member of the *Georgetown Journal of Legal Ethics*.

Mr. Woolley is admitted to practice in New York and Missouri as well as before the United States District Courts for the Southern and Eastern Districts of New York; the Western District of Missouri; and the United States Courts of Appeals for the Third and Sixth circuits.

Exhibit B

THORNTON & NAUMES, LLP

THORNTON & NAUMES, LLP, was founded in 1978, and was in the forefront of the battle to bring justice to asbestos victims in New England. It has since grown to be the largest plaintiffs' personal injury firm in New England. In addition to representing more than 10,000 workers and their families injured by dangerous products and toxic materials, the firm handles complex fraud litigation, including class actions involving violations of federal securities, consumer-protection and whistleblower laws in federal and state courts throughout the country.

The firm's efforts have focused on cutting edge litigation involving public health and corporate misconduct. For example, Thornton and Naumes led a team of lawyers representing the Commonwealth of Massachusetts in a landmark lawsuit against the Tobacco industry that resulted in a settlement which will pay Massachusetts hundreds of millions of dollars each year for over two decades. In addition, the firm represents other states and municipalities against the lead industry, children with birth defects caused by chemical exposure, owners of property damaged by toxic waste, and individuals killed or injured in work related incidents. Thornton and Naumes has also been active in class action litigation involving medical monitoring for tobacco users, insurance fraud, securities litigation on behalf of public authorities, credit card data security, automotive design, and litigation on behalf of public and private pension funds against the banking industry. Currently, Thornton and Naumes is co-counsel in *Donovan, et.al. v. Phillip Morris USA Inc*., (USDC, Mass.), *Travelers Insurance Company Asbestos Settlement Class Action*, (USDC, SDNY), and *Kaiten and Geoffrion v. National Real Estate Information Services, Inc., et.al*. (USDC, Mass.)

Thornton and Naumes is active in supporting pioneering medical research to treat and cure environmentally caused cancer, and in promoting legislation to protect workers and their legal rights.

THE FIRM'S ATTORNEYS APPEARING IN THIS MATTER

MICHAEL P. THORNTON Michael Thornton is managing partner and co-founder of Thornton & Naumes. A nationally recognized expert on toxic tort litigation, Mr. Thornton graduated from Dartmouth College and Vanderbilt Law School. In the 1970's he successfully undertook the representation of a number of shipyard and construction workers who had developed asbestos-related diseases. Over the years, the firm has grown to become the largest firm in the Northeast representing victims of asbestos and other toxic materials.

Mr. Thornton practices in the areas of class actions, Attorney General litigation, benzene, toxic substance and occupational disease claims, birth defects linked to chemicals, childhood lead poisoning, construction and jobsite accidents, Mesothelioma and asbestos claims, pharmaceutical drug and medical device litigation, product liability and personal injury, toxic tort and environmental litigation, wage and hour, and whistleblower litigation.

During the past decade, Mr. Thornton has lead the firm to support many charitable causes; the most visible and important project involves cancer research. Mr. Thornton was approached by clinicians and researchers at Brigham and Women's Hospital who were interested in studying mesothelioma, a then untreatable and invariably fatal form of asbestos related cancer. After making a multiyear commitment from his own firm, Mr. Thornton helped to recruit several other donors. The program, now in its seventh year, has made groundbreaking strides in cancer

research generally, and has helped to revolutionize the treatment of mesothelioma, leading to longer survival and better quality of life for victims of this disease.

Mr. Thornton also responded to a call to help establish a place for the families of mesothelioma victims to stay, as the financial impact of staying in hotels can be devastating. The Thornton and Naumes House was opened in 2008 and houses up to nine families at a time.

Mr. Thornton is a member of the Massachusetts, New Hampshire, and Maine bars. He has published a number of articles on legal subjects and has lectured at the Harvard School of Public Health, Harvard Medical School, and Yale Law School.

GARRETT J. BRADLEY Mr. Bradley is a graduate of Boston College and Boston College Law School. Prior to joining Thornton & Naumes, Mr. Bradley worked as an Assistant District Attorney in the Plymouth County D.A.'s office. Mr. Bradley practices in the areas of class actions, construction and jobsite accidents, mesothelioma and asbestos claims, and workers compensation. Mr. Bradley is a member of the Massachusetts and the New York Bar.

Exhibit C

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FIRM PROFILE:

Lieff Cabraser Heimann & Bernstein, LLP, is a sixty-plus attorney, AV-rated law firm founded in 1972 with offices in San Francisco, New York and Nashville. We have a diversified practice, successfully representing plaintiffs in the fields of personal injury and mass torts, securities and financial fraud, employment discrimination and unlawful employment practices, product defect, antitrust, consumer protection, environmental and toxic exposure, False Claims Act, and human rights. Our clients include individuals, classes or groups of persons, businesses, and public and private entities.

Lieff Cabraser has served as court-appointed Plaintiffs' Lead or Class Counsel in state and federal coordinated, multi-district, and complex litigation throughout the United States. With co-counsel, we have represented clients across the globe in cases filed in American courts.

Lieff Cabraser is among the largest firms in the United States that only represent plaintiffs. Described by *The American Lawyer* as "one of the nation's premier plaintiffs' firms," Lieff Cabraser enjoys a national reputation for professional integrity and the successful prosecution of our clients' claims. We possess sophisticated legal skills and the financial resources necessary for the handling of large, complex cases, and for litigating against some of the nation's largest corporations. We take great pride in the leadership roles our firm plays in many of this country's major cases, including those resulting in landmark decisions and precedent-setting rulings.

Lieff Cabraser has litigated and resolved thousands of individual lawsuits and hundreds of class and group actions, including some of the most important civil cases in the United States over the past three decades. We have assisted our clients recover over $42 billion in verdicts and settlements for clients, plus an additional $206 billion in the multi-state tobacco litigation. Fifteen cases were resolved for over $1 billion; another 30 cases resulted in verdicts or settlements in excess of $100 million.

In the 2010 edition of its annual list of the top plaintiffs' law firms, *The National Law Journal* again selected Lieff Cabraser. In compiling the list, *The National Law Journal* examines recent verdicts and settlements and looked for firms "representing the best qualities of the plaintiffs' bar and that demonstrated unusual dedication and creativity." Lieff Cabraser is one of only two plaintiffs' law firms in the United States to receive this honor for the last eight years.

In September 2010, *U.S. News* and *Best Lawyers* recognized Lieff Cabraser as one of the best law firms in the nation. The publications undertook a comprehensive review of the U.S. legal profession, examining 8,782 law firms in 81 practice areas. Lieff Cabraser received a national Tier 1 ranking in the practice area of Mass Torts Litigation/Class Actions - Plaintiffs. Lieff Cabraser was one of only 22 plaintiffs' law firms nationwide to receive this ranking.

CASE PROFILES:

I. Personal Injury and Products Liability Litigation

A. Current Cases

1. ***In Re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation***, MDL No. 2151 (C.D. Cal.). Elizabeth J. Cabraser serves as Co-Lead Counsel for the plaintiffs in the Toyota injury cases in federal court and our firm represents individuals and families of loved ones nationwide who died in Toyota sudden acceleration accidents. Plaintiffs charge that Toyota knew of numerous complaints that its vehicles suddenly accelerated and could not be stopped by proper application of the brake pedal. Plaintiffs further charge that Toyota breached its duty to manufacture and sell safe automobiles by failing to incorporate within its vehicles a brake override system and other readily available safeguards that could have prevented sudden unintended acceleration. On December 9, 2010, U.S. District Court Judge James V. Selna denied Toyota's motion to dismiss the lawsuits. Discovery remains ongoing and cases are being selected and prepared for trial.

2. ***DePuy ASR Artificial Hip Implants Litigation***. Lieff Cabraser represents patients nationwide personal injury claims for patients nationwide that received the ASR XL Acetabular and ASR Hip

Resurfacing systems manufactured by DePuy Orthopedics, a unit of Johnson & Johnson. On August 26, 2010, DePuy Orthopedics announced the recall of its all-metal ASR hip implants, which were implanted in approximately 40,000 patients in the U.S. from August 2005 through August 2010. The complaints allege that DePuy Orthopedics was aware its ASR hip implants were failing at a high rate, yet continued to manufacture and sell the product to unsuspecting physicians and patients. In January 2011, in *In re DePuy Orthopaedics, Inc. ASR Hip Implant Products*, MDL No. 2197, the Court overseeing all DePuy recall lawsuits in federal court appointed Lieff Cabraser attorney Wendy R. Fleishman to the Plaintiffs' Steering Committee for the organization and coordination of the litigation.

3. ***In re Zimmer Durom Cup Product Liability Litigation***, MDL No. 2158. Lieff Cabraser serves as Co-Liaison Counsel for patients nationwide injured by the defective Durom Cup manufactured by Zimmer Holdings. First sold in the U.S. in 2006, Zimmer marketed its 'metal-on-metal' Durom Cup implant as providing a greater range of motion and less wear than traditional hip replacement components. In July 2008, Zimmer announced the suspension of Durom sales. The complaints estimate that the failure rate of the Durom Cup so far is between 20% and 30%. The true failure rate of the Zimmer Durom Cup may climb much higher in the coming years as doctors and their patients come to realize that their implants are failing.

4. ***Yaz, Yasmin, Ocella Litigation***. Lieff Cabraser represents women prescribed Yasmin and Yaz oral contraceptives and their generic equivalent Ocella who suffered blood clots, deep vein thrombosis, strokes, and heart attacks, as well as the families of loved ones who died suddenly while taking these medications. The complaints allege that Bayer, the manufacturer of Yaz and Yasmin, failed to adequately warn patients and physicians of the increased risk of serious adverse effects from Yasmin and Yaz. The complaints also charge that these oral contraceptives posed a greater risk of serious side effects than other widely available birth control drugs.

5. ***Luisi v. Medtronic***, No. 07 CV 4250 (D. Minn.). Lieff Cabraser currently represents over seven hundred heart patients nationwide who were implanted with recalled Sprint Fidelis defibrillator leads manufactured by Medtronic Inc. Plaintiffs charge that Medtronic has misrepresented the safety of the Sprint Fidelis leads and a defect in the device triggered their receiving massive, unnecessary electrical shocks.

6. ***Fen-Phen ("Diet Drugs") Litigation.*** Since the recall was announced in 1997, Lieff Cabraser has represented individuals who suffered injuries from the "Fen-Phen" diet drugs fenfluramine (sold as

Pondimin) and/or dexfenfluramine (sold as Redux). We served as counsel for the plaintiff that filed the first nationwide class action lawsuit against the diet drug manufacturers alleging that they had failed to adequately warn physicians and consumers of the risks associated with the drugs. In *In re Diet Drugs (Phentermine / Fenfluramine / Dexfenfluramine) Products Liability Litigation*, MDL No. 1203 (E.D. Pa.), the Court appointed Elizabeth J. Cabraser to the Plaintiffs' Management Committee which organized and directed the Fen-Phen diet drugs litigation filed across the nation in federal courts. In August 2000, the Court approved a $4.75 billion settlement offering both medical monitoring relief for persons exposed to the drug and compensation for persons with qualifying damage. We continue to represent persons that suffered valvular heart disease due to Fen-Phen and received compensation under the Diet Drugs Settlement who now require heart value surgery. These persons may be eligible to submit a new claim and receive additional compensation under the settlement.

7. ***In Re Yamaha Motor Corp. Rhino ATV Products Liability Litigation,*** MDL No. 2016 (W.D. Ky.) Lieff Cabraser serves as Plaintiffs' Lead Counsel in the litigation in federal court and Co-Lead Counsel in coordinated California state court litigation arising out of serious injuries and deaths in rollover accidents involving the Yamaha Rhino. The complaints charge that the Yamaha Rhino contains design and engineering flaws and should have been equipped with doors from inception. Our client's complaints allege also that the Yamaha Rhino is unstable due to a narrow track width and high center of gravity.

8. ***Advanced Medical Optics Complete MoisturePlus Litigation***. Lieff Cabraser represents consumers nationwide in personal injury lawsuits filed against Advanced Medical Optics arising out of the May 2007 recall of AMO's Complete MoisturePlus Multi Purpose Contact Lens Solution. The product was recalled due to reports of a link between a rare, but serious eye infection, *Acanthamoeba keratitis*, caused by a parasite and use of AMO's contact lens solution. Plaintiffs charge that though AMO aggressively promoted Complete MoisturePlus Multi Purpose as "effective against the introduction of common ocular microorganisms," the lens solution was ineffective and vastly inferior to other multipurpose solutions on the market. Several plaintiffs were forced to undergo painful corneal transplant surgery to save their vision and some have lost all or part of their vision permanently. The majority of Lieff Cabraser's clients have settled their cases with AMO on favorable, confidential terms.

9. ***Injury and Death Lawsuits Involving Defective Tires, Transmissions, Cars and/or Vehicle Parts (Seat Belts, Roof Crush, Defective seats, and Other Defects).*** Lieff Cabraser has an

active practice prosecuting claims for clients injured, or the families of loved ones who have died, by wrongful driver conduct and by unsafe and defective vehicles, tires, restraint systems, seats, and other automotive equipment. We represent clients in actions involving fatalities and serious injuries from tire and transmission failures as well as rollover accidents (and defective roofs, belts, seat back and other parts) as well as defective transmissions and/or shifter gates that cause vehicles to self shift from park or false park into reverse.

B. Successes

1. ***Multi-State Tobacco Litigation***. Lieff Cabraser represented the Attorneys' General of Massachusetts, Louisiana and Illinois, several additional states, and 21 cities and counties in California, in litigation against Philip Morris, R.J. Reynolds and other cigarette manufacturers. The suits were part of the landmark $206 billion settlement announced in November 1998 between the tobacco industry and the states' attorneys general. The states, cities and counties sought both to recover the public costs of treating smoking-related diseases and require the tobacco industry to undertake extensive modifications of its marketing and promotion activities in order to reduce teenage smoking. In California alone, Lieff Cabraser's clients were awarded an estimated $12.5 billion to be paid over the next 25 years.

2. ***In re Vioxx Products Liability Litigation***, MDL No. 1657 (E.D. La.). Lieff Cabraser represented patients that suffered heart attacks or strokes, and the families of loved ones who died, after having being prescribed the arthritis and pain medication Vioxx. In individual personal injury lawsuits against Merck, the manufacturer of Vioxx, our clients allege that Merck falsely promoted the safety of Vioxx and failed to disclose the full range of the drug's dangerous side effects. In April 2005, in the federal multidistrict litigation, the Court appointed Elizabeth J. Cabraser to the Plaintiffs' Steering Committee, which has the responsibility of conducting all pretrial discovery of Vioxx cases in Federal court and pursuing all settlement options with Merck. In August 2006, Lieff Cabraser was co-counsel in *Barnett v. Merck*, tried in the federal Court in New Orleans. Lieff Cabraser attorneys Don Arbitblit and Jennifer Gross participated in the trial, working closely with attorneys Mark Robinson and Andy Birchfield. The jury reached a verdict in favor of Mr. Barnett, finding that Vioxx caused his heart attack, and that Merck's conduct justified an award of punitive damages. In November 2007, Merck announced it had entered into an agreement with the executive committee of the Plaintiffs' Steering Committee as well as representatives of plaintiffs' counsel in state coordinated proceedings. Merck paid $4.85 billion into a settlement fund for qualifying claims.

3. ***In re Silicone Gel Breast Implants Products Liability Litigation***, MDL No. 926 (N.D. Ala.). Lieff Cabraser served on the Plaintiffs' Steering Committee and was one of five members of the negotiating committee which achieved a $4.25 billion global settlement with certain defendants of the action. This was renegotiated in 1995, and is referred to as the Revised Settlement Program ("RSP"). Over 100,000 recipients have received initial payments, reimbursement for the explanation expenses and/or long term benefits.

4. ***Sulzer Hip and Knee Implants Litigation.*** In December 2000, Sulzer Orthopedics, Inc., announced the recall of approximately 30,000 units of its Inter-Op Acetabular Shell Hip Implant, followed in May 2001 with a notification of failures of its Natural Knee II Tibial Baseplate Knee Implant. In coordinated litigation in California state court, *In re Hip Replacement Cases*, JCCP 4165, Lieff Cabraser served as Court-appointed Plaintiffs' Liaison Counsel and Co-Lead Counsel. In the federal litigation, *In re Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation*, MDL No. 1410, Lieff Cabraser played a significant role in negotiating a revised settlement with Sulzer valued at more than $1 billion. In May 2002, the Court approved the revised settlement.

5. ***In re Bextra/Celebrex Marketing Sales Practices and Products Liability Litigation***, MDL No. 1699 (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Liaison Counsel and Elizabeth J. Cabraser chaired the Plaintiffs' Steering Committee (PSC) charged with overseeing all personal injury and consumer litigation in Federal courts nationwide arising out of the sale and marketing of the COX-2 inhibitors Bextra and Celebrex, manufactured by Pfizer, Inc and its predecessor companies Pharmacia Corporation and G.D. Searle, Inc.

   Under the global resolution of the multidistrict tort and consumer litigation announced in October 2008, Pfizer is paying at least $850 million, including over $750 million to resolve death and injury claims.

   In a report adopted by the Court on common benefit work performed by the PSC, the Special Master stated:

   > [L]eading counsel form both sides, and the attorneys from the PSC who actively participated in this litigation, demonstrated the utmost skill and professionalism in dealing with numerous complex legal and factual issues. The briefing presented to the Special Master, and also to the Court, and the development of evidence by both sides was exemplary. The Special Master particularly wishes to recognize that leading counsel for both sides worked

extremely hard to minimize disputes, and when they arose, to make sure that they were raised with a minimum of rancor and a maximum of candor before the Special Master and Court.

6. ***In re Guidant Implantable Defibrillators Products Liability Litigation***, MDL No. 1708. Lieff Cabraser serves on the Plaintiffs' Lead Counsel Committee in litigation in federal court arising out of the recall of Guidant cardiac defibrillators implanted in patients because of potential malfunctions in the devices. At the time of the recall, Guidant admitted it was aware of 43 reports of device failures, and two patient deaths. Guidant subsequently acknowledged that the actual rate of failure may be higher than the reported rate and that the number of associated deaths may be underreported, since implantable cardio-defibrillators are not routinely evaluated after death. In January 2008, the parties reached a global settlement of the action. Guidant's settlements of defibrillator-related claims will total $240 million.

7. ***In re Copley Pharmaceutical, Inc., "Albuterol" Products Liability Litigation***, MDL No. 1013 (D. Wyo.). Lieff Cabraser served on the Plaintiffs' Steering Committee in a class action lawsuit against Copley Pharmaceutical, which manufactured Albuterol, a bronchodilator prescription pharmaceutical. Albuterol was the subject of a nationwide recall in January 1994 after a microorganism was found to have contaminated the solution, allegedly causing numerous injuries including bronchial infections, pneumonia, respiratory distress and, in some cases, death. In October 1994, the district court certified a nationwide class on liability issues. *In re Copley Pharmaceutical*, 161 F.R.D. 456 (D. Wyo. 1995). In November 1995, the district court approved a $150 million settlement of the litigation.

8. ***Mraz v. DaimlerChrysler***, No. BC 332487 (Cal. Supr. Ct.). In March 2007, the jury returned a $54.4 million verdict, including $50 million in punitive damages, against DaimlerChrysler for intentionally failing to cure a known defect in millions of its vehicles that led to the death of Richard Mraz, a young father. Mr. Mraz suffered fatal head injuries when the 1992 Dodge Dakota pickup truck he had been driving at his work site ran him over after he exited the vehicle believing it was in park. The jury found that a defect in the Dodge Dakota's automatic transmission, called a park-to-reverse defect, played a substantial factor in Mr. Mraz's death and that DaimlerChrysler was negligent in the design of the vehicle for failing to warn of the defect and then for failing to adequately recall or retrofit the vehicle.

For their outstanding service to their clients in *Mraz* and advancing the rights of all persons injured by defective products, Lieff Cabraser partners

Robert J. Nelson, the lead trial counsel, and Scott P. Nealey received the 2008 California Lawyer of the Year (CLAY) Award in the field of personal injury law, and were also selected as finalists for attorney of the year by the Consumer Attorneys of California and the San Francisco Trial Lawyers Association.

In March 2008, a Louisiana-state jury found DaimlerChrysler liable for the death of infant Collin Guillot and injuries to his parents Juli and August Guillot and their then 3 year old daughter Madison. The jury returned a unanimous verdict of $5,080,000 in compensatory damages. The jury found that a defect in the Jeep Grand Cherokee's transmission, called a park-to-reverse defect, played a substantial factor in Collin Guillot's death and the severe injuries suffered by Mr. and Mrs. Guillot and their daughter. Lieff Cabraser served as co-counsel in the trial.

9. ***In re Telectronics Pacing Systems Inc., Accufix Atrial "J" Leads Products Liability Litigation***, MDL No. 1057 (S.D. Ohio). Lieff Cabraser served on the court-appointed Plaintiffs' Steering Committee in a nationwide products liability action alleging that defendants placed into the stream of commerce defective pacemaker leads. In April 1997, the district court re-certified a nationwide class of "J" Lead implantees with subclasses for the claims of medical monitoring, negligence and strict product liability. A summary jury trial utilizing jury instructions and interrogatories designed by Lieff Cabraser occurred in February 1998. A partial settlement was approved thereafter by the district court, but reversed by the Court of Appeals. In March 2001, the district court approved a renewed settlement that included a $58 million fund to satisfy all past, present and future claims by patients for their medical care, injuries, or damages arising from the lead.

10. ***Blood Factor VIII And Factor IX Litigation.*** Working with counsel in Asia, Europe, Central and South America and the Middle East, Lieff Cabraser represented over 1,500 hemophiliacs worldwide, or their survivors and estates, who contracted HIV and/or Hepatitis C (HCV), and Americans with hemophilia who contracted HCV, from contaminated and defective blood factor products produced by American pharmaceutical companies. In 2004, Lieff Cabraser was appointed Plaintiffs' Lead Counsel of the "second generation" Blood Factor MDL litigation presided over by Judge Grady in the Northern District of Illinois. The case reached a global settlement in 2009.

11. ***In re Baycol Products Litigation***, MDL No. 1431 (D. Minn.). Baycol was one of a group of drugs called statins, intended to reduce cholesterol. In August 2001, Bayer A.G. and Bayer Corporation, the manufacturers of Baycol, withdrew the drug from the worldwide market based upon reports that Baycol was associated with serious side effects and linked to the

deaths of over 100 patients worldwide. In the federal multi-district litigation, Lieff Cabraser serves as a member of the Plaintiffs' Steering Committee (PSC) and the Executive Committee of the PSC. In addition, Lieff Cabraser represented approximately 200 Baycol patients who have suffered injuries or family members of patients who died allegedly as a result of ingesting Baycol. In these cases, our clients reached confidential favorable settlements with Bayer.

12. ***In re ReNu With MoistureLoc Contact Lens Solution Products Liability Litigation***, MDL No. 1785 (D. S.C.). Lieff Cabraser served on the Plaintiffs' Executive Committee in federal court litigation arising out of Bausch & Lomb's 2006 recall of its ReNu with MoistureLoc contact lens solution. Consumers who developed *Fusarium keratitis*, a rare and dangerous fungal eye infection, as well as other serious eye infections, alleged the lens solution was defective. Some consumers were forced to undergo painful corneal transplant surgery to save their vision; others lost all or part of their vision permanently. The litigation was resolved under favorable, confidential settlements with Bausch & Lomb.

II. Securities and Financial Fraud

A. Current Cases

1. ***In re Broadcom Corporation Derivative Litigation***, No. CV 06-3252-R (C.D. Cal.). On December 14, 2009, U.S. District Judge Manuel L. Real of the Central District of California granted final approval to a partial settlement in which Broadcom Corporation's insurance carriers will pay $118 million to Broadcom. The settlement releases certain individual director and officer defendants covered by Broadcom's directors' and officers' policy. The $118 million settlement constitutes the second largest in a derivative action involving stock options backdating.

   The settlement does not resolve the claims against William J. Ruehle, Broadcom's former Chief Financial Officer, Henry T. Nicholas, III, Broadcom's co-founder and former Chief Executive Officer, and Henry Samueli, Broadcom's co-founder and former Chief Technology Officer. The suit alleges defendants intentionally manipulated their stock option grant dates between 1998 and 2003 at the expense of Broadcom and Broadcom shareholders. By making it seem as if stock option grants occurred on dates when Broadcom stock was trading at a comparatively low per share price, stock option grant recipients were able to exercise their stock option grants at exercise prices that were lower than the fair market value of Broadcom stock on the day the options were actually granted. Lieff Cabraser serves as court-appointed Lead Counsel in the action.

2. ***Ohio Police & Fire Pension Fund. v. Standard & Poor's Financial Services LLC***, No. 09 CV 1054 (S.D. Ohio). Lieff Cabraser and co-counsel are assisting Ohio Attorney General Mike DeWine in a lawsuit filed against Standard & Poor's, Moody's and Fitch alleging these agencies provided unjustified and inflated ratings of mortgage-backed securities in exchange for lucrative fees from securities issuers. The lawsuit, filed on behalf of the Ohio Public Employees Retirement System, the State Teachers Retirement System of Ohio, the Ohio Police & Fire Pension Fund, the School Employees Retirement System of Ohio and the Ohio Public Employees Deferred Compensation Program, charges that many mortgage-backed securities were given the highest investment-grade credit rating, often referred to as "AAA." This rating assured institutional investors, including the plaintiff Ohio pension funds, that the investments were extremely safe with a very low risk of default. The Ohio funds allege that they lost in excess of $457 million in investments in mortgage-backed securities that were improperly rated by the rating agencies.

3. ***DiNapoli v. Bank of America Corp***., No. 10 CV 5563 (S.D. N.Y.). Lieff Cabraser serves as co-counsel for the New York State Teachers' Retirement System, the Public Employees' Retirement Association of Colorado, and for the New York State Comptroller in his capacity as trustee of the New York State Common Retirement Fund in a direct lawsuit against Bank of America. The complaint seeks recovery of losses the plaintiffs incurred based upon Bank of America's misrepresentation and concealment of material facts that it had a duty to disclose under the federal securities laws in connection with its purchase of Merrill Lynch. The alleged critical facts Bank of America failed to disclose to shareholders prior to the December 5, 2008, vote on the merger included Merrill Lynch's exposure to securities backed by subprime mortgages and its tremendous fourth quarter 2008 losses.

4. ***In re National Century Financial Enterprises, Inc. Investment Litigation***, MDL No. 1565 (S.D. Ohio). Lieff Cabraser serves as outside counsel for the New York City Employees' Retirement System, Teachers' Retirement System for the City of New York, New York City Police Pension Fund, and New York City Fire Department Pension Fund in this multidistrict litigation arising from fraud in connection with NCFE's issuance of notes backed by healthcare receivables.

   The New York City Pension Funds suffered approximately $89 million in losses resulting from the massive NCFE fraud. Having successfully resolved their claims against numerous parties, the Funds maintain claims against several NCFE founders. To date, the Funds have

recovered approximately 70% of their losses, primarily through settlements achieved on their behalf by Lieff Cabraser.

B. Successes

1. ***In re First Capital Holdings Corp. Financial Products Securities Litigation***, MDL No. 901 (C.D. Cal.). Lieff Cabraser served as Co-Lead Counsel in a class action brought to recover damages sustained by policyholders of First Capital Life Insurance Company and Fidelity Bankers Life Insurance Company policyholders resulting from the insurance companies' allegedly fraudulent or reckless investment and financial practices, and the manipulation of the companies' financial statements. This policyholder settlement generated over $1 billion in restored life insurance policies, and was approved by both federal and state courts in parallel proceedings and then affirmed by the Ninth Circuit on appeal.

2. ***In re Scorpion Technologies Securities Litigation I***, No. C-93-20333-EAI (N.D. Cal.); ***Dietrich v. Bauer***, No. C-95-7051-RWS (S.D.N.Y.); ***Claghorn v. Edsaco***, No. 98-3039-SI (N.D. Cal.). Lieff Cabraser served as Lead Counsel in class action suits arising out of an alleged fraudulent scheme by Scorpion Technologies, Inc., certain of its officers, accountants, underwriters and business affiliates to inflate the company's earnings through reporting fictitious sales. In Scorpion I, the Court found plaintiffs had presented sufficient evidence of liability under Federal securities acts against the accounting firm Grant Thornton for the case to proceed to trial. In re Scorpion Techs., 1996 U.S. Dist. LEXIS 22294 (N.D. Cal. Mar. 27, 1996). In 1988, the court approved a $5.5 million settlement with Grant Thornton. In 2000, the Court approved a $950,000 settlement with Credit Suisse First Boston Corporation. In April 2002, a federal jury in San Francisco, California returned a $170.7 million verdict against Edsaco Ltd. The jury found that Edsaco aided Scorpion in setting up phony European companies as part of a scheme in which Scorpion reported fictitious sales of its software to these companies, thereby inflating its earnings. Included in the jury verdict, one of the largest verdicts in the U.S. in 2002, was $165 million in punitive damages. Richard M. Heimann conducted the trial for plaintiffs.

   On June 14, 2002, U.S. District Court Judge Susan Illston commented on Lieff Cabraser's representation: "[C]ounsel for the plaintiffs did a very good job in a very tough situation of achieving an excellent recovery for the class here. You were opposed by extremely capable lawyers. It was an uphill battle. There were some complicated questions, and then there was the tricky issue of actually collecting anything in the end. I think based on the efforts that were made here that it was an excellent result for the

class. . . [T]he recovery that was achieved for the class in this second trial is remarkable, almost a hundred percent."

3. ***Merrill Lynch Fundamental Growth Fund and Merrill Lynch Global Value Fund v. McKesson HBOC,*** No. 02-405792 (Cal. Supr. Ct.). Lieff Cabraser served as counsel for two Merrill Lynch sponsored mutual funds in a private lawsuit alleging that a massive accounting fraud occurred at HBOC & Company ("HBOC") before and following its 1999 acquisition by McKesson Corporation ("McKesson"). The funds charged that defendants, including the former CFO of McKesson HBOC, the name McKesson adopted after acquiring HBOC, artificially inflated the price of securities in McKesson HBOC, through misrepresentations and omissions concerning the financial condition of HBOC, resulting in approximately $135 million in losses for plaintiffs. In a significant discovery ruling in 2004, the California Court of Appeal held that defendants waived the attorney-client and work product privileges in regard to an audit committee report and interview memoranda prepared in anticipation of shareholder lawsuits by disclosing the information to the U.S. Attorney and SEC. *McKesson HBOC, Inc. v. Supr. Court*, 115 Cal. App. 4th 1229 (2004). Lieff Cabraser's clients recovered approximately $145 million, representing nearly 104% of damages suffered by the funds. This amount was approximately $115-120 million more than the Merrill Lynch funds would have recovered had they participated in the federal class action settlement.

4. ***Informix/Illustra Securities Litigation***, No. C-97-1289-CRB (N.D. Cal.). Lieff Cabraser represented Richard H. Williams, the former Chief Executive Officer and President of Illustra Information Technologies, Inc. ("Illustra"), and a class of Illustra shareholders in a class action suit on behalf of all former Illustra securities holders who tendered their Illustra preferred or common stock, stock warrants or stock options in exchange for securities of Informix Corporation ("Informix") in connection with Informix's 1996 purchase of Illustra. Pursuant to that acquisition, Illustra stockholders received Informix securities representing approximately 10% of the value of the combined company. The complaint alleged claims for common law fraud and violations of Federal securities law arising out of the acquisition. In October 1999, U.S. District Judge Charles E. Breyer approved a global settlement of the litigation for $136 million, constituting one of the largest settlements ever involving a high technology company alleged to have committed securities fraud. Our clients, the Illustra shareholders, received approximately 30% of the net settlement fund.

5. ***In re Qwest Communications International Securities and "ERISA" Litigation (No. II),*** No. 06-cv-17880-REB-PAC (MDL No. 1788) (D. Colo.). Lieff Cabraser represented the New York State

Common Retirement Fund, Fire and Police Pension Association of Colorado, Denver Employees' Retirement Plan, San Francisco Employees' Retirement System, and over thirty BlackRock managed mutual funds in individual securities fraud actions ("opt out" cases) against Qwest Communications International, Inc., Philip F. Anschutz, former co-chairman of the Qwest board of directors, and other senior executives at Qwest. In each action, the plaintiffs charged defendants with massively overstating Qwest's publicly-reported growth, revenues, earnings, and earnings per share from 1999 through 2002. The cases were filed in the wake of a $400 million settlement of a securities fraud class action against Qwest that was announced in early 2006. The cases brought by Lieff Cabraser's clients settled in October 2007 for recoveries totaling more than $85 million, or more than 13 times what the clients would have received had they remained in the class.

6. ***BlackRock Global Allocation Fund v. Tyco International Ltd., et al.***, No. 2:08-cv-519 (D. N.J.); ***Nuveen Balanced Municipal and Stock Fund v. Tyco International Ltd., et al.***, No. 2:08-cv-518 (D. N.J.). Lieff Cabraser represented multiple funds of the investment firms BlackRock Inc. and Nuveen Asset Management in separate, direct securities fraud actions against Tyco International Ltd., Tyco Electronics Ltd., Covidien Ltd, Covidien (U.S.), L. Dennis Kozlowski, Mark H. Swartz, and Frank E. Walsh, Jr. Plaintiffs alleged that defendants engaged in a massive criminal enterprise that combined the theft of corporate assets with fraudulent accounting entries that concealed Tyco's financial condition from investors. As a result, plaintiffs purchased Tyco common stock and other Tyco securities at artificially inflated prices and suffered losses upon disclosures revealing Tyco's true financial condition and defendants' misconduct. In 2009, the parties settled the claims against the corporate defendants (Tyco International Ltd., Tyco Electronics Ltd., Covidien Ltd., and Covidien (U.S.). The litigation concluded in 2010. The total settlement proceeds paid by all defendants were in excess of $57 million.

7. ***Kofuku Bank and Namihaya Bank v. Republic New York Securities Corp.***, No. 00 CIV 3298 (S.D.N.Y.); and ***Kita Hyogo Shinyo-Kumiai v. Republic New York Securities Corp.***, No. 00 CIV 4114 (S.D.N.Y.). Lieff Cabraser represented Kofuku Bank, Namihaya Bank and Kita Hyogo Shinyo-Kumiai (a credit union) in individual lawsuits against, among others, Martin A. Armstrong and HSBC, Inc., the successor-in-interest to Republic New York Corporation, Republic New York Bank and Republic New York Securities Corporation for alleged violations of federal securities and racketeering laws. Through a group of interconnected companies owned and controlled by Armstrong—the

Princeton Companies—Armstrong and the Republic Companies promoted and sold promissory notes, known as the "Princeton Notes," to more than eighty of the largest companies and financial institutions in Japan. Lieff Cabraser's lawsuits, as well as the lawsuits of dozens of other Princeton Note investors, alleged that the Princeton and Republic Companies made fraudulent misrepresentations and non-disclosures in connection with the promotion and sale of Princeton Notes, and that investors' moneys were commingled and misused to the benefit of Armstrong, the Princeton Companies and the Republic Companies. In December 2001, the claims of our clients and those of the other Princeton Note investors were settled. As part of the settlement, our clients recovered more than $50 million, which represented 100% of the value of their principal investments less money they received in interest or other payments.

8. ***Alaska State Department of Revenue v. America Online***, No. 1JU-04-503 (Alaska Supr. Ct.). In December 2006, a $50 million settlement was reached in a securities fraud action brought by the Alaska State Department of Revenue, Alaska State Pension Investment Board and Alaska Permanent Fund Corporation against defendants America Online, Inc. ("AOL"), Time Warner Inc. (formerly known as AOL Time Warner ("AOLTW")), Historic TW Inc. When the action was filed, the Alaska Attorney General estimated total losses at $70 million. The recovery on behalf of Alaska was approximately 50 times what the state would have received as a member of the class in the federal securities class action settlement. The lawsuit, filed in 2004 in Alaska State Court, alleged that defendants misrepresented advertising revenues and growth of AOL and AOLTW along with the number of AOL subscribers, which artificially inflated the stock price of AOL and AOLTW to the detriment of Alaska State funds.

   The Alaska Department of Law retained Lieff Cabraser to lead the litigation efforts under its direction. "We appreciate the diligence and expertise of our counsel in achieving an outstanding resolution of the case," said Mark Morones, spokesperson for the Department of Law, following announcement of the settlement.

9. ***Allocco v. Gardner***, No. GIC 806450 (Cal. Supr. Ct.). Lieff Cabraser represents Lawrence L. Garlick, the co-founder and former Chief Executive Officer of Remedy Corporation and 24 other former senior executives and directors of Remedy Corporation in a private (non-class) securities fraud lawsuit against Stephen P. Gardner, the former Chief Executive Officer of Peregrine Systems, Inc., John J. Moores, Peregrine's former Chairman of the Board, Matthew C. Gless, Peregrine's former Chief Financial Officer, Peregrine's accounting firm Arthur Andersen and certain entities that entered into fraudulent transactions with Peregrine.

The lawsuit, filed in California state court, arises out of Peregrine's August 2001 acquisition of Remedy. Plaintiffs charge that they were induced to exchange their Remedy stock for Peregrine stock on the basis of false and misleading representations made by defendants. Within months of the Remedy acquisition, Peregrine began to reveal to the public that it had grossly overstated its revenue during the years 2000-2002, and eventually restated more than $500 million in revenues.

After successfully defeating demurrers brought by defendants, including third parties who were customers of Peregrine who aided and abetted Peregrine's accounting fraud under California common law, plaintiffs reached a series of settlements. The settling defendants included Arthur Andersen, all of the director defendants, three officer defendants and the third party customer defendants KPMG, British Telecom, Fujitsu, Software Spectrum and Bindview. The total amount received in settlements is approximately $45 million.

10. ***In re Cablevision Systems Corp. Shareholder Derivative Litigation***, No. 06-cv-4130-DGT-AKT (E.D.N.Y.). Lieff Cabraser served as Co-Lead Counsel in a shareholders' derivative action against the board of directors and numerous officers of Cablevision. The suit alleged that defendants intentionally manipulated stock option grant dates to Cablevision employees between 1997 and 2002 in order to enrich certain officer and director defendants at the expense of Cablevision and Cablevision shareholders. According to the complaint, Defendants made it appear as if stock options were granted earlier than they actually were in order to maximize the value of the grants. In September 2008, the Court granted final approval to a $34.4 million settlement of the action. Over $24 million of the settlement was contributed directly by individual defendants who either received backdated options or participated in the backdating activity.

11. ***In re Media Vision Technology Securities Litigation,*** No. CV-94-1015 (N.D. Cal.). Lieff Cabraser served as Co-Lead Counsel in a class action lawsuit which alleged that certain of Media Vision's officers, outside directors, accountants and underwriters engaged in a fraudulent scheme to inflate the company's earnings, and issued false and misleading public statements about the company's finances, earnings and profits. By 1998, the Court had approved several partial settlements with many of Media Vision's officers and directors, accountants and underwriters which totaled $31 million. The settlement proceeds have been distributed to eligible class members. The evidence that Lieff Cabraser developed in the civil case led prosecutors to commence an investigation and ultimately file criminal charges against Media Vision's former Chief Executive Officer and Chief Financial Officer. The civil action against Media Vision's CEO

and CFO was stayed pending the criminal proceedings against them. In the criminal proceedings, the CEO pled guilty on several counts, and the CFO was convicted at trial. In October, 2003, the Court granted Plaintiffs' motions for summary judgment and entered a judgment in favor of the class against these two defendants in the amount of $188 million.

12. ***In re California Micro Devices Securities Litigation***, No. C-94-2817-VRW (N.D. Cal.). Lieff Cabraser served as Liaison Counsel for the Colorado Public Employees' Retirement Association and the California State Teachers' Retirement System, and the class they represented. Prior to 2001, the Court approved $19 million in settlements. In May 2001, the Court approved an additional settlement of $12 million, which, combined with the earlier settlements, provided class members an almost complete return on their losses. The settlement with the company included multi-million dollar contributions by the former Chairman of the Board and Chief Executive Officer.

Commenting in 2001 on Lieff Cabraser's work in *Cal Micro Devices*, U.S. District Court Judge Vaughn R. Walker stated, "It is highly unusual for a class action in the securities area to recover anywhere close to the percentage of loss that has been recovered here, and counsel and the lead plaintiffs have done an admirable job in bringing about this most satisfactory conclusion of the litigation." One year later, in a related proceeding and in response to the statement that the class had received nearly a 100% recovery, Judge Walker observed, "That's pretty remarkable. In these cases, 25 cents on the dollar is considered to be a magnificent recovery, and this is [almost] a hundred percent."

13. ***In re Network Associates, Inc. Securities Litigation***, No. C-99-1729-WHA (N.D. Cal.). Following a competitive bidding process, the Court appointed Lieff Cabraser as Lead Counsel for the Lead Plaintiff and the class of investors. The complaint alleged that Network Associates improperly accounted for acquisitions in order to inflate its stock price. In May 2001, the Court granted approval to a $30 million settlement.

In reviewing the *Network Associates* settlement, U.S. District Court Judge William H. Alsup observed, "[T]he class was well served at a good price by excellent counsel . . . We have class counsel who's one of the foremost law firms in the country in both securities law and class actions. And they have a very excellent reputation for the conduct of these kinds of cases . . ."

14. ***In re FPI/Agretech Securities Litigation***, MDL No. 763 (D. Haw., Real, J.). Lieff Cabraser served as Lead Class Counsel on behalf of multiple classes of investors defrauded in a limited partnership investment scheme. The Court approved $15 million in partial pretrial

settlements. At trial, the jury returned a $25 million verdict, which included $10 million in punitive damages plus costs, interest, and attorneys' fees, against non-settling defendant Arthur Young & Co. on securities and tort claims arising from its involvement in the fraud. Richard M. Heimann served as Lead Trial Counsel in the class action trial. On appeal, the compensatory damages judgment was affirmed and the case was remanded for retrial on punitive damages. In 1994, the Court approved a $17 million class settlement with Ernst & Young.

15. ***Nguyen v. FundAmerica***, No. C-90-2090 MHP (N.D. Cal., Patel, J.), 1990 Fed. Sec. L. Rep. (CCH) ¶¶ 95,497, 95,498 (N.D. Cal. 1990). Lieff Cabraser served as Plaintiffs' Class Counsel in this securities/RICO/tort action seeking an injunction against alleged unfair "pyramid" marketing practices and compensation to participants. The District Court certified a nationwide class for injunctive relief and damages on a mandatory basis and enjoined fraudulent overseas transfers of assets. The Bankruptcy Court permitted class proof of claims. Lieff Cabraser obtained dual District Court and Bankruptcy Court approval of settlements distributing over $13 million in FundAmerica assets to class members.

16. ***In re Brooks Automation, Inc. Securities Litigation***, No. 06 CA 11068 (D. Mass.). Lieff Cabraser served as Court-Appointed Lead Counsel for Lead Plaintiff the Los Angeles County Employees Retirement Association and co-plaintiff Sacramento County Employees' Retirement System in a class action lawsuit on behalf of purchasers of Brooks Automation securities. Plaintiffs charged that Brooks Automation, its senior corporate officers and directors violated federal securities laws by backdating company stock options over a six year period, and failed to disclose the scheme in publicly filed financial statements. Subsequent to Lieff Cabraser's filing of a consolidated amended complaint in this action, both the Securities and Exchange Commission and the United States Department of Justice filed complaints against the Company's former C.E.O., Robert Therrien, related to the same alleged practices. In October 2008, the Court approved a $7.75 million settlement of the action.

17. ***Albert v. Alex. Brown Management Services; Baker v. Alex. Brown Management Services*** (Del. Ch. Ct.). In May 2004, on behalf of investors in two investment funds controlled, managed and operated by Deutsche Bank and advised by DC Investment Partners, Lieff Cabraser filed lawsuits for alleged fraudulent conduct that resulted in an aggregate loss of hundreds of millions of dollars. The suits named as defendants Deutsche Bank and its subsidiaries Alex Brown Management Services and Deutsche Bank Securities, members of the funds' management committee, as well as DC Investments Partners and two of its principals. Among the plaintiff-investors were 70 high net worth individuals. In the fall of 2006, the cases settled by confidential agreement.

III. Employment Discrimination and Unfair Employment Practices

A. Current Cases

1. ***Chen-Oster v. Goldman Sachs***, Case No. 10-6950 (S.D.N.Y.). Lieff Cabraser serves as Co-Lead Counsel for plaintiffs in a gender discrimination class action lawsuit against Goldman Sachs. The complaint alleges that Goldman Sachs has engaged in systemic and pervasive discrimination against its female professional employees in violation of Title VII of the Civil Rights Act of 1964 and the New York City Human Rights Law. The complaint charges that, among other things, Goldman Sachs pays its female professionals less than similarly situated males, disproportionately promotes men over equally or more qualified women, and offers better business opportunities and professional support to its male professionals.

2. ***Calibuso v. Bank of America Corporation, Merrill Lynch & Co.***, No. CV10-1413 (E.D. N.Y.). Lieff Cabraser serves as Co-Lead Counsel for current and former female Financial Advisors who allege that Bank of America and Merrill Lynch engaged in a pattern and practice of gender discrimination with respect to business opportunities, compensation, professional support, and other terms and conditions of employment. The complaint charges that these violations are systemic, based upon company-wide policies and practices.

3. ***Tatum v. R.J. Reynolds Tobacco Company***, No. 1:02-cv-00373-NCT (M.D. N.C.). Lieff Cabraser served as Co-Lead Trial Counsel in this class action on behalf of over 3,500 employees of R.J. Reynolds Tobacco Company ("RJR") brought under the Employment Retirement Income Security Act (ERISA). Plaintiffs alleged that RJR breached its duty of prudence in administering the employee 401(k) retirement plan. Plaintiffs alleged that RJR breached its duty of prudence in administering the employee 401(k) retirement plan. The 6-week bench trial occurred in January-February 2010 and December 2010, and post-trial briefing concluded in February 2011.

4. ***Vedachalam v. Tata America Int'l Corp.***, C 06-0963 VRW (N.D. Cal.). Lieff Cabraser and co-counsel represent a proposed class of non-U.S.-citizen employees in a nationwide class action lawsuit against Tata. Plaintiffs allege that Tata unjustly enriched itself by requiring all of its non-U.S.-citizen employees to endorse and sign over their federal and state tax refund checks to Tata. The suit also alleges other violations of California and federal law, including that Tata did not pay its non-U.S.-citizen employees the amount promised to those employees before they came to the United States. In 2007 and again in 2008, the Court denied Tata's motions to compel arbitration of Plaintiffs' claims in India. The

Court held that no arbitration agreement existed because the documents purportedly requiring arbitration in India applied one set of rules to the Plaintiffs and another set to Tata. In 2009, the Ninth Circuit Court of Appeals affirmed this decision.

5. ***Board of Trustees of the National Elevator Industry Health Benefit Fund v. AXA Rosenberg Group, LLC***, No. 0897 (N.D. Cal). Lieff Cabraser, with co-counsel, represents the Board of Trustees of the National Elevator Industry Health Benefit Fund ("NEI") in this multi-plan class action under the Employee Retirement Income Security Act ("ERISA") against AXA Rosenberg Group, LLC and its affiliates ("AXA"). Plaintiffs allege that AXA violated various duties under ERISA, including the duty of loyalty and the duty of prudence, to NEI and other ERISA-covered investors when it allowed a material computer error in its proprietary system to go unnoticed and unremedied for years, and also directed a cover-up of the error.

6. ***Buccellato v. AT&T Operations***, No. C10-00463-LHK (N.D. Cal.). Lieff Cabraser represents a group of current and former AT&T technical support workers who allege that AT&T misclassified them as exempt and failed to pay them for all overtime hours worked in violation of federal and state overtime pay laws. On February 17, 2011, the Court granted preliminary approval of a $12.5 million collective and class action settlement.

7. ***Lewis v. Wells Fargo***, No. 08-cv-2670 CW (N.D. Cal.). Lieff Cabraser serves as Lead Counsel in this case on behalf of approximately 323 I/T workers who allege that Wells Fargo had a common practice of misclassifying them as exempt and failing to pay them for all overtime hours worked in violation of federal and state overtime pay laws. The Court granted collective action certification of the FLSA claims, and Plaintiffs have submitted a proposed settlement of $6.72 million to the court for its approval.

8. ***Holloway v. Best Buy,*** No. C05-5056 PJH (N.D. Cal.). Lieff Cabraser, with co-counsel, represents a proposed class of current and former employees of Best Buy in a federal class action civil rights lawsuit. Plaintiffs allege that Best Buy stores nationwide discriminate against women, African Americans, and Latinos. These employees charge that they are assigned to less desirable positions and denied promotions, and that class members who attain managerial positions are paid less than white males. The suit also alleges that Best Buy discriminates against African Americans in entry-level hiring decisions.

9. ***Winnett v. Caterpillar,*** No. 3:06-cv-00235 (M.D. Tenn.). Lieff Cabraser serves as co-counsel representing retirees in a nationwide class

action lawsuit against Caterpillar, Inc. In October 2004, Caterpillar began charging monthly premiums despite longstanding contracts that promise free healthcare to certain participants and their spouses. The lawsuit seeks to end these charges and restore the plaintiffs and similarly situated retirees to the position they would have been but for Caterpillar's contractual violations. In July 2007, the Court granted the plaintiffs' class certification motion.

10. ***Sherrill v. Premera Blue Cross***, No. 2:10-cv-00590-TSZ (W.D. Wash.). In April 2010, a technical worker at Premera Blue Cross filed a lawsuit against Premera seeking overtime pay from its misclassification of technical support workers as exempt. On February 28, 2011, the court granted preliminary approval of a collective and class action settlement of $1.45 million.

B. Successes

1. ***Butler v. Home Depot***, No. C94-4335 SI (N.D. Cal.). Lieff Cabraser and co-counsel represented a class of approximately 25,000 female employees and applicants for employment with Home Depot's West Coast Division who alleged gender discrimination in connection with hiring, promotions, pay, job assignment, and other terms and conditions of employment. The class was certified in January 1995. In January 1998, the court approved a $87 5 million settlement of the action that included comprehensive injunctive relief over the term of a five-year Consent Decree. Under the terms of the settlement, Home Depot modified its hiring, promotion, and compensation practices to ensure that interested and qualified women were hired for, and promoted to, sales and management positions.

   On January 14, 1998, U.S. District Judge Susan Illston commented that the settlement provides "a very significant monetary payment to the class members for which I think they should be grateful to their counsel. . . . Even more significant is the injunctive relief that's provided for . . ." By 2003, the injunctive relief had created thousands of new job opportunities in sales and management positions at Home Depot, generating the equivalent of over approximately $100 million per year in wages for female employees.

   In 2002, Judge Illston stated that the injunctive relief has been a "win/win . . . for everyone, because . . . the way the Decree has been implemented has been very successful and it is good for the company as well as the company's employees."

2. ***Rosenburg v. IBM,*** No. C 06-0430 PJH (N.D. Cal.). In July 2007, the Court granted final approval to a $65 million settlement of a class action

suit by current and former technical support workers for IBM seeking unpaid overtime. The settlement constitutes a record amount in litigation seeking overtime compensation for employees in the computer industry. Plaintiffs alleged that IBM illegally misclassified its employees who install or maintain computer hardware or software as "exempt" from the overtime pay requirements of federal and state labor laws.

3. ***Satchell v. FedEx Express***, No. C 03-2659 SI; C 03-2878 SI (N.D. Cal.). In 2007, the Court granted final approval to a $54.9 million settlement of the race discrimination class action lawsuit by African American and Latino employees of FedEx Express. The settlement requires FedEx to reform its promotion, discipline, and pay practices. Under the settlement, FedEx will implement multiple steps to promote equal employment opportunities, including making its performance evaluation process less discretionary, discarding use of the "Basic Skills Test" as a prerequisite to promotion into certain desirable positions, and changing employment policies to demonstrate that its revised practices do not continue to foster racial discrimination. The settlement, covering 20,000 hourly employees and operations managers who have worked in the western region of FedEx Express since October 1999, was approved by the Court in August 2007.

4. ***Gonzalez v. Abercrombie & Fitch Stores***, No. C03-2817 SI (N.D. Cal.). In April 2005, the Court approved a settlement, valued at approximately $50 million, which requires the retail clothing giant Abercrombie & Fitch to provide monetary benefits of $40 million to the class of Latino, African American, Asian American and female applicants and employees who charged the company with discrimination. The settlement also requires the company to institute a range of policies and programs to promote diversity among its workforce and to prevent discrimination based on race or gender. Lieff Cabraser serves as Lead Class Counsel and prosecuted the case with a number of co-counsel firms, including the Mexican American Legal Defense and Education Fund, the Asian Pacific American Legal Center and the NAACP Legal Defense and Educational Fund, Inc. Implementation of the consent decree continues into 2011.

5. ***Giles v. Allstate***, JCCP Nos. 2984 and 2985. Lieff Cabraser represented a class of Allstate insurance agents seeking reimbursement of out-of-pocket costs. The action settled for approximately $40 million.

6. ***Frank v. United Airlines***, No. C-92-0692 MJJ (N.D. Cal.). Lieff Cabraser and co-counsel obtained a $36.5 million settlement in February 2004 for a class of female flight attendants who were required to weigh less than comparable male flight attendants.

Former U.S. District Court Judge Charles B. Renfrew (ret.), who served as a mediator in the case, stated, "As a participant in the settlement negotiations, I am familiar with and know the reputation, experience and skills of lawyers involved. They are dedicated, hardworking and able counsel who have represented their clients very effectively." U.S. District Judge Martin J. Jenkins, in granting final approval to the settlement, found "that the results achieved here could be nothing less than described as exceptional," and that the settlement "was obtained through the efforts of outstanding counsel."

7. ***Barnett v. Wal-Mart***, No. 01-2-24553-SNKT (Wash.). On July 21, 2009, the Court gave final approval to a settlement valued at up to $35 million on behalf of workers in Washington State who alleged they were deprived of meal and rest breaks and forced to work off-the-clock at Wal-Mart stores and Sam's Clubs. In addition to monetary relief, the settlement provided injunctive relief benefiting all employees. Wal-Mart was required to undertake measures to prevent wage and hour violations at its 50 stores and clubs in Washington, measures that included the use of new technologies and compliance tools.

Plaintiffs filed their complaint in 2001. Three years later, the Court certified a class of approximately 40,000 current and former Wal-Mart employees. The eight years of litigation were intense and adversarial. Wal-Mart, currently the world's third largest corporation, vigorously denied liability and spared no expense in defending itself.

This lawsuit and similar actions filed against Wal-Mart across America served to reform the pay procedures and employment practices for Wal-Mart's 1.4 million employees nationwide. In a press release announcing the Court's approval of the settlement, Wal-Mart spokesperson Daphne Moore stated, "This lawsuit was filed years ago and the allegations are not representative of the company we are today." Lieff Cabraser served as court-appointed Co-Lead Class Counsel.

8. ***Amochaev. v. Citigroup Global Markets, d/b/a Smith Barney***, No. C 05-1298 PJH (N.D. Cal.). On August 13, 2008, the Court granted final approval to a settlement of the gender discrimination case against Smith Barney. Lieff Cabraser represented Female Financial Advisors who charged that Smith Barney, the retail brokerage unit of Citigroup, discriminated against them in account distributions, business leads, referral business, partnership opportunities, and other terms of employment. The Court approved a four-year settlement agreement that provides for comprehensive injunctive relief and significant monetary relief of $33 million for the 2,411 members of the Settlement Class. The comprehensive injunctive relief provided under the settlement is designed

to increase business opportunities and promote equality in compensation for female brokers.

9. ***Giannetto v. Computer Sciences Corporation***, No. 03-CV-8201 (C.D. Cal.). In one of the largest overtime pay dispute settlements ever in the information technology industry, the Court in July 2005 granted final approval to a $24 million settlement with Computer Sciences Corporation. Plaintiffs charged that the global conglomerate had a common practice of refusing to pay overtime compensation to its technical support workers involved in the installation and maintenance of computer hardware and software in violation of the Fair Labor Standards Act, California's Unfair Competition Law, and the wage and hour laws of 13 states.

10. ***Church v. Consolidated Freightways***, No. C90-2290 DLJ (N.D. Cal.). Lieff Cabraser was the Lead Court-appointed Class Counsel in this class action on behalf of the exempt employees of Emery Air Freight, a freight forwarding company acquired by Consolidated Freightways in 1989. On behalf of the employee class, Lieff Cabraser prosecuted claims for violation of the Employee Retirement Income Security Act, the securities laws, and the Age Discrimination in Employment Act. The case settled in 1993 for $13.5 million.

11. ***Gerlach v. Wells Fargo & Co.,*** No. C 05-0585 CW (N.D. Cal.). .). In January 2007, the Court granted final approval to a $12.8 million settlement of a class action suit by current and former business systems employees of Wells Fargo seeking unpaid overtime. Plaintiffs alleged that Wells Fargo illegally misclassified those employees, who maintained and updated Wells Fargo's business tools according to others' instructions, as "exempt" from the overtime pay requirements of federal and state labor laws.

12. ***Buttram v. UPS***, No. C-97-01590 MJJ (N.D. Cal.). Lieff Cabraser and several co-counsel represented a class of approximately 14,000 African-American part-time hourly employees of UPS's Pacific and Northwest Regions alleging race discrimination in promotions and job advancement. In 1999, the Court approved a $12.14 million settlement of the action. Under the injunctive relief portion of the settlement, among other things, Class Counsel continues to monitor the promotions of African-American part-time hourly employees to part-time supervisor and full-time package car driver.

13. ***Goddard, et al. v. Longs Drug Stores Corporation, et al.***, No. RG04141291 (Cal. Supr. Ct.). Store managers and assistant store managers of Longs Drugs charged that the company misclassified them as exempt from overtime wages. Managers regularly worked in excess of

8 hours per day and 40 hours per week without compensation for their overtime hours. Following mediation, in 2005, Longs Drugs agreed to settle the claims for a total of $11 million. Over 1,000 current and former Longs Drugs managers and assistant managers were eligible for compensation under the settlement, over 98% of the class submitted claims.

14. ***Trotter v. Perdue Farms***, No. C 99-893-RRM (JJF) (MPT) (D. Del.). Lieff Cabraser represented a class of chicken processing employees of Perdue Farms, Inc., one of the nation's largest poultry processors, for wage and hour violations. The suit challenged Perdue's failure to compensate its assembly line employees for putting on, taking off, and cleaning protective and sanitary equipment in violation of the Fair Labor Standards Act, various state wage and hour laws, and the Employee Retirement Income Security Act. Under a settlement approved by the Court in 2002, Perdue paid $10 million for wages lost by its chicken processing employees and attorneys' fees and costs. The settlement was in addition to a $10 million settlement of a suit brought by the Department of Labor in the wake of Lieff Cabraser's lawsuit.

15. ***Gottlieb v. SBC Communications***, No. CV-00-04139 AHM (MANx) (C.D. Cal.). With co-counsel, Lieff Cabraser represented current and former employees of SBC and Pacific Telesis Group ("PTG") who participated in AirTouch Stock Funds, which were at one time part of PTG's salaried and non-salaried savings plans. After acquiring PTG, SBC sold AirTouch, which PTG had owned, and caused the AirTouch Stock Funds that were included in the PTG employees' savings plans to be liquidated. Plaintiffs alleged that in eliminating the AirTouch Stock Funds, and in allegedly failing to adequately communicate with employees about the liquidation, SBC breached its duties to 401k plan participants under the Employee Retirement Income Security Act. In 2002, the Court granted final approval to a $10 million settlement.

16. ***In Re Farmers Insurance Exchange Claims Representatives' Overtime Pay Litigation***, MDL No. 1439 (D. Ore.). Lieff Cabraser and co-counsel represented claims representatives of Farmers' Insurance Exchange seeking unpaid overtime. Lieff Cabraser won a liability phase trial on a classwide basis, and then litigated damages on an individual basis before a special master. The judgment was partially upheld on appeal. In August 2010, the Court approved an $8 million settlement.

17. ***Zuckman v. Allied Group***, No. 02-5800 SI (N.D. Cal.). In September 2004, the Court approved a settlement with Allied Group and Nationwide Mutual Insurance Company of $8 million plus Allied/Nationwide's share of payroll taxes on amounts treated as wages, providing plaintiffs a 100% recovery on their claims. Plaintiffs, claims representatives of Allied /

Nationwide, alleged that the company misclassified them as exempt employees and failed to pay them and other claims representatives in California overtime wages for hours they worked in excess of eight hours or forty hours per week. In approving the settlement, U.S. District Court Judge Susan Illston commended counsel for their "really good lawyering" and stated that they did "a splendid job on this" case.

18. ***Thomas v. California State Automobile Association***, No. CH217752 (Cal. Supr. Ct.). With co-counsel, Lieff Cabraser represented 1,200 current and former field claims adjusters who worked for the California State Automobile Association ("CSAA"). Plaintiffs alleged that CSAA improperly classified their employees as exempt, therefore denying them overtime pay for overtime worked. In May 2002, the Court approved an $8 million settlement of the case.

19. ***Higazi v. Cadence Design Systems,*** No. C 07-2813 JW (N.D. Cal.). In July 2008, the Court granted final approval to a $7.664 million settlement of a class action suit by current and former technical support workers for Cadence seeking unpaid overtime. Plaintiffs alleged that Cadence illegally misclassified its employees who install, maintain, or support computer hardware or software as "exempt" from the overtime pay requirements of federal and state labor laws.

20. ***Sandoval v. Mountain Center, Inc., et al.,*** No. 03CC00280 (Cal. Supr. Ct.). Cable installers in California charged that defendants owed them overtime wages, as well as damages for missed meal and rest breaks and reimbursement for expenses incurred on the job. In 2005, the Court approved a $7.2 million settlement of the litigation, which was distributed to the cable installers who submitted claims.

21. ***Kahn v. Denny's***, No. BC177254 (Cal. Supr. Ct.). Lieff Cabraser brought a lawsuit alleging that Denny's failed to pay overtime wages to its General Managers and Managers who worked at company-owned restaurants in California. The Court approved a $4 million settlement of the case in 2000.

22. ***Wynne v. McCormick & Schmick's Seafood Restaurants***, No. C 06-3153 CW (N.D. Cal.). In August 2008, the Court granted final approval to a settlement valued at $2.1 million, including substantial injunctive relief, for a class of African American restaurant-level hourly employees. The consent decree created hiring benchmarks to increase the number of African Americans employed in front of the house jobs (*e.g.*, server, bartender, host/hostess, waiter/waitress, and cocktail server), a registration of interest program to minimize discrimination in promotions, improved complaint procedures, and monitoring and enforcement mechanisms.

23. ***Lyon v. TMP Worldwide***, No. 993096 (Cal. Supr. Ct.). Lieff Cabraser served as Class Counsel for a class of certain non-supervisory employees in an advertising firm. The settlement, approved in 2000, provided almost a 100% recovery to class members. The suit alleged that TMP failed to pay overtime wages to these employees.

Lieff Cabraser attorneys have also had experience working on several other employment cases, including cases involving race, gender, and age discrimination, ERISA, breach of contract claims, and wage/hour claims. Lieff Cabraser attorneys frequently write amici briefs on cutting-edge legal issues involving employment law. Lieff Cabraser is currently investigating charges of race, gender and/or age discrimination, and wage/hour violations against several companies.

In 2010, the *Legal 500* guide to the U.S. legal profession recognized Lieff Cabraser as having one of the leading plaintiffs' employment practices in the nation. For the past two years, *Best Laywers In America* has selected Kelly M. Dermody, who oversees the firm's employment practice group, as one of the "San Francisco's Best Lawyers." In 2004, *The Recorder* selected Kelly M. Dermody, who oversees the firm's employment law practice, as one of the best employment lawyers in the San Francisco Bay Area. The *Daily Journal* has twice recognized Ms. Dermody as one of the "Top Women Litigators in California," and she also received a 2007 California Lawyer Attorney of the Year (CLAY) Award from *California Lawyer* magazine.

IV. Consumer Protection

A. Current Cases

1. ***Gutierrez v. Wells Fargo Bank***, No. C 07-05923 WHA (N.D. Cal.). Following a two week bench class action trial, on August 10, 2010, U.S. District Court Judge William Alsup held in a 90-page opinion that Wells Fargo violated California law by improperly and illegally assessing overdraft fees on its California customers and ordered $203 million in restitution to the certified class. Instead of posting each transaction chronologically, the evidence presented at trial showed that Wells Fargo deducted the largest charges first, drawing down available balances more rapidly and triggering a higher volume of overdraft fees. The Court entered judgment and the case is on appeal. For his outstanding work as Lead Trial Counsel and the significance of the case, *California Lawyer* magazine recognized Lieff Cabraser attorney Richard M. Heimann with a California Lawyer of the Year (CLAY) Award.

2. ***In re Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fl.). Lieff Cabraser serves on the plaintiffs' executive committee in a MDL action before U.S. District Court Judge James Lawrence King in Miami, Florida, against the nation's major banks for the collection of excessive overdraft fees. The alleged common nucleus of specific facts asserts a common practice by banks to enter charges debiting customer's accounts from the "largest to the smallest" thus maximizing the overdraft fee

revenue for themselves. In March 2010, Judge King denied defendants' motions to dismiss the complaints.

3. ***Brazil v. Dell***, No. C-07-01700 RMW (N.D. Cal.). Lieff Cabraser represents a class certified by U.S. District Court Judge Ronald M. Whyte in the Northern District of California of online purchasers of Dell computers who were victims of Dell's alleged deliberate scheme of misrepresenting price discounts through a systematic web-based false advertising campaign. The complaint charges that Dell advertised "limited time" specific-dollar discounts from expressly referenced former prices, but that the discounts are false because the reference prices are inflated beyond Dell's true regular prices. The certified class consists of consumers in the State of California who on or after March 23, 2003, purchased via Dell's Home & Home Office Web site any Dell-branded products advertised with a supposed former sales price, typically appearing as a price with a "Slash-Thru" alongside the actual selling price.

4. ***Payment Protection Credit Card Litigation.*** Lieff Cabraser represents consumers in a series of federal court cases against some of the nation's largest credit card issuers, challenging the imposition of charges for so-called "payment protection" or "credit protection" programs. Plaintiffs allege that the credit card companies make promises that under these "payment protection programs," payment of credit card debt will be suspended or canceled if borrowers experience major life events such as unemployment or disability. However, plaintiffs allege that they never agreed to sign-up or pay for these programs, and even those customers who attempt to avail themselves of the programs' supposed protections discover that they have been misled about the programs' benefits and exclusions. In response to the complaints, the credit card-issuing banks have filed motions to dismiss or motions to compel arbitration, most of which are pending. On February 17, 2011, a federal court in Florida denied defendants Citigroup, Inc., Citicorp U.S.A., Inc., and Citibank South Dakota N.A.'s motion to compel arbitration, allowing a proposed class of Florida residents to proceed in court.

5. ***White v. Experian Information Solutions***, No. 05-CV-1070 DOC (C.D. Cal.). Lieff Cabraser serves as Co-Lead Counsel in a nationwide class action lawsuit against the nation's three major repositories of consumer credit information, Experian Information Solutions, Inc., Trans Union, LLC, and Equifax Information Services, LLC. Plaintiffs charge that defendants violated the Fair Credit Reporting Act ("FRCA") by recklessly failing to follow reasonable procedures in the reporting, and reinvestigation of reporting, of debts discharged in Chapter 7 bankruptcy proceedings. Plaintiffs allege that millions of Americans were denied loans or were forced to pay higher interest rates because defendants continued to report discharged debts as due and owing.

In August 2008, the Court granted final approval to a historic settlement for injunctive relief requiring detailed procedures for the retroactive correction and updating of consumers' credit file information concerning discharged debt as well as new procedures to ensure that debts subject to future discharge orders will be similarly treated. In May 2009, the Court preliminarily approved a Settlement and conditionally certified under Federal Rule of Civil Procedure 23(b)(3) a class consisting of all Consumers who had received an order of discharge pursuant to Chapter 7 of the United States Bankruptcy Code and who had been the subject of a post-bankruptcy credit report issued by a Defendant that contained possible errors regarding debts discharged in bankruptcy .

6. ***In re Neurontin Marketing and Sales Practices Litigation***, No. 04-CV-10739-PBS (D. Mass.). Lieff Cabraser serves on the Plaintiffs' Steering Committee in multidistrict litigation arising out of the sale and marketing of the prescription drug Neurontin, manufactured by Parke-Davis, a division of Warner-Lambert Company, which was later acquired by Pfizer, Inc. Lieff Cabraser is also of counsel to Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals ("Kaiser") in the litigation. On March 25, 2010, a federal court jury determined that Pfizer Inc. violated a federal antiracketeering law by promoting its drug Neurontin for unapproved uses and found Pfizer must pay Kaiser damages up to $142 million. At trial, Kaiser presented evidence that Pfizer knowingly marketed Neurontin for unapproved uses without proof that it was effective. Kaiser said it was misled into believing neuropathic pain**,** migraines and bipolar disorder were among the conditions that could be treated effectively with Neurontin, which was approved by the FDA as an adjunctive therapy to treat epilepsy and later for post-herpetic neuralgia, a specific type of neuropathic pain. On November 3, 2010, the Court issued Findings of Fact and Conclusions of Law on Kaiser's claims arising under the California Unfair Competition Law, finding Pfizer liable and ordering that it pay restitution to Kaiser of approximately $95 million.

7. ***Estate of Holman v. Noble Energy***, No. 03 CV 9 (Dist. Ct., Weld County, Co.); ***Droegemueller v. Petroleum Development Corporation***, No. 07 CV 2508 JLK (D. Co.); ***Anderson v. Merit Energy Co.***, No. 07 CV 00916 LTB (D. Co.); ***Holman v. Petro-Canada Resources (USA)***, No. 07 CV 416 (Dist. Ct., Weld County, Co.). Lieff Cabraser and co-counsel represent owners of natural gas royalties in a number of lawsuits filed against gas producers and operators. Plaintiffs allege that defendants improperly deducted from royalty payments certain costs associated with defendants' extraction and

processing of natural gas from wells owned by plaintiffs. Since 2007, our clients have recovered more than $150 million.

8. ***In re Chase Bank USA, N.A. "Check Loan" Contract Litigation***, MDL No. 2032. Lieff Cabraser serves as Plaintiffs' Liaison Counsel in a nationwide class action charging that Chase Bank breached its contract with cardholders and violated consumer protection statutes by unilaterally modifying the terms of long-term fixed rate loans.

9. ***In re Ocwen Federal Bank FSB Mortgage Servicing Litigation***, MDL No. 1604 (N.D. Ill.). Lieff Cabraser serves as Co-Lead Plaintiffs' Counsel in a nationwide class action against Ocwen Financial Corporation, Ocwen Federal Bank FSB, and their affiliates ("Ocwen"). This lawsuit arises out of charges against Ocwen of misconduct in servicing its customers' mortgage loans and in its provision of certain related services, including debt collection and foreclosure services. On January 10, 2011, the Court granted preliminary approval of a nationwide settlement that provides monetary relief, cash-equivalent benefits, and injunctive relief. The final approval hearing is scheduled for May 16, 2011.

10. ***In re SIGG Switzerland (USA), Inc. Aluminum Bottles Marketing and Sales Practices Litigation***, MDL No. 2137 (W.D. Ky.). Lieff Cabraser, along with co-counsel, represents a class of consumers who were victims of SIGG's alleged misrepresentations and omissions regarding the presence of the toxic chemical Bisphenol A (BPA) in their water bottles produced prior to August 2008. The complaint charges that SIGG's concealment misled consumers into thinking their water bottles were BPA-free, when the manufacturer knew the plastic bottle liner contained BPA. In January 2011, the court denied Defendant's motion to dismiss plaintiffs' consumer fraud claims.

B. Successes

1. ***Kline v. The Progressive Corporation***, Circuit No. 02-L-6 (Circuit Court of the First Judicial Circuit, Johnson County, Illinois). Lieff Cabraser served as settlement class counsel in a nationwide consumer class action challenging Progressive Corporation's private passenger automobile insurance sales practices. Plaintiffs alleged that the Progressive Corporation wrongfully concealed from class members the availability of lower priced insurance for which they qualified. In 2002, the Court approved a settlement valued at approximately $450 million, which included both cash and equitable relief. The claims program, implemented upon a nationwide mail and publication notice program, was completed in 2003.

2. ***Catholic Healthcare West Cases***, JCCP No. 4453 (Cal. Supr. Ct.). Plaintiff alleged that Catholic Healthcare West ("CHW") charged uninsured patients excessive fees for treatment and services, at rates far higher than the rates charged to patients with private insurance or on Medicare. In January 2007, the Court approved a settlement that provides discounts, refunds and other benefits for CHW patients valued at $423 million. The settlement requires that CHW lower its charges and end price discrimination against all uninsured patients, maintain generous charity case policies allowing low-income uninsureds to receive free or heavily discounted care, and protect uninsured patients from unfair collections practices. Lieff Cabraser served as Lead Counsel in the coordinated action.

3. ***Sutter Health Uninsured Pricing Cases***, JCCP No. 4388 (Cal. Supr. Ct.). Plaintiffs alleged that they and a Class of uninsured patients treated at Sutter hospitals were charged substantially more than patients with private or public insurance, and many times above the cost of providing their treatment. In December 2006, the Court granted final approval to a comprehensive and groundbreaking settlement of the action. As part of the settlement, Class members will be entitled to make a claim for refunds or deductions of between 25% to 45% from their prior hospital bills, at an estimated total value of $276 million. For the next three years, Sutter will maintain discounted pricing policies for uninsureds that will make Sutter's pricing for uninsureds comparable to or better than the pricing for patients with private insurance. In addition, Sutter agreed to maintain more compassionate collections policies that will protect uninsureds who fall behind in their payments. Lieff Cabraser served as Lead Counsel in the coordinated action.

4. ***Citigroup Loan Cases***, JCCP No. 4197 (San Francisco Supr. Ct., Cal.). In 2003, the Court approved a settlement that provided approximately $240 million in relief to former Associates' customers across America. Prior to its acquisition in November 2000, Associates First Financial, referred to as The Associates, was one of the nation's largest "subprime" lenders. Lieff Cabraser represented former customers of The Associates charging that the company added on mortgage loans unwanted and unnecessary insurance products and engaged in improper loan refinancing practices. Lieff Cabraser served as nationwide Plaintiffs' Co-Liaison Counsel.

5. ***Thompson v. WFS Financial.***, No. 3-02-0570 (M.D. Tenn.); ***Pakeman v. American Honda Finance Corporation***, No. 3-02-0490 (M.D. Tenn.); ***Herra v. Toyota Motor Credit Corporation***, No. CGC 03-419 230 (San Francisco Supr. Ct.). Lieff Cabraser with co-counsel litigated against several of the largest automobile finance companies in the country to compensate victims of—and stop future

instances of—racial discrimination in the setting of interest rates in automobile finance contracts. The litigation led to substantial changes in the way Toyota Motor Credit Corporation ("TMCC"), American Honda Finance Corporation ("American Honda") and WFS Financial, Inc., sell automobile finance contracts, limiting the discrimination that can occur.

In approving the settlement in Thompson v. WFS Financial, the Court recognized the "innovative" and "remarkable settlement" achieved on behalf of the nationwide class. In 2006 in Herra v. Toyota Motor Credit Corporation, the Court granted final approval to a nationwide class action settlement on behalf of all African-American and Hispanic customers of TMCC who entered into retail installment contracts that were assigned to TMCC from 1999 to 2006. The monetary benefit to the class was estimated to be between $159-$174 million.

6. ***In re John Muir Uninsured Healthcare Cases***, JCCP No. 4494 (Cal. Supr. Ct.). Lieff Cabraser represented nearly 53,000 uninsured patients who received care at John Muir hospitals and outpatient centers and were charged inflated prices and then subject to overly aggressive collection practices when they failed to pay. On November 19, 2008, the Court approved a final settlement of the *John Muir* litigation. John Muir agreed to provide refunds or bill adjustments of 40-50% to uninsured patients that received medical care at John Muir over a six year period, bringing their charges to the level of patients with private insurance, at a value of $115 million. No claims were required, so every class member received a refund or bill adjustment. Furthermore, John Muir was required to (1) maintain charity care policies to give substantial discounts—up to 100%—to low income, uninsured patients who meet certain income requirements; (2) maintain an Uninsured Patient Discount Policy to give discounts to all uninsured patients, regardless of income, so that they pay rates no greater than those paid by patients with private insurance; (3) enhance communications to uninsured patients so they are better advised about John Muir's pricing discounts, financial assistance, and financial counseling services; and (4) limit the practices for collecting payments from uninsured patients.

7. ***Providian Credit Card Cases***, JCCP No. 4085 (San Francisco Supr. Ct.). Lieff Cabraser served as Co-Lead Counsel for a certified national Settlement Class of Providian credit cardholders who alleged that Providian had engaged in widespread misconduct by charging cardholders unlawful, excessive interest and late charges, and by promoting and selling to cardholders "add-on products" promising illusory benefits and services. In November 2001, the Court granted final approval to a $105 million settlement of the case, which also required Providian to implement substantial changes in its business practices. The

$105 million settlement, combined with an earlier settlement by Providian with Federal and state agencies, represents the largest settlement ever by a U.S. credit card company in a consumer protection case.

8. ***In re Synthroid Marketing Litigation***, MDL No. 1182 (N.D. Ill.). Lieff Cabraser served as Co-Lead Counsel for the purchasers of the thyroid medication Synthroid in litigation against Knoll Pharmaceutical, the manufacturer of Synthroid. The lawsuits charged that Knoll misled physicians and patients into keeping patients on Synthroid despite knowing that less costly, but equally effective drugs, were available. In 2000, the District Court gave final approval to a $87.4 million settlement with Knoll and its parent company, BASF Corporation, on behalf of a class of all consumers who purchased Synthroid at any time from 1990 to 1999. In 2001, the Court of Appeals upheld the order approving the settlement and remanded the case for further proceedings. 264 F.3d 712 (7th Cir. 2001). The settlement proceeds were distributed in 2003.

9. ***R.M. Galicia v. Franklin; Franklin v. Scripps Health***, No. IC 859468 (San Diego Supr. Ct., Cal.). Lieff Cabraser served as Lead Class Counsel in a certified class action lawsuit on behalf of 60,750 uninsured patients who alleged that the Scripps Health hospital system imposed excessive fees and charges for medical treatment. The class action originated in July 2006, when uninsured patient Phillip Franklin filed a class action cross-complaint against Scripps Health after Scripps sued Mr. Franklin through a collection agency. Mr. Franklin alleged that he, like all other uninsured patientsof Scripps Health, was charged unreasonable and unconscionable rates for his medical treatment. In June 2008, the Court granted final approval to a settlement of the action which includes refunds or discounts of 35% off of medical bills, collectively worth $73 million. The settlement also requires Scripps Health to modify its pricing and collections practices by (1) following an Uninsured Patient Discount Policy, which includes automatic discounts from billed charges for Hospital Services; (2) following a Charity Care Policy, which provides uninsured patients who meet certain income tests with discounts on Health Services up to 100% free care, and provides for charity discounts under other special circumstances; (3) informing uninsured patients about the availability and terms of the above financial assistance policies; and (4) restricting certain collections practices and actively monitoring outside collection agents. The prospective future discounts are worth many millions more in savings to uninsureds over the next four years.

10. ***Strugano v. Nextel Communications***, No. BC 288359 (Los Angeles Supr. Crt). In May 2006, the Los Angeles Superior Court granted final approval to a class action settlement on behalf of all California customers

of Nextel from January 1, 1999 through December 31, 2002, for compensation for the harm caused by Nextel's alleged unilateral (1) addition of a $1.15 monthly service fee and/or (2) change from second-by-second billing to minute-by-minute billing, which caused "overage" charges (*i.e.*, for exceeding their allotted cellular plan minutes). The total benefit conferred by the Settlement directly to Class Members was between approximately $13.5 million and $55.5 million, depending on which benefit Class Members selected.

11. ***Curry v. Fairbanks Capital Corporation***, No. 03-10895-DPW (D. Mass.). In 2004, the Court approved a $55 million settlement of a class action lawsuit against Fairbanks Capital Corporation arising out of charges against Fairbanks of misconduct in servicing its customers' mortgage loans. The settlement also required substantial changes in Fairbanks' business practices and established a default resolution program to limit the imposition of fees and foreclosure proceedings against Fairbanks' customers. Lieff Cabraser served as nationwide Co-Lead Counsel for the homeowners.

12. ***California Title Insurance Industry Litigation.*** Lieff Cabraser, in coordination with parallel litigation brought by the Attorney General, reached settlements in 2003 and 2004 with the leading title insurance companies in California, resulting in historic industry-wide changes to the practice of providing escrow services in real estate closings. The settlements brought a total of $50 million in restitution to California consumers, including cash payments. In the lawsuits, plaintiffs alleged, among other things, that the title companies received interest payments on customer escrow funds that were never reimbursed to their customers. The defendant companies include Lawyers' Title, Commonwealth Land Title, Stewart Title of California, First American Title, Fidelity National Title, and Chicago Title.

13. ***Morris v. AT&T Wireless Services***, No. C-04-1997-MJP (W.D. Wash.). Lieff Cabraser served as class counsel for a nationwide settlement class of cell phone customers subjected to an end of billing cycle cancellation policy implemented by AT&T Wireless in 2003 and alleged to have breached customers' service agreements. In May 2006, the New Jersey Superior Court granted final approval to a class settlement that guarantees delivery to the class of $40 million in benefits. Class members received cash-equivalent calling cards automatically, and had the option of redeeming them for cash. Lieff Cabraser had been prosecuting the class claims in the Western District of Washington when a settlement in New Jersey state court was announced. Lieff Cabraser objected to that settlement as inadequate because it would have only provided $1.5 million in benefits without a cash option, and the court agreed, declining to

approve it. Thereafter, Lieff Cabraser negotiated the new settlement providing $40 million to the class, and the settlement was approved.

14. ***Berger v. Property I.D. Corporation***, No. CV 05-5373-GHK (C.D. Cal.). In January 2009, the Court granted final approval to a $39.4 million settlement with several of the nation's largest real estate brokerages, including companies doing business as Coldwell Banker, Century 21, and ERA Real Estate, and California franchisors for RE/MAX and Prudential California Realty, in an action under the Real Estate Settlement Procedures Act on behalf of California home sellers. Plaintiffs charged that the brokers and Property I.D. Corporation set up straw companies as a way to disguise kickbacks for referring their California clients' natural hazard disclosure report business to Property I.D. (the report is required to sell a home in California). Under the settlement, hundreds of thousands of California home sellers were eligible to receive a full refund of the cost of their report, typically about $100.

15. ***In re Tri-State Crematory Litigation***, MDL No. 1467 (N.D. Ga.). In March 2004, Lieff Cabraser delivered opening statements and began testimony in a class action by families whose loved ones were improperly cremated and desecrated by Tri-State Crematory in Noble, Georgia. The families also asserted claims against the funeral homes that delivered the decedents to Tri-State Crematory for failing to ensure that the crematory performed cremations in the manner required under the law and by human decency. One week into trial, settlements with the remaining funeral home defendants were reached and brought the settlement total to approximately $37 million. Trial on the class members' claims against the operators of crematory began in August 2004. Soon thereafter, these defendants entered into a $80 million settlement with plaintiffs. As part of the settlement, all buildings on the Tri-State property were razed. The property will remain in a trust so that it will be preserved in peace and dignity as a secluded memorial to those whose remains were mistreated, and to prevent crematory operations or other inappropriate activities from ever taking place there. Earlier in the litigation, the Court granted plaintiffs' motion for class certification in a published order. 215 F.R.D. 660 (2003).

16. ***In re American Family Enterprises***, MDL No. 1235 (D. N.J.). Lieff Cabraser served as Co-Lead Counsel for a nationwide class of persons who received any sweepstakes materials sent under the name "American Family Publishers." The class action lawsuit alleged that defendants deceived consumers into purchasing magazine subscriptions and merchandise in the belief that such purchases were necessary to win an American Family Publishers' sweepstakes prize or enhanced their chances of winning a sweepstakes prize. In September 2000, the Court granted

final approval of a $33 million settlement of the class action. In April 2001, over 63,000 class members received refunds averaging over $500 each, representing 92% of their eligible purchases. In addition, American Family Publishers agreed to make significant changes to the way it conducts the sweepstakes.

17. ***Cincotta v. California Emergency Physicians Medical Group,*** No. 07359096 (Cal. Supr. Ct.). Lieff Cabraser served as class counsel for nearly 100,000 uninsured patients that alleged they were charged excessive and unfair rates for emergency room service across 55 hospitals throughout California. The settlement, approved on October 31, 2008, provided complete debt elimination, 100% cancellation of the bill, to uninsured patients treated by California Emergency Physicians Medical Group during the 4-year class period. These benefits were valued at $27 million. No claims were required, so all of these bills were cancelled. In addition, the settlement required California Emergency Physicians Medical Group prospectively to (1) maintain certain discount policies for all charity care patients; (2) inform patients of the available discounts by enhanced communications; and (3) limit significantly the type of collections practices available for collecting from charity care patients.

18. ***Yarrington v. Solvay Pharmaceuticals***, No. 09-CV-2261 (D. Minn.). In March 2010, the Court granted final approval to a $16.5 million settlement with Solvay Pharmaceuticals, one of the country's leading pharmaceutical companies. Lieff Cabraser served as Co-Lead Counsel, representing a class of persons who purchased Estratest—a hormone replacement drug. The class action lawsuit alleged that Solvay deceptively marketed and advertised Estratest as an FDA-approved drug when in fact Estratest was not FDA-approved for any use. Under the settlement, consumers obtained partial refunds for up to 30% of the purchase price paid of Estratest. In addition, $8.9 million of the settlement was allocated to fund programs and activities devoted to promotiong women's health and well-being at health organizations, medical schools, and charities throughout the nation.

19. ***Reverse Mortgage Cases***, JCCP No. 4061 (San Mateo County Supr Ct., Cal.). Transamerica Corporation, through its subsidiary Transamerica Homefirst, Inc., sold "reverse mortgages" marketed under the trade name "Lifetime." The Lifetime reverse mortgages were sold exclusively to seniors, *i.e.*, persons 65 years or older. Lieff Cabraser, with co-counsel, filed suit on behalf of seniors alleging that the terms of the reverse mortgages were unfair, and that borrowers were misled as to the loan terms, including the existence and amount of certain charges and fees. In 2003, the Court granted final approval to an $8 million settlement of the action.

V. Antitrust/Trade Regulation/Intellectual Property

A. Current Cases

1. ***In re TFT-LCD (Flat Panel) Antitrust Litigation,*** MDL No. 1827 (N.D. Cal.). Representing direct purchasers of flat-panel TV screens and other products incorporating liquid crystal displays, Lieff Cabraser serves as court appointed Co-Lead Counsel in nationwide class action litigation against the world's leading manufacturers of Thin Film Transistor Liquid Crystal Displays. TFT-LCDs are used in flat-panel televisions as well as computer monitors, laptop computers, mobile phones, personal digital assistants and other devices. Plaintiffs charge that defendants conspired to raise, fix and stabilize the prices of TFT-LCDs. On March 3, 2009, U.S. District Court Judge Susan Illston denied defendants' motions to dismiss direct purchaser plaintiffs' First Amended Consolidated Complaint. The Court found that the plaintiffs' amended consolidated complaints "more than adequately allege the involvement of each defendant and put defendants on notice of the claims against them." On March 28, 2010, the Court certified a class of all persons and entities that directly purchased TFT-LCDs from January 1, 1999 through December 31, 2006.

2. ***In re Static Random Access Memory (SRAM) Antitrust Litigation***, MDL No. 1819 (N.D. Cal.). Plaintiffs allege that from November 1, 1996 through December 31, 2006, the defendant manufacturers conspired to fix and maintain artificially high prices for SRAM, a type of memory used in many products including smartphones and computers. In February 2008, U.S. District Court Judge Claudia Wilken denied most aspects of defendants' motions to dismiss plaintiffs' complaints. In November 2009, the Court certified a nationwide class seeking injunctive relief and twenty-seven state classes seeking damages. Lieff Cabraser serves as one of three members of the Steering Committee for consumers and other indirect purchasers of SRAM.

3. ***Sullivan v. DB Investments***, No. 04-02819 (D. N.J.). Lieff Cabraser serves as class counsel for consumers who purchased diamonds from 1994 through March 31, 2006, in a class action lawsuit against the De Beers group of companies. Plaintiffs charge that De Beers conspired to monopolize the sale of rough diamonds. In May 2008, the Court granted final approval of a settlement that provides $295 million to purchasers of diamonds and diamond jewelry, including $130 million to consumers. The settlement also prevents De Beers from continuing its illegal business practices and requires De Beers to submit to the jurisdiction of the Court to enforce the settlement. The case is presently on appeal.

4. ***Coalition for Elders' Independence, Inc. v. Biovail Corporation,*** No. CV023320 (Cal. Supr. Ct.). Lieff Cabraser serves as

Co-Lead Counsel for class of consumers who purchased the drug Adalat, also known as Nifedipine. Plaintiffs allege that two generic manufacturers of Adalat entered into an agreement to allocate the dosages markets for generic Adalat, thereby substantially reducing competition and unlawfully inflating prices on both generic and brand-name Adalat, in violation of state antitrust laws.

5. ***Electrical Carbon Products Cases***, JCCP No. 4294 (San Francisco Supr. Court). Lieff Cabraser represents the City and County of San Francisco and a class of indirect purchasers of carbon brushes and carbon collectors on claims that producers fixed the price of carbon brushes and carbon collectors in violation of the Cartwright Act and the Unfair Competition Law. Lieff Cabraser also represents the People of the State of California in claims arising from the Unfair Competition Law.

6. ***In re ATM Antitrust Litigation***, No. C-04-2676 (N.D. Cal.). Lieff Cabraser represents a putative class of ATM users against a number of banks comprising the Star ATM Network, alleging that those banks conspired to fix the price of ATM interchange fees, thereby unlawfully inflating fees paid by ATM users in the network.

7. ***In re Publication Paper Antitrust Litigation***, MDL No. 1631 (D. Conn.). Lieff Cabraser serves as class counsel in this nationwide antitrust class action on behalf of printing companies. Plaintiffs allege that the defendants, who are among the world's largest paper manufacturers, conspired illegally to fix the price of publication paper that is used to print magazines.

B. Successes

1. ***Natural Gas Antitrust Cases***, JCCP Nos. 4221, 4224, 4226 & 4228 (Cal. Supr. Ct.). In 2003, the Court approved a landmark of $1.1 billion settlement in class action litigation against El Paso Natural Gas Co. for manipulating the market for natural gas pipeline transmission capacity into California. Lieff Cabraser served as Plaintiffs' Co-Lead Counsel and Co-Liaison Counsel in the *Natural Gas Antitrust Cases I-IV*.

   In June 2007, the Court granted final approval to a $67.39 million settlement of a series of class action lawsuits brought by California business and residential consumers of natural gas against a group of natural gas suppliers, Reliant Energy Services, Inc., Duke Energy Trading and Marketing LLC, CMS Energy Resources Management Company, and Aquila Merchant Services, Inc.

   Plaintiffs charged defendants with manipulating the price of natural gas in California during the California energy crisis of 2000-2001 by a variety

of means, including falsely reporting the prices and quantities of natural gas transactions to trade publications, which compiled daily and monthly natural gas price indices; prearranged wash trading; and, in the case of Reliant, "churning" on the Enron Online electronic trading platform, which was facilitated by a secret netting agreement between Reliant and Enron.

The 2007 settlement followed a settlement reached in 2006 for $92 million partial settlement with Coral Energy Resources, L.P.; Dynegy Inc. and affiliates; EnCana Corporation; WD Energy Services, Inc.; and The Williams Companies, Inc. and affiliates.

2. ***Wholesale Electricity Antitrust Cases I & II***, JCCP Nos. 4204 & 4205 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Lead Counsel in the private class action litigation against Duke Energy Trading & Marketing Reliant Energy, and The Williams Companies for claims that the companies manipulated California's wholesale electricity markets during the California energy crisis of 2000-2001. Extending the landmark victories for California residential and business consumers of electricity, in September 2004, plaintiffs reached a $206 million settlement with Duke Energy Trading & Marketing, and in August 2005, plaintiffs reached a $460 million settlement with Reliant Energy, settling claims that the companies manipulated California's wholesale electricity markets during the California energy crisis of 2000-01. Lieff Cabraser earlier entered into a settlement for over $400 million with The Williams Companies.

3. ***In re Brand Name Prescription Drugs***, MDL No. 997 (N.D. Ill.). Lieff Cabraser served as Class Counsel for a class of tens of thousands of retail pharmacies against the leading pharmaceutical manufacturers and wholesalers of brand name prescription drugs for alleged price-fixing from 1989 to 1995 in violation of the federal antitrust laws. Plaintiffs charged that defendants engaged in price discrimination against retail pharmacies by denying them discounts provided to hospitals, health maintenance organizations, and nursing homes. In 1996 and 1998, the Court approved settlements with certain manufacturers totaling $723 million.

4. ***Microsoft Private Antitrust Litigation.*** Representing businesses and consumers, Lieff Cabraser prosecuted multiple private antitrust cases against Microsoft Corporation in state courts across the country, including Florida, New York, North Carolina, and Tennessee. Plaintiffs alleged that Microsoft had engaged in anticompetitive conduct, violated state deceptive and unfair business practices statutes, and overcharged businesses and consumers for Windows operating system software and for certain software applications, including Microsoft Word and Microsoft Office. In August 2006, the New York Supreme Court granted final

approval to a settlement that made available up to $350 million in benefits for New York businesses and consumers. In August 2004, the Court in the North Carolina action granted final approval to a settlement valued at over $89 million. In June 2004, the Court in the Tennessee action granted final approval to a $64 million settlement. In November 2003, in the Florida Microsoft litigation, the Court granted final approval to a $202 million settlement, one of the largest antitrust settlements in Florida history. Lieff Cabraser served as Co-Lead Counsel in the New York, North Carolina and Tennessee cases, and held leadership roles in the Florida case.

5. ***In re Linerboard Antitrust Litigation***, MDL No. 1261 (E.D. Pa.). Lieff Cabraser served as Class Counsel on behalf of a class of direct purchasers of linerboard. The Court approved a settlement totaling $202 million.

6. ***Azizian v. Federated Department Stores,*** No. 3:03 CV 03359 SBA (N.D. Cal.). In March 2005, the Court granted final approval to a settlement that Lieff Cabraser and co-counsel reached with numerous department store cosmetics manufacturers and retailers. The settlement is valued at $175 million and includes significant injunctive relief, for the benefit of a nationwide class of consumers of department store cosmetics. The complaint alleged the manufacturers and retailers violated antitrust law by engaging in anticompetitive practices to prevent discounting of department store cosmetics.

7. ***Pharmaceutical Cases I, II, and III***, JCCP Nos. 2969, 2971 & 2972 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Lead and Co-Liaison Counsel representing a certified class of indirect purchasers (consumers) on claims against the major pharmaceutical manufacturers for violations of the Cartwright Act and the Unfair Competition Act. The class alleged that defendants unlawfully fixed discriminatory prices on prescription drugs to retail pharmacists in comparison with the prices charged to certain favored purchasers, including HMOs and mail order houses. In April 1999, the Court approved a settlement providing $148 million in free, brand-name prescription drugs to health agencies that serve California's poor and uninsured. In October 2001, the Court approved a settlement with the remaining defendants in the case, which provided an additional $23 million in free, brand-name prescription drugs to these agencies.

8. ***In re Lupron Marketing and Sales Practices Litigation***, MDL No. 1430 (D. Mass.). In May 2005, the Court granted final approval to a settlement of a class action lawsuit by patients, insurance companies and health and welfare benefit plans that paid for Lupron, a prescription drug used to treat prostate cancer, endometriosis and precocious puberty. The settlement requires the defendants, Abbott Laboratories, Takeda

Pharmaceutical Company Limited, and TAP Pharmaceuticals, to pay $150 million, inclusive of costs and fees, to persons or entities who paid for Lupron from January 1, 1985 through March 31, 2005. Plaintiffs charged that the defendants conspired to overstate the drug's average wholesale price ("AWP"), which resulted in plaintiffs paying more for Lupron than they should have paid. Lieff Cabraser served as Co-Lead Plaintiffs' Counsel.

9. ***California Vitamins Cases***, JCCP No. 4076 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Liaison Counsel and Co-Chairman of the Plaintiffs' Executive Committee on behalf of a class of California indirect vitamin purchasers in every level of the chain of distribution. In January 2002, the Court granted final approval of a $96 million settlement with certain vitamin manufacturers in a class action alleging that these and other manufacturers engaged in price fixing of particular vitamins. In December 2006, the Court granted final approval to over $8.8 million in additional settlements.

10. ***In re Buspirone Antitrust Litigation***, MDL No. 1413 (S.D. N.Y.). In November 2003, Lieff Cabraser obtained a $90 million cash settlement for individual consumers, consumer organizations, and third party payers that purchased BuSpar, a drug prescribed to alleviate symptoms of anxiety. Plaintiffs alleged that Bristol-Myers Squibb Co. (BMS), Danbury Pharmacal, Inc., Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. entered into an unlawful agreement in restraint of trade under which BMS paid a potential generic manufacturer of BuSpar to drop its challenge to BMS' patent and refrain from entering the market. Lieff Cabraser served as Plaintiffs' Co-Lead Counsel.

11. ***In re Travel Agency Commission Antitrust Litigation***, MDL No. 1058 (D. Minn.). Lieff Cabraser served as Co-Lead Counsel for a certified class of U.S. travel agents on claims against the major U.S. air carriers, who allegedly violated the federal antitrust laws by fixing the commissions paid to travel agents. In 1997, the Court approved an $82 million settlement.

12. ***In re Commercial Explosives Antitrust Litigation***, MDL No. 1093 (D. Utah). Lieff Cabraser served as Class Counsel on behalf of direct purchasers of explosives used in mining operations. In 1998, the Court approved a $77 million settlement of the litigation.

13. ***In re Toys 'R' Us Antitrust Litigation***, MDL No. 1211 (E.D. N.Y.). Lieff Cabraser served as Co-Lead Counsel representing a class of direct purchasers (consumers) who alleged that Toys 'R' Us conspired with the major toy manufacturers to boycott certain discount retailers in order to

restrict competition and inflate toy prices. In February 2000, the Court approved a settlement of cash and product of over $56 million.

14. ***In re Carpet Antitrust Litigation***, MDL No. 1075 (N.D. Ga.). Lieff Cabraser served as Class Counsel and a member of the trial team for a class of direct purchasers of twenty-ounce level loop polypropylene carpet. Plaintiffs, distributors of polypropylene carpet, alleged that Defendants, seven manufacturers of polypropylene carpet, conspired to fix the prices of polypropylene carpet by agreeing to eliminate discounts and charge inflated prices on the carpet. In 2001, the Court approved a $50 million settlement of the case.

15. ***In re High Pressure Laminates Antitrust Litigation***, MDL No. 1368 (S.D. N.Y.). Lieff Cabraser served as Trial Counsel on behalf of a class of direct purchasers of high pressure laminates. The case in 2006 was tried to a jury verdict. The case settled for over $40 million.

16. ***Schwartz v. National Football League***, No. 97-CV-5184 (E.D. Pa.). Lieff Cabraser served as counsel for individuals who purchased the "NFL Sunday Ticket" package of private satellite transmissions in litigation against the National Football League for allegedly violating the Sherman Act by limiting the distribution of television broadcasts of NFL games by satellite transmission to one package. In August 2001, the Court approved of a class action settlement that included: (1) the requirement that defendants provide an additional weekly satellite television package known as Single Sunday Ticket for the 2001 NFL football season, under certain circumstances for one more season, and at the defendants' discretion thereafter; (2) a $7.5 million settlement fund to be distributed to class members; (3) merchandise coupons entitling class members to discounts at the NFL's Internet store which the parties value at approximately $3 million; and (4) $2.3 million to pay for administering the settlement fund and notifying class members.

17. ***In re Lasik/PRK Antitrust Litigation***, No. CV 772894 (Cal. Supr. Ct.). Lieff Cabraser served as a member of Plaintiffs' Executive Committee in class actions brought on behalf of persons who underwent Lasik/PRK eye surgery. Plaintiffs alleged that defendants, the manufacturers of the laser system used for the laser vision correction surgery, manipulated fees charged to ophthalmologists and others who performed the surgery, and that the overcharges were passed onto consumers who paid for laser vision correction surgery. In December 2001, the Court approved a $12.5 million settlement of the litigation.

18. ***Quantegy Recording Solutions, LLC, et al. v. Toda Kogyo Corp., et al.,*** No. C-02-1611 (PJH). In August 2006 and January 2009, the Court approved the final settlements in antitrust litigation against

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manufacturers, producers, and distributors of magnetic iron oxide ("MIO"). MIO is used in the manufacture of audiotape, videotape, and data storage tape. Plaintiffs alleged that defendants violated federal antitrust laws by conspiring to fix, maintain, and stabilize the prices and to allocate the worldwide markets for MIO from 1991 to October 12, 2005. The value of all settlements reached in the litigation was $6.35 million. Lieff Cabraser served as Plaintiffs' Co-Lead Counsel.

19. ***Carbon Fiber Cases I, II, III***, JCCP Nos. 4212, 4216 & 4222 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Liaison Counsel on behalf of indirect purchasers of carbon fiber. Plaintiffs alleged that defendants illegally conspired to raise prices of carbon fiber. Settlements have been reached with all of the defendants.

20. ***Methionine Cases I and II***, JCCP Nos. 4090 & 4096 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Lead Counsel on behalf of indirect purchasers of methionine, an amino acid used primarily as a poultry and swine feed additive to enhance growth and production. Plaintiffs alleged that the companies illegally conspired to raise methionine prices to super-competitive levels. The case settled.

21. ***McIntosh v. Monsanto***, No. 4:01CV65RSW (E.D. Mo.). Lieff Cabraser served as Co-Lead Counsel in a class action lawsuit against Monsanto Company and others alleging that a conspiracy to fix prices on genetically modified Roundup Ready soybean seeds and Yieldgard corn seeds. The case settled.

22. ***Tortola Restaurants v. Minnesota Mining and Manufacturing***, No. 314281 (Cal. Supr. Ct). Lieff Cabraser served as Co-Lead Counsel on behalf of indirect purchasers of Scotch-brand invisible and transparent tape. Plaintiffs alleged that defendant 3M conspired with certain retailers to monopolize the sale of Scotch-brand tape in California. The case was resolved as part of a nationwide settlement that Lieff Cabraser negotiated, along with co-counsel.

23. ***In re Compact Disc Antitrust Litigation***, MDL No. 1216 (C.D. Cal.). Lieff Cabraser served as Co-Lead Counsel for the direct purchasers of compact discs on claims that the producers fixed the price of CDs in violation of the federal antitrust laws.

24. ***In re Electrical Carbon Products Antitrust Litigation***, MDL No. 1514 (D.N.J.). Lieff Cabraser represented the City and County of San Francisco and a class of direct purchasers of carbon brushes and carbon collectors on claims that producers fixed the price of carbon brushes and carbon collectors in violation of the Sherman Act.

VI. Non-Personal Injury Defective Products

A. Current Cases

1. ***In re Mercedes-Benz Tele-Aid Contract Litigation***, MDL No. 1914 (D. N.J.). With co-counsel, Lieff Cabraser represents owners and lessees of Mercedes-Benz cars and SUVs equipped with the Tele-Aid system, an emergency response system which links subscribers to road-side assistance operators by using a combination of global positioning and cellular technology. In 2002, the Federal Communications Commission issued a rule, effective 2008, eliminating the requirement that wireless phone carriers provide analog-based networks. The Tele-Aid system offered by Mercedes-Benz relied on analog signals. Plaintiffs charge that Mercedes-Benz committed fraud in promoting and selling the Tele-Aid system without disclosing to buyers of certain model years that the Tele-Aid system as installed would become obsolete in 2008. Mercedes-Benz subsequently told customers that they could pay to upgrade their Tele-Aid system to operate over a digital network, at a cost of as much as $1,500 for some owners. Plaintiffs' complaint seeks damages for Mercedes-Benz fraudulent conduct, along with reimbursement for Mercedes-Benz customers with analog systems who paid to upgrade their Tele-Aid systems to operate on a digital network. In an April 2009 published order, the Court certified a nationwide class of all persons or entities in the U.S. who purchased or leased a Mercedes-Benz vehicle equipped with an analog-only Tele Aid system after August 8, 2002, and (1) subscribed to Tele Aid service until being informed that such service would be discontinued at the end of 2007, or (2) purchased an upgrade to digital equipment.

2. ***In re Burnham Hydronics, Inc. Litigation,*** No. 10-cv-3968-MAM (E.D. Penn). Lieff Cabraser serves as Co-Counsel for customers who purchased residential boilers. In the Limited Water Warranty, Burnham claimed its Burnham V7 and V8 series boilers were durable and "free of defects." Plaintiffs allege that the Burnham V7 and V8 series boilers have a manufacturing defect in the heat exchanger, causing the block to crack and corrode, eventually leading to the boiler failure.

3. ***In re Whirlpool Corporation Front-Loading Washer Products Liability Litigation***, MDL No. 2001 (N.D. Ohio). Lieff Cabraser serves as Lead Counsel in class action litigation against Whirlpool Corporation. The complaint charges that certain Whirlpool high-efficiency front-loading automatic washers develop mold, resulting in a moldy odor on clothes and permeates the washing machines and customers' homes. Although many class members have spent money for repairs and on other purported remedies, the complaint alleges that none of these remedies eliminates the problem.

B. Successes

1. ***Naef v. Masonite***, No. CV-94-4033 (Mobile County Circuit Ct., Ala.). Lieff Cabraser served as Co-Lead Class Counsel on behalf of a nationwide Class of an estimated 4 million homeowners with allegedly defective hardboard siding manufactured and sold by Masonite Corporation, a subsidiary of International Paper, installed on their homes. The Court certified the class in November 1995, and the Alabama Supreme Court twice denied extraordinary writs seeking to decertify the Class, including in *Ex Parte Masonite*, 681 So. 2d 1068 (Ala. 1996). A month-long jury trial in 1996 established the factual predicate that Masonite hardboard siding was defective under the laws of most states. The case settled on the eve of a second class-wide trial, and in 1998, the Court approved a settlement. Under a claims program established by the settlement that ran through 2008, class members with failing Masonite hardboard siding installed and incorporated in their property between January 1, 1980, and January 15, 1998, were entitled to make claims, have their homes evaluated by independent inspectors, and receive cash payments for damaged siding. Combined with settlements involving other alleged defective home building products sold by Masonite, the total cash paid to homeowners exceeded $1 billion.

2. ***In re Intel Pentium Processor Litigation***, No. CV 745729 (Santa Clara Supr. Ct., Cal.). Lieff Cabraser served as one of two court appointed Co-Lead Class Counsel, and negotiated a settlement, approved by the Court in June 1995, involving both injunctive relief and damages having an economic value of approximately $1 billion. The chip replacement program has been implemented, and is ongoing.

3. ***In re General Motors Corp. Pick-Up Fuel Tank Products Liability Litigation***, MDL No. 961 (E.D. Pa.). Lieff Cabraser served as court-appointed Co-Lead Counsel representing a class of 4.7 million plaintiffs who owned 1973-1987 GM C/K pickup trucks with allegedly defective gas tanks. The Consolidated Complaint asserted claims under the Lanham Act, the Magnuson-Moss Act, state consumer protection statutes, and common law. In 1995, the Third Circuit vacated the District Court settlement approval order and remanded the matter to the District Court for further proceedings. In July 1996, a new nationwide class action was certified for purposes of an enhanced settlement program valued at a minimum of $600 million, plus funding for independent fuel system safety research projects. The Court granted final approval of the settlement in November 1996.

4. ***Cox v. Shell***, No. 18,844 (Obion County Chancery Ct., Tenn.). Lieff Cabraser served as Class Counsel on behalf of a nationwide class of approximately 6 million owners of property equipped with defective

polybutylene plumbing systems and yard service lines. In November 1995, the Court approved a settlement involving an initial commitment by Defendants of $950 million in compensation for past and future expenses incurred as a result of pipe leaks, and to provide replacement pipes to eligible claimants. The deadline for filing claims expired in 2009.

5. ***In re Louisiana-Pacific Inner-Seal Siding Litigation***, No. C-95-879-JO (D. Ore.). Lieff Cabraser served as Co-Lead Class Counsel on behalf of a nationwide class of homeowners with defective exterior siding on their homes. Plaintiffs asserted claims for breach of warranty, fraud, negligence, and violation of consumer protection statutes. In 1996, U.S. District Judge Robert E. Jones entered an Order, Final Judgment and Decree granting final approval to a nationwide settlement requiring Louisiana-Pacific to provide funding up to $475 million to pay for inspection of homes and repair and replacement of failing siding over the next seven years.

6. ***Grays Harbor Adventist Christian School v. Carrier Corporation***, No. 05-05437 (W.D. Wash.). In April 2008, the Court granted final approval to a nationwide settlement in a class action lawsuit filed by current and past owners of high-efficiency furnaces manufactured and sold by Carrier Corporation and equipped with polypropylene-laminated condensing heat exchangers ("CHXs"). Carrier sold the furnaces under the Carrier, Bryant, Day & Night and Payne brand-names. Plaintiffs alleged that starting in 1989 Carrier began manufacturing and selling high efficiency condensing furnaces manufactured with a secondary CHX made of inferior materials. Plaintiffs alleged that as a result, the CHXs, which Carrier warranted and consumers expected to last for 20 years, failed prematurely. The settlement provides an enhanced 20-year warranty of free service and free parts for consumers whose furnaces have not yet failed. The settlement also offers a cash reimbursement for consumers who already paid to repair or replace the CHX in their high-efficiency Carrier furnaces.

   An estimated three million or more consumers in the U.S. and Canada purchased the furnaces covered under the settlement. Plaintiffs valued the settlement to consumers at over $300 million based upon the combined value of the cash reimbursement and the estimated cost of an enhanced warranty of this nature.

7. ***Hanlon v. Chrysler Corp.***, No. C-95-2010-CAL (N.D. Cal.). In 1995, the district court approved a $200+ million settlement enforcing Chrysler's comprehensive minivan rear latch replacement program, and to correct alleged safety problems with Chrysler's pre-1995 designs. As part of the settlement, Chrysler agreed to replace the rear latches with

redesigned latches. The settlement was affirmed on appeal by the Ninth Circuit in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (1998).

8. ***Richison v. American Cemwood Corp.***, No. 005532 (San Joaquin Supr. Ct., Cal.). Lieff Cabraser served as Co-Lead Class Counsel for an estimated nationwide class of 30,000 owners of homes and other structures on which defective Cemwood Shakes were installed. In November 2003, the Court granted final approval to a $75 million Phase 2 settlement in the American Cemwood roofing shakes national class action litigation. This amount was in addition to a $65 million partial settlement approved by the Court in May 2000, and brought the litigation to a conclusion. The claims period runs through 2015.

9. ***ABS Pipe Litigation***, JCCP No. 3126 (Contra Costa County Supr. Ct., Cal.). Lieff Cabraser served as Lead Class Counsel on behalf of property owners whose ABS plumbing pipe was allegedly defective and caused property damage by leaking. Six separate class actions were filed in California against five different ABS pipe manufacturers, numerous developers of homes containing the ABS pipe, as well as the resin supplier and the entity charged with ensuring the integrity of the product. Between 1998 and 2001, we achieved 12 separate settlements in the class actions and related individual lawsuits for approximately $78 million.

   Commenting on the work of Lieff Cabraser and co-counsel in the case, California Superior Court (now appellate) Judge Mark B. Simons stated on May 14, 1998: “The attorneys who were involved in the resolution of the case certainly entered the case with impressive reputations and did nothing in the course of their work on this case to diminish these reputations, but underlined, in my opinion, how well deserved those reputations are.”

10. ***Foothill/DeAnza Community College District v. Northwest Pipe Company***, No. C-00-20749 (N.D. Cal.). In June 2004, the court approved the creation of a settlement fund of up to $14.5 million for property owners nationwide with Poz-Lok fire sprinkler piping that fails. Since 1990, Poz-Lok pipes and pipe fittings were sold in the U.S. as part of fire suppression systems for use in residential and commercial buildings. After leaks in Poz-Lok pipes caused damage to its DeAnza Campus Center building, Foothill/DeAnza Community College District in California retained Lieff Cabraser to file a class action lawsuit against the manufacturers of Poz-Lok. The college district charged that Poz-Lok pipe had manufacturing and design defects that resulted in the premature corrosion and failure of the product. Under the settlement, owners whose Poz-Lok pipes are leaking today, or over the next 15 years, may file a claim for compensation.

11. ***Gross v. Mobil***, No. C 95-1237-SI (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Class Counsel in this nationwide action involving an estimated 2,500 aircraft engine owners whose engines were affected by Mobil AV-1, an aircraft engine oil. Plaintiffs alleged claims for strict liability, negligence, misrepresentation, violation of consumer protection statutes, and for injunctive relief. Plaintiffs obtained a preliminary injunction requiring Defendant Mobil Corporation to provide notice to all potential class members of the risks associated with past use of Defendants' aircraft engine oil. In addition, Plaintiffs negotiated a proposed Settlement, granted final approval by the Court in November 1995, valued at over $12.5 million, under which all Class Members were eligible to participate in an engine inspection and repair program, and receive compensation for past repairs and for the loss of use of their aircraft associated with damage caused by Mobil AV-1.

12. ***Weekend Warrior Trailer Cases***, JCCP No. 4455 (Cal. Supr. Ct.). Lieff Cabraser, with co-counsel, represented owners of Weekend Warrior trailers manufactured between 1998 and 2006 that were equipped with frames manufactured, assembled, or supplied by Zieman Manufacturing Company. The trailers, commonly referred to as "toy haulers," were used to transport outdoor recreational equipment such as motorcycles and all-terrain vehicles. Plaintiffs charged that Weekend Warrior and Zieman knew of design and performance problems, including bent frames, detached siding, and warped forward cargo areas, with the trailers, and concealed the defects from consumers. In February 2008, the Court approved a $5.5 million settlement of the action that provided for the repair and/or reimbursement of the trailers. In approving the settlement, California Superior Court Judge Thierry P. Colaw stated that class counsel were "some of the best" and "there was an overwhelming positive reaction to the settlement" among class members.

13. ***Williams v. Weyerhaeuser***, No. 995787 (San Francisco Supr. Ct.). Lieff Cabraser served as Class Counsel on behalf of a nationwide class of hundreds of thousands or millions of owners of homes and other structures with defective Weyerhaeuser hardboard siding. A California-wide class was certified for all purposes in February 1999, and withstood writ review by both the California Court of Appeal and Supreme Court of California. In 2000, the Court granted final approval to a nationwide settlement of the case which provides class members with compensation for their damaged siding, based on the cost of replacing or, in some instances, repairing, damaged siding. The settlement has no cap, and requires Weyerhaeuser to pay all timely, qualified claims over a nine year period. The claims program is underway and paying claims.

14. ***Cartwright v. Viking Industries***, No. 2:07-cv-2159 FCD (E.D. Cal.) Lieff Cabraser represented California homeowners in a class action

lawsuit which alleged that over one million Series 3000 windows produced and distributed by Viking between 1989 and 1999 were defective. The plaintiffs charged that the windows were not watertight and allowed for water to penetrate the surrounding sheetrock, drywall, paint or wallpaper. Under the terms of a settlement approved by the Court in August 2010, all class members who submitted valid claims were entitled to receive as much as $500 per affected property.

15. ***Pelletz. v. Advanced Environmental Recycling Technologies*** (W.D. Wash.). Lieff Cabraser served as Co-Lead Counsel in a case alleging that ChoiceDek decking materials, manufactured by AERT, developed persistent and untreatable mold spotting throughout their surface. In a published opinion in January 2009, the Court approved a settlement that provided affected consumers with free and discounted deck treatments, mold inhibitor applications, and product replacement and reimbursement.

16. ***Toshiba Laptop Screen Flicker Settlement.*** Lieff Cabraser negotiated a settlement with Toshiba America Information Systems, Inc. ("TAIS") to provide relief for owners of certain Toshiba Satellite 1800 Series, Satellite Pro 4600 and Tecra 8100 personal notebook computers whose screens flickered, dimmed or went blank due to an issue with the FL Inverter Board component. Under the terms of the Settlement, owners of affected computers who paid to have the FL Inverter issue repaired by either TAIS or an authorized TAIS service provider recovered the cost of that repair, up to $300 for the Satellite 1800 Series and the Satellite Pro 4600 personal computers, or $400 for the Tecra 8100 personal computers. TAIS also agreed to extend the affected computers' warranties for the FL Inverter issue by 18 months.

17. ***Create-A-Card v. Intuit***, No. C07-6452 WHA (N.D. Cal.). Lieff Cabraser, with co-counsel, represented business users of QuickBooks Pro for accounting that lost their QuickBooks data and other files due to faulty software code sent by Intuit, the producer of QuickBooks. In September 2009, the Court granted final approval to a settlement that provided all class members who filed a valid claim with a free software upgrade and compensation for certain data-recovery costs. Commenting on the settlement and the work of Lieff Cabraser on September 17, 2009, U.S. District Court Judge William H. Alsup stated, "I want to come back to something that I observed in this case firsthand for a long time now. I think you've done an excellent job in the case as class counsel and the class has been well represented having your and your firm in the case."

18. ***McManus v. Fleetwood Enterprises, Inc.***, No. SA-99-CA-464-FB (W.D. Tex.). Lieff Cabraser served as Class Counsel on behalf of original owners of 1994-2000 model year Fleetwood Class A and Class C motor

homes. In 2003, the Court approved a settlement that resolved lawsuits pending in Texas and California about braking while towing with 1994 Fleetwood Class A and Class C motor homes. The lawsuits alleged that Fleetwood misrepresented the towing capabilities of new motor homes it sold, and claimed that Fleetwood should have told buyers that a supplemental braking system is needed to stop safely while towing heavy items, such as a vehicle or trailer. The settlement paid $250 to people who bought a supplemental braking system for Fleetwood motor homes that they bought new.

19. ***Lundell v. Dell***, No. C05-03970 (N.D. Cal.). Lieff Cabraser served as Lead Class Counsel for consumers who experienced power problems with the Dell Inspiron 5150 notebook. In December 2006, the Court granted final approval to a settlement of the class action which extended the one-year limited warranty on the notebook for a set of repairs related to the power system. In addition, class members that paid Dell or a third party for repair of the power system of their notebook were entitled to a 100% cash refund from Dell.

20. ***Kan v. Toshiba American Information Systems***, No. BC327273 (Los Angeles Super. Ct.). Lieff Cabraser served as Co-Lead Counsel for a class of all end-user persons or entities who purchased or otherwise acquired in the United States, for their own use and not for resale, a new Toshiba Satellite Pro 6100 Series notebook. Consumers alleged a series of defects were present in the notebook. In 2006, the Court approved a settlement that extended the warranty for all Satellite Pro 6100 notebooks, provided cash compensation for certain repairs, and reimbursed class members for certain out-of-warranty repair expenses.

VII. Environmental and Toxic Exposures

A. Current Cases

1. ***In Re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico***, MDL No. 2179 (E.D. La.). Lieff Cabraser and co-counsel represent fishermen, property owners, business owners, wage earners, and other harmed parties in class action litigation against BP, Transocean, Halliburton, Cameron, and other defendants for the Deepwater Horizon oil rig explosion and resulting oil spill in the Gulf of Mexico on April 20, 2010. The Master Complaints in this litigation allege that the defendants' were insouciant in addressing the operations of the well and the oil rig, ignored warning signs of the impending disaster, and failed to employ and/or follow proper safety measures, worker safety laws, and environmental protection laws in favor of cost-cutting measures.

B. Successes

1. ***In re Exxon Valdez Oil Spill Litigation***. The *Exxon Valdez* ran aground on March 24, 1989, spilling 11 million gallons of oil into Prince William Sound. Lieff Cabraser served as one of the court-appointed Plaintiffs' Class Counsel. The class consisted of fisherman and others whose livelihoods were gravely affected by the disaster. In addition, Lieff Cabraser served on the Class Trial Team that tried the case before a jury in federal court in 1994. The jury returned an award of $5 billion in punitive damages.

   In 2001, the Ninth Circuit Court of Appeals ruled that the original $5 billion punitive damages verdict was excessive. In 2002, U.S. District Court Judge H. Russell Holland reinstated the award at $4 billion. Judge Holland stated that, "Exxon officials knew that carrying huge volumes of crude oil through Prince William sound was a dangerous business, yet they knowingly permitted a relapsed alcoholic to direct the operation of the *Exxon Valdez* through Prince William Sound." In 2003, the Ninth Circuit again directed Judge Holland to reconsider the punitive damages award under United States Supreme Court punitive damages guidelines. In January 2004, Judge Holland issued his order finding that Supreme Court authority did not change the Court's earlier analysis.

   In December 2006, the Ninth Circuit Court of Appeals issued its ruling, setting the punitive damages award at $2.5 billion. Subsequently, the U.S. Supreme Court further reduced the punitive damages award to $507.5 million, an amount equal to the compensatory damages. With interest, the total award to the plaintiff class was $1.515 billion.

2. ***In re GCC Richmond Works Cases***, JCCP No. 2906 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Liaison Counsel and Lead Class Counsel in coordinated litigation arising out of the release on July 26, 1993, of a massive toxic sulfuric acid cloud which injured an estimated 50,000 residents of Richmond, California. The Coordination Trial Court granted final approval to a $180 million class settlement for exposed residents.

3. ***In re Unocal Refinery Litigation***, No. C 94-04141 (Cal. Supr. Ct.). Lieff Cabraser served as one of two Co-Lead Class Counsel and on the Plaintiffs' Steering Committee in this action against Union Oil Company of California ("Unocal") arising from a series of toxic releases from Unocal's San Francisco refinery in Rodeo, California. The action was settled in 1997 on behalf of approximately 10,000 individuals for $80 million.

4. ***West v. G&H Seed Co., Aventis CropSciences USA, LLP***, No. 99-C-4984-A (La. State Ct.). With co-counsel, Lieff Cabraser represented a

class of 1,500 Louisiana crawfish farmers. The farmers sued Bayer CropScience LP claiming the pesticide ICON killed their crawfish and caused economic ruin. In 2004, the Court approved a $45 million settlement. The settlement was reached after the parties had presented nearly a month's worth of evidence at trial, and were on the verge of making closing arguments to the jury.

5. ***In re Sacramento River Spill Cases I and II***, JCCP Nos. 2617 & 2620 (Cal. Supr. Ct.). On July 14, 1991, a Southern Pacific train tanker car derailed in northern California, spilling 19,000 gallons of a toxic pesticide, metam sodium, into the Sacramento River near the town of Dunsmir. The metam sodium mixed thoroughly with the river water, and had a devastating effect on the river and surrounding ecosystem. In addition, many residents living along the river became ill with symptoms that included headaches, shortness of breath, and vomiting. Lieff Cabraser served as Court-appointed Plaintiffs' Liaison Counsel, Lead Class Counsel, and chaired the Plaintiffs' Litigation Committee in coordinated proceedings that included all of the lawsuits arising out of this toxic spill. Settlement proceeds of approximately $16 million were distributed pursuant to Court approval of a plan of allocation to four certified plaintiff classes: personal injury, business loss, property damage/diminution, and evacuation.

6. ***Craft v. Vanderbilt University***, Civ. No. 3-94-0090 (M.D. Tenn.). Lieff Cabraser served as Lead Counsel of a certified class of over 800 pregnant women and their children who were intentionally fed radioactive iron without their consent while receiving prenatal care at defendant Vanderbilt's hospital in the 1940s. The facts surrounding the administration of radioactive iron to the pregnant women and their children *in utero* came to light as a result of Energy Secretary Hazel O'Leary's 1993 disclosures of government-sponsored human radiation experimentation during the Cold War. Defendants' attempts to dismiss the claims and decertify the class were unsuccessful. The case was settled in July 1998 for a total of $10.3 million and a formal apology from Vanderbilt.

7. ***Kentucky Coal Sludge Litigation.*** On October 11, 2000, near Inez, Kentucky, a coal waste storage facility ruptured, spilling 300 million gallons of coal sludge (a wet mixture produced by the treatment and cleaning of coal) into waterways in the region and contaminating hundreds of properties. This was one of the worst environmental disasters in the Southeastern United States. With co-counsel, Lieff Cabraser represented over 400 clients in property damage claims, including claims for diminution in the value of their homes and properties. In April 2003, the parties reached a confidential settlement agreement on favorable terms to the plaintiffs.

8. ***Toms River Childhood Cancer Incidents***. With co-counsel, Lieff Cabraser represented 69 families in Toms River, New Jersey, each with a child having cancer, that claimed the cancers were caused by environmental contamination in the Toms River area. Commencing in 1998, the parties—the 69 families, Ciba Specialty Chemicals, Union Carbide and United Water Resources, Inc., a water distributor in the area—participated in an unique alternative dispute resolution process, which lead to a fair and efficient consideration of the factual and scientific issues in the matter. In December 2001, under the supervision of a mediator, a confidential settlement favorable to the families was reached.

VIII. False Claims Act

A. Current Cases

1. ***United States ex rel. Dye v. ATK Launch Systems***, No. 1:06CV39TS (D. Utah). Lieff Cabraser represents a whistleblower who alleges that Defendant ATK Launch Systems knowingly sold defective and potentially dangerous illumination flares to the United States military in violation of the federal False Claims Act. The case is currently in discovery, with a trial date set for early 2012.

2. ***State of California ex rel. Rockville Recovery Associates v. Multiplan***, No. 34-2010-00079432 (Sacramento Supr. Crt., Cal.). Lieff Cabraser represents whistleblower Rockville Recovery Associates in a qui tam suit for treble damages and penalties under the California Insurance Frauds Prevention Act, Cal. Insurance Code § 1871.7. The Act is designed to prevent fraud against insurers and, by extension, their policyholders. The complaint alleges that Sutter hospitals throughout California submit fraudulent bills for anesthesia services to insurers and other payors. In January 2011, the Court denied Sutter's motion to compel arbitration and sustained in part and overruled in part Sutter's demurrer with leave to amend.

3. ***State of California ex rel. Associates Against FX Insider Trading v. State Street Corp.***, No. 34-2008-00008457 (Sacramento Supr. Crt., Cal.). State Street Corporation serves as the contractual custodian for over 40% of public pension funds in the United States, and also the custodian for many non-public investment funds and other investors. As the contractual custodian, State Street is responsible for undertaking the foreign currency exchange (FX) transactions necessary to facilitate a customer's purchases or sales of foreign securities.

   The complaint charges that State Street violated the California False Claims Act by systematically manipulating the timing of its execution and reporting of FX trades in order to enrich itself, at the expense of its

custodial public pension fund clients, including the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRs). Instead of promptly recording FX trades upon receipt, the complaint alleges that State Street sits on the trade, assesses the movement of the currency rate over the day, and opportunistically determines what rate it will report for the transaction. The case is in the discovery stage after the trial court denied State Street's demurrer.

B. Successes

1. ***United States of America ex rel. Mary Hendow and Julie Albertson v. University of Phoenix***, No. 2:03-cv-00457-GEB-DAD (E.D. Cal.). Lieff Cabraser obtained a record whistleblower settlement against the University of Phoenix that charged the university had violated the incentive compensation ban of the Higher Education Act (HEA) by providing improper incentive pay to its recruiters. The HEA prohibits colleges and universities whose students receive federal financial aid from paying their recruiters based on the number of students enrolled, which creates a risk of encouraging recruitment of unqualified students who, Congress has determined, are more likely to default on their loans. High student loan default rates not only result in wasted federal funds, but the students who receive these loans and default are burdened for years with tremendous debt without the benefit of a college degree.

   The complaint specifically alleged that the University of Phoenix defrauded the U.S. Department of Education by obtaining federal student loan and Pell Grant monies from the federal government based on false statements of compliance with HEA. In December 2009, the parties announced a $78.5 million settlement. The settlement constitutes the second-largest settlement ever in a False Claims Act case in which the federal government declined to intervene in the action and largest settlement ever involving the Department of Education. The University of Phoenix case led to the Obama Administration passing new regulations that took away the so-called “safe harbor” provisions that for-profit universities relied on to justify their alleged recruitment misconduct. For his outstanding work as Lead Counsel and the significance of the case, *California Lawyer* magazine recognized Lieff Cabraser attorney Robert J. Nelson with a California Lawyer of the Year (CLAY) Award.

2. ***United States of America ex rel. Mauro Vosilla and Steven Rossow v. Avaya, Inc.***, Case No. Case No. CV04-8763 PA JTLx (C.D. Cal.). Lieff Cabraser represented whistleblower in litigation alleging that defendants Avaya, Lucent Technologies, and AT&T violated the Federal Civil False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, as amended, and False Claims Acts of California and several other states. The complaint alleged

that defendants charged governmental agencies for the lease, rental, and post-warranty maintenance of telephone communications systems and services that the governmental agencies no longer possessed and/or were no longer maintained by defendants. In November 2010, the parties entered into a $21.75 million settlement of the litigation.

IX. International and Human Rights Litigation

A. Successes

1. ***Holocaust Cases***. Lieff Cabraser is one of the leading firms that prosecuted claims by Holocaust survivors and the heirs of Holocaust survivors and victims against banks and private manufacturers and other corporations who enslaved and/or looted the assets of Jews and other minority groups persecuted by the Nazi Regime during the Second World War era. We serve as Settlement Class Counsel in the case against the Swiss banks that the Court approved a U.S. $1.25 billion settlement in July 2000. Lieff Cabraser donated its attorneys' fees in the Swiss Banks case, in the amount of $1.5 million, to endow a Human Rights clinical chair at Columbia University Law School. We were also active in slave labor and property litigation against German and Austrian defendants, and Nazi-era banking litigation against French banks. In connection therewith, Lieff Cabraser participated in multi-national negotiations that led to Executive Agreements establishing an additional approximately U.S. $5 billion in funds for survivors and victims of Nazi persecution. Our website provides links to the websites of settlement and claims administrators in these cases.

Commenting on the work of Lieff Cabraser and co-counsel in the litigation against private German corporations, entitled *In re Holocaust Era German Industry, Bank & Insurance Litigation* (MDL No. 1337), U.S. District Court Judge William G. Bassler stated on November 13, 2002:

> Up until this litigation, as far as I can tell, perhaps with some minor exceptions, the claims of slave and forced labor fell on deaf ears. You can say what you want to say about class actions and about attorneys, but the fact of the matter is, there was no attention to this very, very large group of people by Germany, or by German industry until these cases were filed. . . . What has been accomplished here with the efforts of the plaintiffs' attorneys and defense counsel is quite incredible. . . . I want to thank counsel for the assistance in bringing us to where we are today. Cases don't get settled just by litigants. It can only be settled by competent, patient attorneys.

2. ***Cruz v. U.S., Estados Unidos Mexicanos, Wells Fargo Bank, et al.***, No. 01-0892-CRB (N.D. Cal.). Working with co-counsel, Lieff Cabraser succeeded in correcting an injustice that dated back 60 years. The case was brought on behalf of Mexican workers and laborers, known as Braceros ("strong arms"), who came from Mexico to the United States pursuant to bilateral agreements from 1942 through 1946 to aid American farms and industries hurt by employee shortages during World War II in the agricultural, railroad, and other industries. As part of the braceros program, employers held back 10% of the workers' wages, which were to be transferred via United States and Mexican banks to savings accounts for each Bracero. The Braceros were never reimbursed for the portion of their wages placed in the forced savings accounts.

Despite significant obstacles including the aging and passing away of many Braceros, statutes of limitation hurdles, and strong defenses to claims under contract and international law, plaintiffs prevailed in a settlement in February 2009. Under the settlement, the Mexican government provided a payment to Braceros, or their surviving spouses or children, in the amount of approximately $3,500 (USD). In approving the settlement on February 23, 2009, U.S. District Court Judge Charles Breyer stated:

> I've never seen such litigation in eleven years on the bench that was more difficult than this one. It was enormously challenging. . . . It had all sorts of issues . . . that complicated it: foreign law, constitutional law, contract law, [and] statute of limitations. . . . Notwithstanding all of these issues that kept surfacing . . . over the years, the plaintiffs persisted. I actually expected, to tell you the truth, at some point that the plaintiffs would just give up because it was so hard, but they never did. They never did. And, in fact, they achieved a settlement of the case, which I find remarkable under all of these circumstances.

FIRM BIOGRAPHY:

PARTNERS

ELIZABETH J. CABRASER, born Oakland, California, June 23, 1952. Admitted to practice in California, 1978; U.S. Supreme Court, 1996; U.S. Tax Court, 1979; California Supreme Court, 1978; U.S. District Court, Northern District of California, 1978; Eastern District of California, 1979; Central District of California and Southern District of California, 1992; U.S. District Court, Eastern District of Michigan (2005); U.S. Court of Appeals, Second Circuit, 2009; Third Circuit, 1994; Fifth Circuit, 1992; Sixth Circuit, 1992; Seventh Circuit, 2001; Ninth Circuit,

1979; Tenth Circuit, 1992; Eleventh Circuit, 1992; U.S. District Court, District of Hawaii, 1986. *Education*: Boalt Hall School of Law, University of California (J.D., 1978); University of California at Berkeley (A.B., 1975). *Awards and Honors*: AV Peer Review Rated, *Martindale-Hubbell*; The Best Lawyers in America (published by *American Lawyer Media*), based on peer and blue ribbon panel review, selected for list of "San Francisco's Best Lawyers," 2005-2011; “Women of Achievement Award,” Legal Momentum (formerly the NOW Legal Defense & Education Fund), 2011; "Lawdragon 500 Leading Lawyers in America," *Lawdragon*, 2005-2011; "Margaret Brent Women Lawyers of Achievement Award," American Bar Association Commission on Women in the Profession, 2010; "Top 100 Attorneys in California," *Daily Journal*, 2002-2007, 2010; "Top California Women Litigators," *Daily Journal*, 2007, 2010; "Northern California Super Lawyer," *Super Lawyers*, 2004-2010; "Top 100 Northern California Super Lawyers," *Super Lawyers*, 2005-2010; "Top 50 Female Northern California Super Lawyers," *Super Lawyers*, 2005-2010; "Edward Pollock Award," Consumer Attorneys of California, 2008; "Top Women Litigators in California," *Daily Journal*, 2007; "Lawdragon 500 Leading Plaintiffs' Lawyers," *Lawdragon*, Winter 2007; "50 Most Influential Women Lawyers in America," *The National Law Journal*, 1998 & 2007; "Award For Public Interest Excellence," University of San Francisco School of Law Public Interest Law Foundation, 2007; "Top 75 Women Litigators," *Daily Journal*, 2005-2006; "Lawdragon 500 Leading Litigators in America," *Lawdragon*, 2006; "Distinguished Leadership Award," Legal Community Against Violence, 2006; "Women of Achievement Award," Legal Momentum (formerly the NOW Legal Defense & Education Fund), 2006; "100 Most Influential Lawyers in America," *The National Law Journal*, 1997, 2000 & 2006; "Top 30 Securities Litigator," *Daily Journal*, 2005; "Top 50 Women Litigators," *Daily Journal*, 2004; "Citation Award," University of California, Berkeley Boalt Hall, 2003; "Distinguished Jurisprudence Award," Anti-Defamation League, 2002; "Top 30 Women Litigators," *California Daily Journal*, 2002; "Top Ten Women Litigators," *The National Law Journal*, 2001; "Matthew O. Tobriner Public Service Award," Legal Aid Society, 2000; "California Law Business Top 100 Lawyers," *California Daily Journal*, 1998-2000; "California Lawyer of the Year (CLAY)," *California Lawyer*, 1998; “Presidential Award of Merit,” Consumer Attorneys of California, 1998; "Public Justice Achievement Award," Public Justice, 1997. *Publications & Presentations*: "Due Process Pre-Empted: Stealth Preemption As a Consequence of Agency Capture" (2009); “Just Choose: The Jurisprudential Necessity to Select a Single Governing Law for Mass Claims Arising from Nationally Marketed Consumer Goods and Services,” *Roger Williams University Law Review* (Winter 2009); "California Class Action Classics," Consumer Attorneys of California (January/February Forum 2009); Co-Author with Joy A. Kruse, Bruce Leppla, "Selective Waiver: Recent Developments in the Ninth Circuit and California," (pts. 1 & 2), *Securities Litigation Report* (West Legalworks May & June 2005); "The Manageable Nationwide Class: A Choice-of-Law Legacy of Phillips Petroleum Co. v. Shutts," *University of Missouri- Kansas City Law Review*, Volume 74, Number 3, Spring 2006; Co-Author with Fabrice N. Vincent, "Class Actions Fairness Act of 2005," *California Litigation*, Vol. 18, No. 3 (2005); Editor-in-Chief, *California Class Actions Practice and Procedures* (2003); "A Plaintiffs' Perspective On The Effect of State Farm v. Campbell On Punitive Damages in Mass Torts" (May 2003); Co-Author, "Decisions Interpreting California's Rules of Class Action Procedure," *Survey of State Class Action Law*, updated and re-published in *5 Newberg on Class Actions* (ABA 2001-2004); Co-Author, "Mass But Not (Necessarily) Class: Emerging Aggregation Alternatives Under the Federal Rules," *ABA 8th Annual National Institute on Class*

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Women Lawyers; Consumer Attorneys of California; Federal Bar Association (Northern District of California Chapter); Federal Civil Rules Advisory Committee (Appointed by Supreme Court, 2011); National Center for State Courts Mass Tort Conference Planning Committee; Ninth Circuit Judicial Conference; Northern District of California Civil Justice Reform Act (Advisory Committee; Advisory Committee on Professional Conduct); Public Justice Foundation; Queen's Bench; State Bar of California.

RICHARD M. HEIMANN, born Miami, Florida, August 23, 1948. Admitted to practice in Pennsylvania, 1972; District of Columbia, 1974; California, U.S. District Court, Northern District of California and U.S. Court of Appeals, Ninth Circuit, 1975; U.S. Supreme Court, 1980; U.S. Court of Appeals, Second Circuit, 1980; U.S. District Court, District of Hawaii, 1986; New York, 2000. *Education*: Georgetown University (J.D., 1972); *Georgetown Law Journal*, 1971-72; University of Florida (B.S.B.A., with honors, 1969). *Employment*: Mr. Heimann served as Deputy District Attorney and Acting Assistant District Attorney for Tulare County, California, and as an Assistant Public Defender in Philadelphia, Pennsylvania, 1972-74. As a private civil law attorney, Mr. Heimann has tried over 30 civil jury cases, including complex cases such as the successful *FPI/Agretech* and *Edsaco* securities class action trials. In April 2002 in the *Edsaco* case, a federal jury in San Francisco, California returned a $170.7 million verdict against Edsaco Ltd., which included $165 million in punitive damages. *Awards & Honors*: AV Peer Review Rated, Martindale-Hubbell; The Best Lawyers in America (published by American Lawyer Media), based on peer and blue ribbon panel review, selected for list of "San Francisco's Best Lawyers," 2007-2011; California Lawyer of the Year (CLAY) Award, California Lawyer, 2011; "Lawdragon Finalist," Lawdragon, 2009-2011; "Top 100 Attorneys in California," Daily Journal, 2010; "Top Attorneys In Securities Law," Super Lawyers Corporate Counsel Edition, 2010; "Northern California Super Lawyer," Super Lawyers, 2004-2010. *Publications & Presentations:* Securities Law Roundtable, *California Lawyer* (September 2010); Securities Law Roundtable, *California Lawyer* (March 2009); Securities Law Roundtable, *California Lawyer* (April 2008); Securities Law Roundtable, *California Lawyer* (April 2007); Co-Author, "Preliminary Issues Regarding Forum Selection, Jurisdiction, and Choice of Law in Class Actions" (December 1999). *Member*: State Bar of California; Bar Association of San Francisco.

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STEVEN E. FINEMAN, born Los Angeles, California, February 13, 1963. Managing Partner. Admitted to practice in California, 1989; U.S. District Court, Northern, Eastern and Central Districts of California and U.S. Court of Appeals, Ninth Circuit, 1995; U.S. Court of Appeals, Fifth Circuit, 1996; New York, U.S. District Court, Eastern and Southern Districts of New York, U.S. District Court, District of Colorado, 2006; U.S. Court of Appeals, Second Circuit and U.S. Supreme Court, 1997; U.S. District Court for the District of Columbia, 1997. *Education*: University of California, Hastings College of the Law (J.D., 1988); University of California, San Diego (B.A., 1985); Stirling University, Scotland (English Literature and Political Science, 1983-84). *Honors/Appointments*: The Best Lawyers in American (published by American Lawyer Media), based on peer and blue ribbon panel review, selected for list of "The New York Area's Best Lawyers" (2005-2010); "New York Super Lawyers," *Super Lawyers*, 2006-2010; "New York Super Lawyers, Corporate Counsel Edition, Securities Litigation," *Super Lawyers*, 2008-2009; "100 Managing Partners You Need to Know," *Lawdragon*, 2008; "40 Under 40", *The National Law Journal*, 2002, selected as one of the country's most successful litigators under the age of 40; Consultant to the Office of the Attorney General, State of New York, in connection with an industry-wide investigation and settlement concerning health insurers' use of the "Ingenix database" to determine usual and customary rates for out-of-network services (April 2008-February 2009); Public Justice Foundation, Vice-President (July 2009-present), Executive Committee (July 2006-present), Board of Directors (July 2002-present), Co-Chair, Major Donors/Special Gifts Committee (July 2009-present), Class Action Preservation Project Committee (July 2005-present; Co-Chair, July 2005-July 2009); Civil Justice Foundation, Board of Trustees (January 2004-present); The National Association of Shareholder and Consumer Attorneys, Executive Committee (2009-present); New York State Trial Lawyers Institute, Quarterly (June 2005-present); Editorial Board Columnist on Federal Practice for the State Court Practitioner, New York State Trial Lawyers Association's "Bill of Particulars" (2005-present); New York State Trial Lawyers Association, Board of Directors (July 2001-July 2004); Plaintiff Toxic Tort Advisory Council, Lexis/Nexis, Mealey's Publications and Conferences Group (January 2002-2005); "*Lawdragon* Finalist," *Lawdragon*, 2009-2011. *Publications & Presentations*: American Constitution Society for Law and Policy, Access to Justice in Federal Courts—Panel Member, *The Iqbal and Twombly Cases* (January 21, 2010, New York, New York); American Bar Association, Section of Litigation, The 13th Annual

National Institute on Class Actions—Panel Member, *Hydrogen Peroxide Will Clear It Up Right Away: Developments in the Law of Class Certification* (November 20, 2009, Washington, D.C.); Global Justice Forum, Presented by Robert L. Lieff and Lieff, Cabraser, Heimann & Bernstein, LLP—Conference Co-Host and Moderator of Mediation/Arbitration Panel (October 16, 2009, Columbia Law School, New York, New York). The Forum included practicing attorneys, retired judges and legal academics from countries throughout the world and focused on financial fraud, mass tort, and competition litigation in a "post-economic crisis world."; Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, *Foreign Claimants in U.S. Courts/U.S. Lawyers in Foreign Courts* (April 6, 2009, Stanford, California); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, *Foreign Claimants in U.S. Courts/U.S. Lawyers in Foreign Courts* (April 16, 2008, Stanford, California); Benjamin N. Cardoza Law School, The American Constitution Society for Law and Policy, and Public Justice, Co-Organizer and Master of Ceremonies for *Justice and the Role of Class Actions* (March 28, 2008, New York, New York); Stanford University Law School and The Centre for Socio-Legal Studies, Oxford University, conference on The Globalization of Class Actions, Panel Member, *Resolution of Class and Mass Actions* (December 13 and 14, 2007, Oxford, England); "Bill of Particulars, A Review of Developments in New York State Trial Law," Column, *Federal Multidistrict Litigation Practice* (Fall 2007); "Bill of Particulars, A Review of Developments in New York State Trial Law," Column, *Pleading a Federal Court Complaint* (Summer 2007); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, *Foreign Claimants in U.S. Courts* (April 17, 2007, Stanford, California); "Bill of Particulars, A Review of Developments in New York State Trial Law," *Initiating Litigation and Electronic Filing in Federal Court* (Spring 2007); "Bill of Particulars, A Review of Developments in New York State Trial Law," *Federal Court Jurisdiction: Getting to Federal Court By Choice or Removal* (Winter 2007); American Constitution Society for Law and Policy, 2006 National Convention, Panel Member, *Finding the Balance: Federal Preemption of State Law* (June 16, 2006, Washington, D.C.); Lieff Cabraser Heimann & Bernstein, LLP, Global Justice Forum, Conference Moderator and Panel Member on securities litigation (May 19, 2006, Paris, France); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, *Foreign Claimants in U.S. Court* (April 25, 2006, Stanford, California); Lieff Cabraser Heimann & Bernstein, LLP, Global Justice Forum, Conference Moderator and Speaker and Papers, *The Basics of Federal Multidistrict Litigation: How Disbursed Claims are Centralized in U.S. Practice and Basic Principles of Securities Actions for Institutional Investors* (May 20, 2005, London, England); New York State Trial Lawyers Institute, Federal Practice for State Practitioners, Speaker and Paper, *Federal Multidistrict Litigation Practice* (March 30, 2005, New York, New York), published in "Bill of Particulars, A Review of Developments in New York State Trial Law" (Spring 2005); Stanford University Law School, The Stanford Center on Conflict and Negotiation, Interdisciplinary Seminar on Conflict and Dispute Resolution, Guest Lecturer, *In Search of "Global Settlements": Resolving Class Actions and Mass Torts with Finality* (March 16, 2004, Stanford, California); Lexis/Nexis, Mealey's Publications and Conferences Group, Wall Street Forum: Mass Tort Litigation, Co-Chair of Event (July 15, 2003, New York, New York); Northstar Conferences, The Class Action Litigation Summit, Panel Member on Class Actions in the Securities Industry, and Paper, *Practical Considerations for Investors' Counsel—Getting the Case* (June 27, 2003, Washington,

D.C.); The Manhattan Institute, Center for Legal Policy, Forum Commentator on Presentation by John H. Beisner, "Magnet Courts: If You Build Them, Claims Will Come" (April 22, 2003, New York, New York); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's Courses on Complex Litigation ("Selecting The Forum For a Complex Case—Strategic Choices Between Federal And State Jurisdictions") and Alternative Dispute Resolution ("ADR In Mass Tort Litigation") (March 4, 2003, Stanford, California); American Bar Association, Tort and Insurance Practice Section, Emerging Issues Committee, Member of Focus Group on Emerging Issues in Tort and Insurance Practice (coordinated event with New York University Law School and University of Connecticut Law School, August 27, 2002, New York, New York); Duke University and University of Geneva, *Debates Over Group Litigation in Comparative Perspective*, Panel Member on Mass Torts and Products Liability (July 21-22, 2000, Geneva, Switzerland); *New York Law Journal*, Article, *Consumer Protection Class Actions Have Important Position, Applying New York's Statutory Scheme* (November 23, 1998); Leader Publications, *Litigation Strategist*, "Fen-Phen" Articles, *The Admissibility of Scientific Evidence in Fen-Phen Litigation* and *Daubert Developments: Something for Plaintiffs, Defense Counsel* (June 1998, New York, New York); The Defense Research Institute and Trial Lawyer Association, Toxic Torts and Environmental Law Seminar, Article and Lecture, *A Plaintiffs' Counsels' Perspective: What's the Next Horizon?* (April 30, 1998, New York, New York); Lexis/Nexis, Mealey's Publications and Conference Group, Mealey's Tobacco Conference: Settlement and Beyond 1998, Article and Lecture, *The Expanding Litigation* (February 21, 1998, Washington, D.C.); New York State Bar Association, Expert Testimony in Federal Court After Daubert and New Federal Rule 26, Article and Lecture, *Breast Implant Litigation: Plaintiffs' Perspective on the Daubert Principles* (May 23, 1997, New York, New York). *Member*: American Bar Association; New York State Bar Association; State Bar of California; District of Columbia Bar Association; Association of the Bar of the City of New York; Public Justice Foundation; American Association for Justice; Civil Justice Foundation; American Constitution Society for Law and Policy; The National Association of Shareholder and Consumer Attorneys; New York State Trial Lawyers Association.

ROBERT J. NELSON, born New York, New York, October 20, 1960; admitted practice in California, 1987; U.S. District Court, Central District of California, 1987; U.S. District Court, Northern District of California, 1988; U.S. Court of Appeals, Ninth Circuit, 1988; U.S. Court of Appeals, Sixth Circuit, 1995; District of Columbia, 1998; New York, 1999; U.S. District Court, Eastern District of New York, Southern District of New York, 2001; U.S. District Court, Eastern District of California, 2006. *Education*: New York University School of Law (J.D., 1987): Order of the Coif, Articles Editor, *New York University Law Review*; Root-Tilden-Kern Scholarship Program. Cornell University (A.B., *cum laude* 1982): Member, Phi Beta Kappa; College Scholar Honors Program. London School of Economics (General Course, 1980-81): Graded First. *Employment:* Judicial Clerk to Judge Stephen Reinhardt, U.S. Court of Appeals, Ninth Circuit, 1987-88; Assistant Federal Public Defender, Northern District of California, 1988-93; Legal Research and Writing Instructor, University of California-Hastings College of the Law, 1989-91 (Part-time position). *Awards & Honors*: "Lawdragon Finalist," *Lawdragon*, 2009-2011; "California Lawyer Attorney of the Year (CLAY)" Award, *California Lawyer*, 2008, 2010; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2007, 2010; "Northern California Super Lawyer," *Super Lawyers*, 2004-2010;"San Francisco Trial Lawyer of

the Year Finalist," San Francisco Trial Lawyers' Association, 2007. *Publications:* False Claims Roundtable, *California Lawyer* (June 2010); Product Liability Roundtable, *California Lawyer* (March 2010); Product Liability Roundtable, *California Lawyer* (July 2009); "Class Action Treatment of Punitive Damages Issues after *Philip Morris v. Williams*: We Can Get There from Here," 2 Charleston Law Review 2 (Spring 2008) (with Elizabeth J. Cabraser); Product Liability Roundtable, California Lawyer (December 2007); Contributing Author, California Class Actions Practice and Procedures (Elizabeth J. Cabraser editor in chief, 2003); "The Importance of Privilege Logs," The Practical Litigator, Vol. II, No. 2 (March 2000) (ALI-ABA Publication); "To Infer or Not to Infer a Discriminatory Purpose: Rethinking Equal Protection Doctrine," 61 New York University Law Review 334 (1986). *Member*: State Bar of California; District of Columbia Bar Association; New York Bar Association; American Bar Association; Fight for Justice Campaign; Bar Association of San Francisco; Consumer Attorneys of California; American Association for Justice; San Francisco Trial Lawyers Association.

KELLY M. DERMODY, born Ithaca, New York, June 16, 1967. Admitted to practice in California, 1994; U.S. District Court, Northern District of California, 1995; U.S. Court of Appeals for the Third Circuit (2001); U.S. Court of Appeals for the Fourth Circuit (2008); U.S. Court of Appeals for the Sixth Circuit (2008); U.S. Court of Appeals for the Seventh Circuit (2006); U.S. Court of Appeals for the Ninth Circuit (2007); U.S. District Court of Colorado (2007). *Education*: Boalt Hall School of Law, University of California, Berkeley (J.D. 1993); Moot Court Executive Board (1992-1993); Articles Editor, *Industrial Relations Law Journal/Berkeley Journal of Employment and Labor Law* (1991-1992); Harvard University (A.B. *magna cum laude*, 1990), Senior Class Ames Memorial Public Service Award. *Employment*: Law Clerk to Chief Judge John T. Nixon, U.S. District Court, Middle District of Tennessee, 1993-1994; Adjunct Professor of Law, Golden Gate University School of Law, Employment Law (Spring 2001). *Awards & Honors:* The Best Lawyers in America (published by *American Lawyer Media*), based on peer and blue ribbon panel review, selected for list of "San Francisco's Best Lawyers," 2010-2011; "Women of Achievement Award," *Legal Momentum* (formerly the NOW Legal Defense & Education Fund), 2011; "Florence K. Murray Award," National Association of Women Judges, 2010 (for influencing women to pursue legal careers, opening doors for women attorneys, and advancing opportunities for women within the legal profession); "Top California Women Litigators," *Daily Journal*, 2007, 2010; "Irish Legal 100" Finalist, *The Irish Voice*, 2010; "Lawdragon 500 Leading Lawyers in America," *Lawdragon*, 2010; "Northern California Super Lawyer," *Super Lawyers*, 2004-2010; "Top 50 Female Northern California Super Lawyers," *Super Lawyers*, 2007-2010; "Lawdragon Finalist," *Lawdragon*, 2007-2009; "Top 100 Northern California Super Lawyers," *Super Lawyers*, 2007, 2009; "Community Service Award," Bay Area Lawyers for Individual Freedom, 2008; "Community Justice Award," Centro Legal de la Raza, 2008; "Award of Merit," Bar Association of San Francisco, 2007; "California Lawyer Attorney of the Year (CLAY) Award," *California Lawyer*, 2007; "Lawdragon 500 Leading Plaintiffs' Lawyers," *Lawdragon*, Winter 2007; "Trial Lawyer of the Year Finalist," Public Justice Foundation, 2007; California's "Top 20 Lawyers Under 40," *Daily Journal*, 2006; "Consumer Attorney of the Year" Finalist, Consumer Attorneys of California, 2006; "Living the Dream Partner," Lawyers' Committee for Civil Rights of the San Francisco Bay Area, 2005. *Publications & Presentations*: "Class Actions: Latest Developments in Litigating and Settling Employment Discrimination Class Actions" American Bar Association Labor and Employment

Section Equal Employment Opportunity Committee (Mid-Year Meeting 2001); "A Road Map to Discovery in Employment Discrimination and Wage/Hour Class Actions," with James M. Finberg, Glasser Legal Works Seminar (2000); "Employment Discrimination Class Actions in the Wake of *Allison v. Citgo Petroleum Corp*. and Fed.R.Civ.P. 23(f)," Federal Bar Association Convention (1999); Co-Author with James Finberg, "Discovery in Employment Discrimination Class Actions," *Litigation and Settlement of Complex Class Actions* (Glasser Legal Works 1998). *Member*: Northern District of California Lawyer Representative to the Ninth Circuit Judicial Conference (2007-present); Bar Association of San Francisco (Board of Directors: 2005-present, President-Elect, 2010-Present; Treasurer: 2009-2010, Secretary: 2008-2009; Litigation Section, Executive Committee, (2002-2005); American Bar Association (Labor and Employment Law Section, Governing Council (2009-present), CLE Conference Task Force (Co-Chair, 2008-2009, Vice-Chair, 2007-2008), Committee on Equal Opportunity in the Legal Profession (Co-Chair, 2006-2007), Equal Employment Opportunity Committee (Co-Chair, 2003-2006; Midwinter Meeting Planning Committee, 2000-2006), Katrina Task Force (Member, 2005-2007); National Association of Women Judges (Resource Board, 2005-present); Carver Healthy Environments and Response to Trauma in Schools (Carver HEARTS), Steering Committee (2007-present); American Bar Foundation (Fellow, 2006-present); Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Board of Directors, 1998-2005; Secretary, 1999-2003; Co-Chair, 2003-2005); National Center for Lesbian Rights (Board of Directors, 2002-2008; Co-Chair, 2005-2006); Pride Law Fund (Board of Directors, 1995-2002; Secretary, 1995-1997; Chairperson, 1997-2002); Equal Rights Advocates (Litigation Committee, 2000-2002); State Bar of California; Consumer Attorneys of California; National Employment Lawyers' Association; Bay Area Lawyers for Individual Freedom; Public Justice.

JONATHAN D. SELBIN, born Baton Rouge, Louisiana, May 11, 1967. Admitted to practice in California; District of Columbia; New York; U.S. Court of Appeals, Third Circuit; U.S. Court of Appeals, Fifth Circuit; U.S. Court of Appeals, Sixth Circuit; U.S. Court of Appeals Ninth Circuit; U.S. Court of Appeals, Eleventh Circuit; U.S. District Court, Northern District of California; U.S. District Court, Central District of California; U.S. District Court, Southern District of New York; U.S. District Court, Eastern District of New York; U.S. District Court, Eastern District of Michigan; U.S. District Court, Northern District of Florida. *Education*: Harvard Law School (J.D., *magna cum laude*, 1993); University of Michigan (B.A., *summa cum laude*, 1989). *Employment*: Law Clerk to Judge Marilyn Hall Patel, U.S. District Court, Northern District of California, 1993-95. *Awards & Honors*: "New York Super Lawyers," *Super Lawyers*, 2006-2010; "*Lawdragon* Finalist," *Lawdragon*, 2009. *Publications & Presentations*: Contributing Author, *California Class Actions Practice and Procedures (*Elizabeth J. Cabraser editor-in-chief, 2003); "Bashers Beware: The Continuing Constitutionality of Hate Crimes Statutes After R.A.V.," 72 *Oregon Law Review* 157 (Spring, 1993). *Member*: State Bar of California; New York State Bar Association; District of Columbia Bar Association; American Bar Association; New York State Trial Lawyers Association.

MICHELE C. JACKSON, born Redwood City, California, January 17, 1954. Admitted to bar, 1979, California; United States Supreme Court, 1988; U.S. Court of Appeals, Ninth Circuit, 1981; U.S. District Court, Central District of California, 1985; U.S. District Court, Northern District of California, 1979. *Education*: University of San Francisco School of Law

(J.D., *cum laude*, 1979); Stanford University (B.A., with honors in Economics, 1976). *Employment*: Judicial Extern to Justice Wiley W. Manuel, California Supreme Court, Summer 1977. *Awards & Honors*: AV Peer Review Rated, Martindale-Hubbell; "Top Attorneys In Antitrust Law," *Super Lawyers* Corporate Counsel Edition, 2010; "Northern California Super Lawyer," *Super Lawyers*, 2007-2010; "State Bar Board of Governors Award," State Bar of California; "*Lawdragon* Finalist," *Lawdragon*, 2009. *Publications & Presentations*: Panelist, "Antitrust Dispute Resolution in Complex Business Torts and Antitrust Cases: Is There Really a Class Arbitration?" (April 2007), American Bar Association Antitrust Law Spring Meeting; Panelist, "Settlement and Mediation of Unfair Competition Disputes" (May, 2006) and other panels, State Bar of California Antitrust and Unfair Competition Section; Author, *Recent Judicial Opinions On Class And Multi-Party Arbitration In Antitrust And Consumer Cases, And Principles Underlying Those Opinions* (February 2007), American Bar Association; Chapter Co-Author with Marc Seltzer, "State Antitrust Law and Intellectual Property" in *California Antitrust & Unfair Competition Law* (Third), Vol. 1: Antitrust*;* Author, *Asserted Defenses to a § 17200 Class Action Based on Korea Supply—The Interplay With Indirect Purchaser Litigation* (2005) American Bar Association; Contributing Author, *California Class Actions Practice and Procedure* (2003). *Appointments*: Officer, Advisor and Executive Committee Member, State Bar of California Antitrust and Unfair Competition Section (terms September, 2001-2007). *Member*: American Bar Association; State Bar of California; Bar Association of San Francisco; McAuliffe Law Honor Society; Queen's Bench.

MICHAEL W. SOBOL, born Mt. Kisco, New York, October 5, 1961. Admitted to practice in Massachusetts, 1989; California, 1998; United States District Court, District of Massachusetts, 1990; U.S. District Court, Northern District of California, 2001; U.S. District Court, Central District of California, 2005; U.S. Court of Appeals for the Ninth Circuit (2009). *Education*: Boston University (J.D., 1989); Hobart College (B.A., *cum laude*, 1983). *Prior Employment*: Lecturer in Law, Boston University School of Law, 1995-1997. *Awards & Honors:* "*Lawdragon* Finalist," *Lawdragon*, 2009. *Publications & Presentations*: Panelist, National Consumer Law Center's 15th Annual Consumer Rights Litigation Conference, Class Action Symposium; Panelist, Continuing Education of the Bar (C.E.B.) Seminar on Unfair Business Practices—California's Business and Professions Code Section 17200 and Beyond; Columnist, *On Class Actions*, Association of Business Trial Lawyers, 2005 to present; *The Fall of Class Action Waivers* (2005); *The Rise of Issue Class Certification* (2006); *Proposition 64's Unintended Consequences* (2007); *The Reach of Statutory Damages* (2008). *Member*: State Bar of California; Bar Association of San Francisco; Consumer Attorneys of California, Board of Governors, (2007-2008, 2009-2010); National Association of Consume Advocates.

FABRICE N. VINCENT, born Paris, France, June 15, 1966. Admitted to practice in California, 1992; U.S. District Court, Northern District of California, Central District of California, Eastern District of California, Ninth Circuit Court of Appeals, 1992. *Education*: Cornell Law School (J.D., *cum laude*, 1992); University of California at Berkeley (B.A., 1989). *Awards & Honors:* "Northern California Super Lawyer," *Super Lawyers*, 2006–2010. *Publications & Presentations*: Co-Author with Elizabeth J. Cabraser, "Class Actions Fairness Act of 2005," *California Litigation*, Vol. 18, No. 3 (2005); Co-Editor, *California Class Actions Practice and Procedures* (2003-06); Co-Author, "Ethics and Admissibility: Failure to Disclose

Conflicts of Interest in and/or Funding of Scientific Studies and/or Data May Warrant Evidentiary Exclusions," *Mealey's December Emerging Drugs Reporter* (December 2002); Co-author, "The Shareholder Strikes Back: Varied Approaches to Civil Litigation Claims Are Available to Help Make Shareholders Whole," *Mealey's Emerging Securities Litigation Reporter* (September 2002); Co-Author, "Decisions Interpreting California's Rules of Class Action Procedure," *Survey of State Class Action Law* (ABA 2000-09), updated and re-published in 5 *Newberg on Class Actions* (2001-09); Coordinating Editor and Co-Author of California section of the ABA State Class Action Survey (2001-06); Co-Editor-In-Chief, *Fen-Phen Litigation Strategist* (Leader Publications 1998-2000) and author of "Off-Label Drug Promotion Permitted" (Oct. 1999); Co-Author, "The Future of Prescription Drug Products Liability Litigation in a Changing Marketplace," and "Six Courts Certify Medical Monitoring Claims for Class Treatment," 29 *Forum* 4 (Consumer Attorneys of California 1999); Co-Author, *Class Certification of Medical Monitoring Claims in Mass Tort Product Liability Litigation* (ALI-ABA Course of Study 1999); Co-Author, "How Class Proofs of Claim in Bankruptcy Can Help in Medical Monitoring Cases," (Leader Publications 1999); Co-Author, Introduction, "Sanctioning Discovery Abuses in the Federal Court," (LRP Publications 2000); "With Final Approval, Diet Drug Class Action Settlement Avoids Problems That Doomed Asbestos Pact," (Leader Publications 2000). *Member*: State Bar of California; Bar Association of San Francisco; American Bar Association; Fight for Justice Campaign; Association of Business Trial Lawyers, Society of Automotive Engineers.

DAVID S. STELLINGS, born New Jersey, April 23, 1968. Admitted to practice in New York, 1994; New Jersey; 1994; U.S. District Court, Southern District of New York, 1994. *Education*: New York University School of Law (J.D., 1993); Editor, *Journal of International Law and Politics;* Cornell University (B.A., *cum laude*, 1990). *Awards & Honors*: "*Lawdragon* Finalist, *Lawdragon*, 2009. *Member*: State Bar of New York; State Bar of New Jersey; Bar Association of the City of New York; New York State Bar Association; American Bar Association.

ERIC B. FASTIFF, born San Francisco, California. Admitted to practice in California, 1996; District of Columbia, 1997; U.S. Courts of Appeals for the Third, Ninth and Federal Circuit; U.S. District Courts for the Northern, Southern, Eastern, and Central Districts of California, District of Columbia; U.S. District Court, Eastern District of Wisconsin. *Education*: Cornell Law School (J.D., 1995); Editor-in-Chief, *Cornell International Law Journal;* London School of Economics (M.Sc.(Econ.), 1991); Tufts University (B.A., *cum laude, magno cum honore in thesi*, 1990). *Employment*: Law Clerk to Hon. James T. Turner, U.S. Court of Federal Claims, 1995-1996. *Awards & Honors*: "Northern California Super Lawyer," *Super Lawyers*, 2010; "*Lawdragon* Finalist," *Lawdragon*, 2009. *Publications & Presentations*: General Editor, *California Class Actions Practice and Procedures*, (2003-2009); Coordinating Editor and Co-Author of California section of the *ABA State Class Action Survey* (2003-2008); Author, "US Generic Drug Litigation Update," 1 *Journal of Generic Medicines* 212 (2004); Author, "The Proposed Hague Convention on the Recognition and Enforcement of Civil and Commercial Judgments: A Solution to Butch Reynolds's Jurisdiction and Enforcement Problems," 28 *Cornell International Law Journal* 469 (1995). *Member*: State Bar of California; District of Columbia Bar Association; Bar Association of San Francisco; Bar of the U.S. Court of Federal Claims; Children's Day School (Board of Trustees); Editorial Board Member, *Journal of Generic*

Medicines, 2003-present; Jewish Home for the Aged (Board of Trustees); Menorah Park (Board of Trustees); SF Works (Board of Trustees); Children's Day School (Board of Trustees).

WENDY R. FLEISHMAN, born Philadelphia, Pennsylvania, 1954. Admitted to practice in Pennsylvania, 1977; New York, 1992. *Education*: University of Pennsylvania (Post-Baccalaureate Pre-Med, 1982); Temple University (J.D., 1977); Sarah Lawrence College (B.A., 1974). *Employment*: Skadden, Arps, Slate, Meagher & Flom LLP in New York (Counsel in the Mass Torts and Complex Litigation Department), 1993-2001; Fox, Rothschild O'Brien & Frankel (partner), 1988-93 (tried more than thirty civil, criminal, employment and jury trials, and AAA arbitrations, including toxic tort, medical malpractice and serious injury and wrongful death cases); Ballard Spahr Andrews & Ingersoll (associate), 1984-88 (tried more than thirty jury trials on behalf of the defense and the plaintiffs in civil personal injury and tort actions as well as employment—and construction—related matters); Assistant District Attorney in Philadelphia, 1977-84 (in charge of and tried major homicide and sex crime cases). *Awards and Honors*: "New York Super Lawyers," *Super Lawyers*, 2006-2010; "*Lawdragon* Finalist," *Lawdragon*, 2009. *Publications & Presentations*: Editor, Brown & Fleishman, "Proving and Defending Damage Claims: A Fifty-State Guide," (2007); Co-Author with Donald C. Arbitblit, "The Risky Business of Off-Label Use," *Trial* (March 2005); Co-Author, "From the Defense Perspective," in *Scientific Evidence*, Chapter 6 (Aspen Law Pub, 1999); American Bar Association, Editor, *Trial Techniques Newsletter*, Tort and Insurance Practices Section, 1995-96; and 1993-94; "How to Find, Understand, and Litigate Mass Torts," NYSTLA Mass Torts Seminar (April 2009); "Ethics of Fee Agreements in Mass Torts," AAJ Education Programs (July 2009). *Appointments:* Mealey's Drug & Medical Device Litigation Conference, Co-Chair (2007); Executive Committee *In re ReNu MoistureLoc Product Liability Litigation, MDL*; *In re Guidant Product Liability Litigation*, *Discovery*; *In re Baycol MDL Litigation*—Co Chair Science Committee; *In re Vioxx MDL Litigation*—Pricing Committee. *Member*: New York State Trial Lawyers Association (Board of Directors, 2004-Present); Association of the Bar of the City of New York (Judiciary Committee, 2004-Present); American Bar Association (2000, Affair Chair, ABA Annual Meeting, Torts & Insurance Practices Section, NYC; 1997, Chair, Trial Techniques Committee, Tort & Insurance Practices; 1996, Chair Elect, Trial Techniques Committee, Tort & Insurance Practices); American Association for Justice (Section Officer); Pennsylvania Bar Association (Committee on Legal Ethics and Professionalism, 1993-Present; Committee on Attorney Advertising, 1993-Present; Vice-Chair, Task Force on Attorney Advertising, 1991-92); State Bar of New York, Federal Bar Association; Member, Gender and Race Bias Task Force of the Second Circuit, 1994-present; Deputy Counsel, Governor Cuomo's Screening Committee for New York State Judicial Candidates, 1993-94; New York State Trial Lawyers Association; New York Women's Bar Association; Association of the Bar of the City of New York (Product Liability Committee, 2007-present); New York County Lawyers; Fight for Justice Campaign; NYTLA; PATLA; Philadelphia Bar Association (Member of Committee on Professionalism 1991-92).

PAULINA do AMARAL, born New York, New York, February 1966. Admitted to practice in New York, 1997; California, 1998; U.S. Court of Appeals, Ninth Circuit, 1999; U.S. District Court, Southern District of New York, 2004; U.S. District Court, Western District of Michigan, 2004; U.S. District Court, Eastern District of Michigan, 2007. *Education*: University of California Hastings College of Law (J.D., 1996); Executive Editor, *Hastings Constitutional*

Law Quarterly; National Moot Court Competition Team, 1995; Moot Court Executive Board; University of Rochester (B.A., 1988). *Employment*: Law Clerk to Chief Judge Richard Alan Enslen, U.S. District Court, Western District of Michigan, 1996-98. *Member*: Association of the Bar of the City of New York, (2007-2010, Committee on the Judiciary); American Bar Association; State Bar of New York; State Bar of California; Bar Association of San Francisco; American Trial Lawyers Association; New York State Trial Lawyers Association.

KATHRYN E. BARNETT, born Chapel Hill, North Carolina, October 23, 1967. Admitted to practice in Tennessee, 1992; Sixth Circuit Court of Appeals, 2000; Eleventh Circuit Court of Appeals, 2003; United States District Court, Eastern District Tennessee, 2005; United States District Court, Middle District of Tennessee, 1997; United States District Court, Western District of Tennessee, 2001. *Education*: Vanderbilt University School of Law (J.D., 1992); American Jurisprudence Awards: Torts I and Jurisprudence; Davidson College (B.A., with Honors in Philosophy, 1989), Dean Rusk Grant for International Studies. *Litigation Experience*: Ms. Barnett has tried over 15 civil and criminal trials, including complex and class action cases, as well as catastrophic personal injury cases. In 2000, Ms. Barnett obtained a verdict of nearly $6 million on behalf of parents whose unborn fetus died tragically due to medical malpractice. In March, 2004 and in August, 2004 Ms. Barnett served as Co-Lead trial counsel in the class action lawsuit of *In re Tri-State Crematory Litigation*, MDL No. 1467. The case was settled during the second week of trial. The settlements in the *Tri-State* litigation exceed $40 million. *Employment*: Judicial Intern to Judge John T. Nixon, U.S. District Court, Middle District of Tennessee, Fall 1990; Assistant Public Defender, Davidson County, Tennessee, Sept. 1992-1995. *Awards & Honors*: *The Best Lawyers in America*, 2010-2011; "Nashville Lawyers In Charge," *Nashville Post*, 2010; "Best of the Bar," *Nashville Business Journal*, 2003, 2005-2010; Mid-South Super Lawyer, *Super Lawyers*, 2006-2009; "150 Best Lawyers in Tennessee," *Business Tennessee*, 2006-2009; "*Lawdragon* Finalist," *Lawdragon*, 2009-2011. *Publications & Presentations*: "The Basics of Class Action and MDL Litigation," Tennessee Bar Association (July 2009); "Advanced Federal Court Practice," Nashville Bar Association (March 2009); Guest speaker, "Medicine, Law and Society," Vanderbilt University (March 2009) "Annual Review: Medical Malpractice Update" Tennessee Association for Justice (Oct, Dec. 2008); "Civil Procedure and Evidence Update," Tennessee Trial Lawyers (Oct. and Nov. 2006); "Pre-Trial Skills: Thinking on Your Feet," National Business Institute (Nov. 2006), "Trial Practice Institute," Nashville Bar Association (Sept. 2005); "State Law Class Actions," American Bar Association, Business Law Section (April 2005); "Power Windows Can Kill," *Trial* (April 2005); "Auto Defect Cases," Tennessee Trial Lawyers (Feb. 2005); "Limiting the Harmful Testimony of Experts on the Law," *Trial* (Jan. 2001); "Letting Focus Groups Work for You," *Trial* (April 1999); "Knocking Out Opposing Experts," Tennessee Trial Lawyers (October and November, 2004), Nashville Bar Association (July, 2004); "Trial Practice Tips: Powerful Trial Strategies for the Absolute Litigator," Nashville Bar Association (April, 2004); "Damages," Tennessee Trial Lawyers (Oct. and Nov. 2003); "Trying the Wrongful Death Case in Tennessee," National Business Institute (Aug. 2003); "Advanced Personal Injury," National Business Institute (July 2003); "Mass Torts," Tennessee Bar Association (July 2002); "Superior Depositions Strategies in Civil Trial Practice," National Business Institute (Jan. 2002, Dec. 1999); "Lawsuits Against the Nursing Home Industry," Tennessee Trial Lawyers (Feb. 2000); "How to Prepare for Mediation and other Practice Tips," Nashville Bar Association (Oct. 2000);

"Tennessee Expert Witness," Lorman Education Services (July 2000); "Using Focus Groups to Get the Settlement or Verdict Your Client Deserves," Tennessee Trial Lawyers (Feb. 1999). *Member*: Tennessee Judicial Conference, Bench/Bar Committee (Chair, 2009-2010); Tennessee Association for Justice (Treasurer, 2010; Executive Committee, 2008-2009, Secretary, 2007-2009, Chair, Continuing Education Committee, 2004-2006, Board of Governors, 2002-2009); Nashville Bar Association, First Vice President (2007) (Board, 2005-2008); Harry Phillips American Inn of Courts, (Executive Committee, 2004-09, Member, 2004-2009, 1997-99); Nashville Bar Foundation (Fellow); Tennessee Justice Center, Inc. (Board of Directors, 2002-05, Secretary-Treasurer, 2003-04); Nashville Lawyer's Association for Women (President, 2004-2005; President-elect, 2003-2004; Director, 2002-03; Treasurer, 2000-02; Nominating Committee, 2007; Board, 1998-2005); Davidson County, Tennessee Metropolitan Board of Equalization, 2000-04; Tennessee Bar Association; American Association of Trial Lawyers.

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MARK P. CHALOS, born New York, New York, September 3, 1973. Admitted to practice in Tennessee, 1998; U.S. Court of Appeals, Sixth Circuit, 1998; U.S. District Court, Middle District of Tennessee, 2000; U.S. District Court, Western District of Tennessee, 2002; U.S. District Court, Eastern District of Tennessee, 2006; U.S. District Court, Northern District of

Florida, 2006; U.S. District Court, Northern District of California, 2007. *Education*: Emory University School of Law (J.D., 1998); Dean's List; Award for Highest Grade, Admiralty Law; Research Editor, *Emory International Law Review*; Phi Delta Phi Legal Fraternity; Vanderbilt University (B.A., 1995). *Honors & Awards*: AV Peer Review Rated, Martindale-Hubbell, 2003; "Best of the Bar," *Nashville Business Journal*, 2008-2009; "Top 40 Under 40," *The Tennessean*, 2004; "Rising Stars," *Super Lawyers*, 2008-2010. *Publications & Presentations*: "Successfully Suing Foreign Manufacturers," TRIAL Magazine, November 2008; "Washington Regulators Versus American Juries: The United States Supreme Court Shifts the Balance in Riegel v. Medtronic," *Nashville Bar Journal*, 2008; "Washington Bureaucrats Taking Over American Justice System," *Tennessean.com* (December 2007); "The End of Meaningful Punitive Damages," *Nashville Bar Journal*, November 2001; "Is Civility Dead?" *Nashville Bar Journal*, October 2003; "The FCC: The Constitution, Censorship, and a Celebrity Breast," Nashville Bar Journal, April 2005. *Member*: American Association for Justice; American Bar Association; (Past-Chair, YLD Criminal & Juvenile Justice Committee; Tort Trial and Insurance Practice Section Professionalism Committee); First Center for the Visual Arts (Founding Member, Young Professionals Program); Harry Phillips American Inn of Court; Kappa Chapter of Kappa Sigma Fraternity Alumni Association (President); Metropolitan Nashville Arts Commission (Grant Review Panelist); Nashville Bar Association (YLD Board of Directors; Nashville Bar Association YLD Continuing Legal Education and Professional Development Director); Nashville Bar Journal (Editorial Board); Tennessee Association for Justice (Board of Directors, 2008-2010; Legislative Committee); Tennessee Bar Association (Continuing Legal Education Committee); Tennessee Trial Lawyers Association (Board of Directors); Historic Belcourt Theatre (Past Board Chair; Board of Directors); Nashville Cares (Board of Directors).

KRISTEN LAW SAGAFI, born Parkersburg, West Virginia, April 3, 1974. Admitted to practice in California (2002); U.S. District Court, Northern District of California (2002); U.S. District Court, Central District of California (2005); US District Court; Northern District of Florida (2009); U.S. Court of Appeals for the Eleventh Circuit (2010). *Education*: Boalt Hall School of Law, University of California, Berkeley (J.D. 2002); Executive Editor, *Ecology Law Quarterly*; Moot Court Advocacy Award; Moot Court Board; Hopi Appellate Clinic; Ohio Wesleyan University (B.A., *summa cum laude,* 1995); Presidential Scholar. *Honors & Awards*: "Northern California Rising Stars," *Super Lawyers*, 2009. *Member*: Phi Beta Kappa; State Bar of California.

JAHAN C. SAGAFI, born Philadelphia, Pennsylvania, December 26, 1971. Admitted to practice in California, 2003; U.S. Court of Appeals for the Second Circuit, 2006; U.S. District Court, Central District of California; U.S. District Court, Northern District of California. *Education*: Harvard Law School (J.D., 2001); Senior Editor, *Harvard Civil Rights-Civil Liberties Law Review* (1999-2001); President, Board of Student Advisers; Harvard College (B.A., *magna cum laude*, 1994). *Employment*: Law Clerk to Judge William W Schwarzer, U.S. District Court, Northern District of California, 2001-02. *Honors & Awards*: "Top 20 Under 40," *Daily Journal*, 2011; "Northern California Rising Stars," *Super Lawyers*, 2009; "Community Justice Award," Centro Legal de la Raza, 2008. *Member*: American Constitution Society (Chair of Bay Area Lawyer Chapter); ACLU of Northern California (Board Member; Chair of the Legal Committee, 2010; Vice Chair, 2010; Executive Committee, 2009-present); National

Employment Lawyers' Association; Consumer Attorneys of California; American Bar Association; Bar Association of San Francisco.

KENT L. KLAUDT, born Jamestown, North Dakota, September 6, 1968. Admitted to practice in California, 1996; U.S. District Court, Northern District of California, 1997; U.S. District Court, Eastern District of California, 1998; U.S. District Court, Central District of California, 2007; California Supreme Court. *Education*: University of Minnesota Law School (J.D., 1996); Outside Articles Editor, *Journal of Law & Inequality: A Journal of Theory & Practice*; National Association of Public Interest Law (Summer Fellowship, 1995); University of Minnesota (B.A., 1991). *Employment*: BlueDog, Olson & Small, PLLP, 1995-96; Cartwright & Alexander, LLP, 1996-2001; The Cartwright Law Firm, Inc., 2001-2004. *Publications & Presentations*: "Hungary After the Revolution: Privatization, Economic Ideology, and the False Promise of the Free Market," 13 *Law & Inequality: A Journal of Theory & Practice* 301. *Member*: American Trial Lawyers Association; Consumer Attorneys of California; Public Justice; San Francisco Trial Lawyers Association; National Lawyers Guild.

JENNIFER GROSS, born Sleepy Hollow, New York, July 1, 1969. Admitted to practice in California, 1994; U.S. District Court, Central District of California, 1994. *Education*: RAND Graduate School (M. Phil., 1997); University of Southern California (J.D., 1994); Emory University (B.A., 1991). *Publications & Presentations*: Co-Author, *Intelligence, Surveillance, and Reconnaissance Force Mix Study: Final Report* (RAND 2003); Co-Author, *Asbestos Litigation Costs and Compensation: An Interim Report* (RAND 2002); Co-Author, *Asbestos Litigation in the U.S.: A New Look at an Old Issue* (RAND 2001); Co-Author, *Class Action Dilemmas: Pursuing Public Goals for Private Gain* (RAND, 2000); Co-Author, *Potential Vulnerabilities of U.S. Air Force Information Systems* (RAND, 1999); Co-Author, "Preliminary Results of the RAND Study of Class Action Litigation," (RAND, 1997). *Member*: State Bar of California.

LEXI J. HAZAM, born Olney, Maryland, October 9, 1973. Admitted to practice in California, 2003; U.S. District Court, Northern District of California, 2003; U.S. Court of Appeals for the Seventh Circuit, 2006. *Education*: Stanford University (B.A., 1995, M.A., 1996), Phi Beta Kappa; Boalt Hall School of Law, University of California, Berkeley (J.D., 2001). *Employment*: Law Clerk, Mexican American Legal Defense and Education Fund, 1999; Law Clerk, Judge Henry H. Kennedy, Jr., U.S. District Court for the District of Columbia, 2001-2002; Associate, Lieff Cabraser Heimann & Bernstein, LLP, 2002-2006; Partner, Lieff Global LLP, 2006-2008. *Honors & Awards*: "Northern California Rising Stars," *Super Lawyers*, 2009. *Member*: State Bar of California; American Association for Justice; Consumer Attorneys of California.

HEATHER A. FOSTER, born Washington, D.C., October 2, 1970. Admitted to practice in California in 1996; U.S. District Court, Northern District of California, 1996. *Education*: University of the Pacific, McGeorge School of Law (J.D., 1996); Moot Court Honors Board, 1995-96; Trial Advocacy Honors 1996; Boston College (B.A., 1992). *Employment*: Adjunct Professor, San Francisco State University—College of Extended Learning, Paralegal and LNC program (Fall 2000–Spring 2001). *Publications & Presentations*: Co-Author, *Class Certification of Medical Monitoring Claims in Mass Tort Product Liability Litigation* (ALI-ABA

Course of Study, 1999). *Member*: American Association for Justice; American Bar Association (Litigation Section); Association of Legal Administrators; Bar Association of San Francisco; Legal Assistant Management Association; Phi Alpha Delta; State Bar of California (Volunteer Legal Services Program: Liaison for the Summer Associate Public Service Program—Homeless Advocacy Program, 2002; Teachers in the Schools Program, 2002; Pro Bono Attorney—Family Law Clinic, 1999); Trial Lawyers for Public Justice.

BRENDAN P. GLACKIN, born Sacramento, California, July 23, 1973. Admitted to practice in California, 1998; New York, 2000; U.S. District Court, Northern, Central, Eastern and Southern Districts of California, 2001; U.S. Court of Appeals for the Ninth Circuit, 2004; U.S. District Court, Southern District of New York, 2001; U.S. District Court, District of Colorado, 2001. *Education*: Harvard Law School (J.D., *cum laude*, 1998); University of Chicago (A.B., Phi Beta Kappa, 1995). *Employment*: Contra Costa Public Defender, 2005-2007; Boies, Schiller & Flexner, 2000-2005; Willkie Farr & Gallagher, 1999-2000; Law Clerk to Honorable William B. Shubb, U.S. District Court, Eastern District of California, 1998-1999. *Member*: State Bar of California; BASF Antitrust Section, Executive Committee. *Seminars:* Ramifications of *American Needle, Inc. v. National Football League*, 2010; Antitrust Institute 2011: Develpoments & Hot Topics, 2011.

DANIEL E. SELTZ, born Alexandria, Virginia, April 24, 1974. Admitted to practice in New York, 2004; U.S. District Court, Southern District of New York; Eastern District of New York. *Education*: New York University School of Law (J.D., 2003); *Review of Law and Social* Change, Managing Editor; Hiroshima University (Fulbright Fellow, 1997-98); Brown University (B.A., *magna cum laude*, Phi Beta Kappa, 1997). *Employment*: Law Clerk to Honorable John T. Nixon, U.S. District Court, Middle District of Tennessee, 2003-04. *Publications & Presentations*: Panelist, "Taking and Defending Depositions," New York City Bar, May 20, 2009; Contributing Author, *California Class Actions Practice & Procedures* (Elizabeth J. Cabraser, Editor-in-Chief, 2008); "Remembering the War and the Atomic Bombs: New Museums, New Approaches," in *Memory and the Impact of Political Transformation in Public Space* (Duke University Press, 2004), originally published in *Radical History Review*, Vol. 75 (1998); "Issue Advocacy in the 1998 Congressional Elections," with Jonathan S. Krasno (Urban Institute, 2001); *Buying Time: Television Advertising in the 1998 Congressional Elections*, with Jonathan S. Krasno (Brennan Center for Justice, 2000); "Going Negative," in *Playing Hardball*, with Kenneth Goldstein, Jonathan S. Krasno and Lee Bradford (Prentice-Hall, 2000). *Member*: American Association for Justice; State Bar of New York.

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HEATHER H. WONG, born San Diego, California, July 5, 1978. Admitted to practice in California, 2005; U.S. Court of Appeals, Ninth Circuit, 2005; U.S. District Court, Central and Northern Districts of California, 2005, 2006; U.S. District Court, District of Colorado, 2006. *Education*: University of San Francisco (J.D. & M.B.A., 2005); Beta Gamma Sigma Honor Society (2005); Technical Editor, *Maritime Law Journal*; Staff Editor, *Journal of Law and Social Challenges*; University of California, Berkeley (B.A., 2000). *Awards & Honors*: “Northern California Rising Stars,” *Super Lawyers*, 2009-2010. *Publications & Presentations*: Panelist, “It Don’t Matter If You’re Black or White”—or Female or Older—Primer on Title VII and ADEA,” ABA Section of Labor & Employment Law’s 4th Annual CLE Conference, Chicago,

IL (November 2010); Panelist, "Labor and Employment Law Career Opportunities," ABA Section of Labor & Employment Law's Outreach to Law School Students Task Force Seminar, Santa Clara, CA (March 2010); Presenter, "Rule 23 Basics in Employment Cases," Impact Fund's 8th Annual Employment Discrimination Class Action Conference, Oakland, CA (February 2010); Presenter, "Updates on Employment Law," ALRP MCLE Program, San Francisco, CA (December 2009); Panelist, "EEO Law: Overview and Current Issues under Title VII, the ADEA, and the ADA," ABA Section of Labor & Employment Law's 3rd Annual CLE Conference, Washington, D.C. (November 2009); Panelist, "The Nuts & Bolts of Class and Collective Actions," National Employment Lawyers Association's 19th Annual Convention, Atlanta, GA (June 2008); (Young Lawyers Division; Labor & Employment Law Section; Section of Litigation; Employment Discrimination Law Treatise, Chapter Monitor (2007-present); California Class Action Practice and Procedure Treatise, Chapter Editor (2007-present)). *Member*: American Association for Justice; American Bar Association (Co-Chair, Leadership Development Program; Young Lawyers Division; Labor & Employment Law Section; Section of Litigation; *Employment Discrimination Law Treatise*, Chapter Monitor, 2007-present); American Constitution Society (Mentor); Asian American Bar Association; Asian American Legal Defense and Education Fund; Association of Business Trial Lawyers; Bar Association of San Francisco (Barristers Club; Labor & Employment Law Section; Litigation Section); *California Class Action Practice and Procedure Treatise* (Chapter Editor, 2007-present); Carver Healthy Environments and Response to Trauma in Schools ("HEARTS") Project (Steering Committee, 2007-present); Consumer Attorneys of California; Legal Services for Children (Pro Bono Awards Luncheon Committee, 2010-present); Minority Bar Coalition (2008 Unity Conference Planning Committee); National Employment Lawyers Association; State Bar of California (Labor & Employment Law Section; Litigation Section).

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University of California (J.D., Boalt Hall School of Law, M.G. Reade Scholarship Award); University of California at Berkeley (M.S., Quantitative Economics, with honors); Yale University (B.A., *magna cum laude*, Highest Honors in Economics). *Prior Employment*: Partner, Lieff Cabraser Heimann & Bernstein, LLP (2004-2008), Counsel (2002-2003); Chairman, Leppla Capital Management LLC (2008-present); Chairman, Susquehanna Corporation (2006-present); CEO and President, California Bankers Insurance Services Inc., 1999-2001; CEO and President, Redwood Bank (1985-1998), CFO and General Counsel (1981-1984); Brobeck, Phleger & Harrison (1980); Davis Polk & Wardwell (1976-80). *Publications*: Author or co-author of 11 different U.S. and International patents in electronic commerce and commercial product design, including "A Method for Storing and Retrieving Digital Data Transmissions," United States Patent No. 5,659,746, issued August 19, 1997; "*Stay in the Class or Opt-Out? Institutional Investors Are Increasingly Opting-Out of Securities Class Litigation*," Securities Litigation Report, Vol. 3, No. 8, September 2006, West LegalWorks; reprinted by permission of the author in Wall Street Lawyer, October 2006, Vol. 10, No. 10, West LegalWorks; "*Selected Waiver: Recent Developments in the Ninth Circuit and California, Part 1*;" Elizabeth J. Cabraser, Joy A. Kruse and Bruce W. Leppla; Securities Litigation Report, May 2005, Vol. I, No. 9, pp. 1, 3-7; "*Selected Waiver: Recent Developments in the Ninth Circuit and California, Part 2*;" Elizabeth J.Cabraser, Joy A. Kruse and Bruce W. Leppla; Securities Litigation Report, June 2005, Vol. I, No. 10, pp. 1, 3-9; Author, *"Securities Powers for Community Banks,"* California Bankers Association Legislative Journal (Nov. 1987). *Teaching Positions*: Lecturer, University of California at Berkeley, Haas School of Business, Real Estate Law and Finance (1993-96); Lecturer, California Bankers Association General Counsel Seminars, Lending Documentation, Financial Institutions Litigation and similar topics (1993-96). *Panel Presentations*: Union Internationale des Avocats, Spring Meeting 2010, Frankfurt, Germany, "*Recent Developments in Cross-Border Litigation;"* Union Internationale des Avocats, Winter Meeting 2010, Park City, Utah, "*Legal and Economic Aspects of Securities Class and Opt-out Litigation;"* EPI European Pension Fund Summit, Montreux, Switzerland, "*Legal and Global Economic Implications of the U.S. Subprime Lending Crisis*," May 2, 2008; Bar Association of San Francisco, "*Impact of Spitzer's Litigation and Attempted Reforms on the Investment Banking and Insurance Industries*," May 19, 2005; Opal Financial Conference, National Public Fund System Legal Conference, Phoenix, AZ, "*Basic Principles of Securities Litigation*," January 14, 2005; American Enterprise Institute, "*Betting on the Horse After the Race is Over—In Defense of Mutual Fund Litigation Related to Undisclosed After Hours Order Submission*," September 30, 2004. *Member*: State Bar of California; State Bar of New York; Member, Editorial Board, *Wall Street Lawyer*; Yale University Alumni Board of Directors (Director, 2001-2005); California Bankers Association (Director, 1993-99); California State Small Business Development Board (1989-1997); University of California at Berkeley, Boalt Hall Alumni Board of Directors (1993-96); Leadership Council, San Francisco Chamber of Commerce (1990-1992); Community Reinvestment Institute (Founding Director, 1989-1990); Member, Yale Whiffenpoofs.

NICK R. DIAMAND, born London, England. Admitted to practice in New York, 2003; U.S. District Court, Southern, Eastern, Northern, and Western Districts of New York; US. Court of Appeals, Seventh Circuit. *Education*: Columbia University School of Law (LL.M., Stone Scholar, 2002); College of Law, London, England (C.P.E.; L.P.C.; Commendation, 1997);

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LYDIA LEE, born Oklahoma City, Oklahoma, June 20, 1957. Admitted to practice in Oklahoma 1983; U.S. District Court, Western and Eastern Districts of Oklahoma; U.S. Court of Appeals, 10th Circuit. *Education*: Oklahoma City University, School of Law (J.D., 1983); University of Central Oklahoma (B.A., 1980). *Prior Employment*: Partner, Law Office of Lydia Lee (2005-2008); Partner, Oklahoma Public Employees Retirement System (1985-2005); Associate, law firm of Howell & Webber (1983-1985). *Publications & Presentations*: "QDROs for Oklahoma's Public Pension Plans," *Oklahoma Family Law Journal*, Vol. 13, September, 1998; Co-Author, "Special Problems in Dividing Retirement for Employees of the State of Oklahoma," *OBA/FLS Practice Manual*, Chapter 27.3, 2002; Featured Guest Speaker, *Saturday Night Law*, KTOK Radio; Contributor and Editor, INFRE Course Books for CRA program. *Member*: Oklahoma Bar Association (1983–present), Member OBA Women in Law Committee (2007-present); National Association of Public Pension Attorneys (1988-present), President (2002-2004), Vice-President (2001-2002), Executive Board member (1998-2004), Chair of Benefits Section, Emeritus Board member, (2004-present); Edmond Neighborhood Alliance Board of Directors (2005-present), President (2006-2007), Past President and Director (2007-present); Central Edmond Urban Development Board (2006-present); Midwest City Regional Hospital, Board of Governors (1992-1996), Served on Physician/Hospital Organization Board, Pension and Insurance Trust Committees, and Chairman of Woman's Health Committee; City of Midwest City, Planning Commission (1984-1998), Chairman (1990-1995), Vice-Chairman (1987– 990), Served on Capital Improvement Committee, Airport Zoning Commission (Tinker AFB), and Parkland Review Board, served on 1991 Midwest City Legislative Reapportionment Committee.

MORRIS A. RATNER, born San Jose, California, November 13, 1966. Admitted to practice in California, 1991; District of Columbia, 1999; New York, 2000; U.S. District Court, Northern, Central and Southern Districts of California; and U.S. Court of Appeals, Second, Third, Sixth and Ninth Circuits. *Education*: Harvard University (J.D., 1991); Stanford University (B.A., with distinction, 1988); Phi Beta Kappa. *Publications & Presentations*: Contributing Author, *California Class Actions Practice and Procedures (*Elizabeth J. Cabraser editor in chief, 2003); "Factors Impacting the Selection and Positioning of Human Rights Class Actions in United States Courts: A Practical Overview," 58 *New York University Annual Survey of American Law* 623 (2003); "The Settlement of Nazi-Era Litigation Through the Executive and Judicial Branches," 20 *Berkeley Journal of International Law* 212 (No. 1, March 2002).

Faculty Appointments: Harvard Law School, Visiting Professor (2010-2011): "Class Actions and Other Aggregate Litigation," "Remedies," "Legal Profession," and "Holocaust Litigation"; Harvard Law School, Visiting Lecturer on Law for Winter Term 2009, teaching "Holocaust Litigation." *Lectures*: Stanford University, History Department (guest lecturer, June 2008, re Holocaust-era litigation); UC Berkeley School of Law Boalt Hall (guest lecturer, 2007, re legal ethics); Columbia Law School (guest lecturer, 2004, re Holocaust litigation); New York University School of Law (guest panelist, 2003, re developments in international law). *Member*: State Bar of California; State Bar of New York; Bar of the District of Columbia.

WILLIAM B. HIRSCH, born Los Angeles, California, May 19, 1951. Admitted to practice in California, 1983; U.S. District Court, Northern District of California; U.S. District Court, District of Hawaii, 1991. *Education*: Harvard University (J.D., 1983); Princeton University (M.A., 1975); University of California at Santa Cruz (B.A., with highest honors, 1973). *Awards & Honors*: Trial Lawyer of the Year, Public Justice, 1995. *Publications & Presentations*: "Justice Delayed: Seven Years Later & No End In Sight," in The Exxon Valdez Disaster: Readings on a Modern Social Problem (Kendall & Hunt Pub. Co. 1996). *Member*: Bar Association of San Francisco; State Bar of California; Public Justice; American Association for Justice; ACLU of Northern California (Steering Committee, 1993-94).

ASSOCIATES

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NANCY CHUNG, born Los Angeles, February 21, 1972. Admitted to practice in California, 2003; U.S. Court of Appeals for the Ninth Circuit, 2003; U.S. District Court, Northern and Central Districts of California (2007, 2008). *Education*: Hasting College of Law (J.D., 2002); University of California, Santa Cruz (B.A., Language Studies, 1995). *Employment*: International Labor Organization, Geneva, Switzerland (2000-2001); Peace Corps Volunteer, Romania (1995-1997). *Member*: Bar Association of San Francisco. *Languages*: French, Romanian and Korean.

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Northern District of California, Summer 2001; Website Editor, Public Agenda, 1999-2000. *Member*: State Bar of California; Bar Association of San Francisco; Arbitrator, Bar Association of San Francisco, Attorney-Client Fee Disputes Program; Member, Committee on *Iqbal v. Ashcroft*, Public Justice.

CECILIA HAN, born Silver Spring, Maryland, November 22, 1978. Admitted to practice in California, 2005; U.S. District Court, Northern District of California, 2008; U.S. District Court, Central District of California, 2009; U.S. Court of Appeals for the Ninth Circuit (2010). *Education*: University of California, Hastings College of the Law (J.D., 2004); Executive Editor, *Hasting Constitutional Law Quarterly*, (2003-2004); Judicial Extern to Judge Anthony Kline of California Appellate Court, 2002; Judicial Extern to Magistrate Judge Edward M. Chen, 2003; University of California, Berkeley (BA., Phi Beta Kappa, 2000). *Employment*: Associate, Brayton Purcell, (2005-2007). *Member*: State Bar of California; Minority Bar Coalition; CAOC; Bar Association of San Francisco.

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ROGER N. HELLER, born New York, New York, June 4, 1975. Admitted to practice in California, 2001; U.S. District Court, Northern District of California, 2001). *Education*: Columbia University School of Law (J.D., 2001); Columbia Law Review, Senior Editor; Emory University (B.A., 1997). *Employment*: Extern, Honorable Michael Dolinger, U.S. District Court, Southern District of new York, 1999; Associate, O'Melveny & Myers LLP, 2001-2005; Senior Staff Attorney, Disability Rights Advocates, 2005-2008. *Honors & Awards*: Harlan Fiske Stone Scholar. *Publications & Presentations*: Co-author, Fighting For Troops on the Homefront, Trial Magazine (September 2006). *Member*: American Bar Association.

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Massachusetts, 2007; New York State Bar Association, 2007; U.S. District Court, Central District of California, 2008; U.S. District Court, Eastern District of California, 2008; U.S. District Court, Eastern District of New York, 2009; U.S. District Court, Northern District of California, 2008; U.S. District Court, Southern District of California, 2008; U.S. District Court, Southern District of New York, 2009. American Bar Association, Antitrust and Litigation Sections Member; Bar Association of San Francisco, International Law Section Member.

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ANNE SHAVER, born Denver, Colorado, June 30, 1982. Admitted to practice in California, 2008; Colorado, 2008; U.S. District Court, Northern District of California, 2009. *Education*: Boalt Hall School of Law, University of California (J.D., 2007), Order of the Coif; University of California, Santa Cruz (B.A. *cum laude*, 2003), Phi Beta Kappa. *Employment*: Law Clerk to Honorable Betty Fletcher, U.S. Court of Appeals for the Ninth Circuit, 2008-2009; Davis, Graham & Stubbs, LLP, Litigation Associate, 2008; Public Defender's Office of Contra Costa County, 2007; Davis, Cowell & Bowe, LLP, Summer Law Clerk, 2006; Centro Legal de la Raza, Student Director, 2005-2006; Human Rights Watch, Legal Intern, 2005. *Publications*: "*U.S. v. Fort* and the Future of Work-Product in Criminal Discovery," 44 Cal. W. L. Rev. 127, 12293 (Fall 2007). *Member*: State Bar of California.

JARON R. SHIPP, born Berkeley, California, October 6, 1980. Admitted to practice in New York, 2007; U.S. District Court, Southern and Eastern Districts of New York, 2007; New York, 2009; U.S. District Court, Northern District of California, 2009. *Education*: Howard

University School of Law (J.D., 2005): President, Student Bar Association (2004-2005); Member, Howard Law School Admission Committee (2004-2005); Contributing Writer, The Barrister. University of Pennsylvania (B.A., 2002). *Employment*: Associate, Latham & Watkins, LLP (2006-2008); Law Clerk to the Honorable Deborah A. Robinson (2005-2006). *Member*: American Bar Association.

ALISON STOCKING, born Milwaukee, Wisconsin, July 26, 1977. Admitted to practice in New York, 2008; U.S. Court of Appeals for the Ninth Circuit, 2010. *Education*: Yale Law School (J.D., 2006), Editor, *Yale Human Rights and Development Law Journal*; University of Wisconsin (B.A., 1999), Hilldale Undergraduate/Faculty Research Award; American University in Cairo(1997-98). *Prior Employment*: Law Clerk to the Honorable Barrington D. Parker, Jr., United States Court of Appeals, Second Circuit, 2008-09; Law Clerk to the Honorable John Gleeson, United States District Court, Eastern District of New York, 2006-07; Associate, Jenner & Block, New York, 2007-08.

BARBRA L. WILLIAMS, born Bellflower, California, July 10, 1974. Admitted to practice in California, 2007; U.S. District Court, Central, Eastern and Northern Districts of California, 2007; U.S. District Court, Central District of California, 2007; U.S. Court of Appeals for the Ninth Circuit (2007); U.S. District Court, District of Colorado, (2009). *Education*: University of California, Hastings College of the Law (J.D., 2006, Concentration in Civil Litigation); Notes Editor, *Hastings Race & Poverty Law Journal;* UC Hastings Civil Justice Clinic, Individual Wage & Hour Representation; UC Hastings Admissions Policy Committee; Teaching Assistant, Legal Writing & Research; National Black Law Students Association (Sub-Regional Director); Hastings Black Law Students Association (Co-President); University of California, Irvine (B.A., 1997). *Member:* American Bar Association Labor and Employment Law Section, Law School Outreach Coordinator; Consumer Attorneys of California (Women's Caucus County Liaison for San Francisco County); National Employment Lawyers Association, Class Action Quarterly Reports; State Bar of California; National Bar Association; California Association of Black Lawyers; Bar Association of San Francisco; Charles Houston Bar Association; Aids Legal Referral Panel, San Francisco, CA (Board Member); Twenty Pearls Foundation, Oakland CA (Board Member).

ALLEN WONG, born Hong Kong, China, April 7, 1978. Admitted to practice in New York, 2005; New Jersey 2005. *Education*: Harvard Law School (J.D. 2004); Kennedy School of Government, Harvard University (M.P.A. 2004); Student Attorney, Harvard Legal Aid Bureau (2002-2004); Williams College (B.A. 2000). *Prior Employment*: Law Clerk to Senior Judge Morton I. Greenberg, U.S. Court of Appeals for the Third Circuit (2007-2008); Law Clerk to Chief Judge Garrett E. Brown, Jr., U.S. District Court, District of New Jersey (2005-2007). *Publications*: *Product Liability: The Fate of the Learned Intermediary Doctrine*, 30 J.L. Med. & Ethics 471 (2002).

Notice on the Firm's AV Rating: AV is a registered certification mark of Reed Elsevier Properties, Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies. Martindale-Hubbell is the facilitator of a peer review process that rates lawyers. Ratings reflect the confidential opinions of members of the Bar and the Judiciary. Martindale-Hubbell Ratings fall into two categories—legal ability and general ethical standards.

EX. 15

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, et al, Plaintiffs,	)	
v.	)	
	)	C.A. No. 11-10230-MLW
STATE STREET CORPORATION, STATE STREET BANK & TRUST COMPANY, and STATE STREET GLOBAL MARKETS, LLC Defendants.	)	

MEMORANDUM AND ORDER

WOLF, D.J. January 11, 2012

Plaintiff in this putative class action lawsuit has filed an Assented-To Motion ("the motion") seeking to appoint Labaton Sucharow LLP ("Labaton Sucharow") as interim lead counsel for the proposed class pursuant to Federal Rule of Civil Procedure 23(g)(3). See Plaintiff's Assented-To Mot. for Appointment of Interim Lead Counsel for the Proposed Class (Docket No. 7). In addition, defendants have filed a motion to dismiss. See Defendants' Motion to Dismiss and Request for Oral Argument (Docket No. 18). For the following reasons, plaintiff's motion for appointment of interim lead counsel is being allowed and a hearing is being scheduled on the motion to dismiss.

I. BACKGROUND

In April 2011, plaintiff Arkansas Teacher Retirement System

("ARTRS") filed an amended complaint in the District of Massachusetts, alleging that defendants State Street Corporation, State Street Bank and Trust Company, and State Street Global Markets, LLC, engaged in deceptive acts and practices in connection with foreign exchange transactions executed on behalf of their custodial bank clients, including the plaintiff. See Amended Compl. at ¶¶ 1, 3, 8. ARTRS asserted claims under Sections 2, 9 and 11 of the Massachusetts Consumer Protection Act, M.G.L. c. 93A, and further claimed breach of duty of trust, breach of contract, and negligent misrepresentation. See id. at ¶¶ 88-89, 97-98, 111-112, 120-121, 137, 140. Plaintiff sought to maintain the lawsuit as a class action pursuant to Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(3). See id. at ¶¶ 21-31.

Plaintiff moved to appoint Labaton Sucharow as interim lead counsel for the proposed class pursuant to Federal Rule of Civil Procedure 23(g)(3), seeking to facilitate efficient management of the litigation and to clarify responsibilities for: (1) opposing the motion to dismiss; (2) conducting discovery; (3) moving for class certification; and (4) conducting potential settlement discussions. See Plaintiff's Assented-To Mot. for Appointment of Interim Lead Counsel for the Proposed Class (Docket No. 7); Memorandum of Law in Support of Plaintiff's Assented-To Mot. for Appointment of Interim Lead Counsel and Liaison Counsel for the Proposed Class, at 1-2, 4 (Docket No. 8). Labaton Sucharow, with

Thornton & Naumes, LLP ("Thornton & Naumes") and Lieff Cabraser Heimann & Bernstein, LLP ("LCHB"), serve as counsel for the plaintiff (collectively, "plaintiff's counsel"). In its memorandum in support of the motion, plaintiff states that Thornton & Naumes will serve as liaison counsel for ARTRS, and LCHB will serve as additional counsel for the plaintiff and the proposed class. See Memorandum of Law in Support of Plaintiff's Assented-To Mot. for Appointment of Interim Lead Counsel and Liaison Counsel for the Proposed Class, at 1 (Docket No. 8).

II. DISCUSSION

Rule 23(g)(3) of the Federal Rules of Civil Procedure authorizes a court to "designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action." Although not required, appointment of interim class counsel may help "clarif[y] responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement." Federal Judicial Center, Manual For Complex Litigation § 21.11, at 246 (4th ed. 2004). See also Fed. R. Civ. P. 23(g)(3), 2003 Advisory Committee Notes for Rule 23(g).

Counsel's duty is to "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4). See also Fed. R. Civ. P. 23(g)(3), 2003 Advisory Committee Notes for Rule 23(g).

In appointing interim counsel, courts generally look to the factors used for determining adequacy of class counsel under Federal Rule of Civil Procedure 23(g)(1)(A):

> "(i) the work counsel has done in identifying or investigating potential claims in the action;
>
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
>
> (iii) counsel's knowledge of the applicable law; and
>
> (iv) the resources that counsel will commit to representing the class[.]"

In addition, a court may "consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class[.]" Fed. R. Civ. P. 23(g)(1)(B).

Plaintiff's counsel have invested substantial resources in investigating and preparing this action. See Memorandum of Law in Support of Plaintiff's Assented-To Mot. for Appointment of Interim Lead Counsel and Liaison Counsel for the Proposed Class, at 4-5. Each of the firms, including Labaton Sucharow, have extensive experience with complex commercial litigation and class action lawsuits involving financial and securities fraud. See id. at 5-9. The firms are knowledgeable the applicable areas of law, and individually and collectively possess the resources required to represent the proposed class. See id. Moreover, plaintiff's

counsel concur with the proposed leadership structure. See Plaintiff's Assented-To Mot. for Appointment of Interim Lead Counsel for the Proposed Class (Docket No. 7).

Accordingly, it is hereby ORDERED that:

1. Plaintiff's motion for appointment of Labaton Sucharow as interim lead counsel is ALLOWED. Pursuant to Fed. R. Civ. P. 23(g)(3), the court designates Labaton Sucharow as interim lead counsel to act on behalf of all plaintiffs and the proposed class in the action until and unless class counsel is appointed, with the responsibilities hereinafter described. Thornton & Naumes shall serve as liaison counsel for plaintiff and the proposed class, and LCHB shall serve as additional attorneys for plaintiff and the proposed class.

2. The court appoints Labaton Sucharow LLP to be responsible for: (a) ensuring that orders of the court are served on all counsel; (b) communicating with the court on behalf of all counsel in each case as to scheduling matters; and (c) maintaining a master service list of all parties and their respective counsel.

3. Interim lead counsel shall have sole authority over the following matters on behalf of all plaintiffs: (a) the initiation, response, scheduling, briefing and argument of all motions; (b) the initiation and coordination of plaintiffs' pretrial activities and plan for trial, including but not limited to the scope, order and conduct of all discovery proceedings and of all trial and post-trial proceedings; (c) the delegation of work assignments to

other plaintiffs' counsel and arrangement of meetings of plaintiffs' counsel as they may deem appropriate; (d) designation of which attorneys may appear at hearings and conferences with the court; (e) the retention of experts; (f) the timing and substance of any settlement negotiations with defendants; and (g) other matters concerning the prosecution and/or resolution of the action.

4. Interim lead counsel shall have sole authority to communicate with defendants' counsel and the court on behalf of all plaintiffs unless that authority is expressly delegated to other counsel. Defendants' counsel may rely on all agreements made with interim lead counsel, and such agreements shall be binding on all other plaintiffs' counsel.

5. Interim lead counsel is authorized to create committees of plaintiffs' counsel as it deems appropriate for the efficient prosecution of this action. Any such committee shall operate under the direct supervision of interim lead counsel.

6. Subject to any restrictions agreed upon or set forth in a protective order, all discovery obtained by any plaintiff in these cases may be shared with any other plaintiff. All discovery obtained by any defendant in these cases shall be deemed discovered in each of these cases.

7. All counsel shall make best efforts to avoid duplication, inefficiency and inconvenience to the court, the parties, counsel and witnesses. Interim lead counsel shall ensure that schedules are met and unnecessary expenditures of time and funds are avoided, including the avoidance of unnecessary or duplicative

communications among plaintiffs' counsel. However, nothing stated herein shall be construed to diminish the right of any counsel to be heard on matters that are not susceptible to joint or common action, or as to which there is a genuine and substantial disagreement among counsel.

8. Nothing herein shall limit the requirements on plaintiffs and plaintiffs' counsel set forth in Fed. R. Civ. P. 23, or affect whether any of the current actions should be certified as a class action, whether plaintiffs are adequate representatives of any class that may be certified, or whether plaintiffs' counsel are adequate counsel for any such class.

9. All plaintiffs' counsel shall keep contemporaneous time records and shall periodically submit summaries or other records of time and expenses incurred by their respective firms to interim lead counsel in such manner as interim lead counsel shall require. Failure to provide such documents and/or data on a timely basis may result in the court's not considering non-compliant counsel's application for fees and expenses, should this litigation be resolved successfully for plaintiffs.

10. A hearing on defendants' motion to dismiss is scheduled for February 24, 2012 at 3:00 p.m.

/S/ Mark L. Wolf
UNITED STATES DISTRICT JUDGE

EX. 16

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Case No. 11-cv-10230 MLW

- -x

ARKANSAS TEACHER RETIREMENT SYSTEM, et al.,

Plaintiffs,

-against-

STATE STREET BANK AND TRUST COMPANY,

Defendant.

- -x

JAMS
Reference No. 1345000011

- -x

In Re: STATE STREET ATTORNEYS' FEES

- -x

June 14, 2017
5:17 p.m.

B e f o r e :

SPECIAL MASTER HON. GERALD ROSEN
United States District Court (Retired)

Deposition of LAWRENCE SUCHAROW, taken by Counsel to the Special Master, held at the offices of JAMS, 620 Eighth Avenue, New York, New York, before Helen Mitchell, a Registered Professional Reporter and Notary Public.

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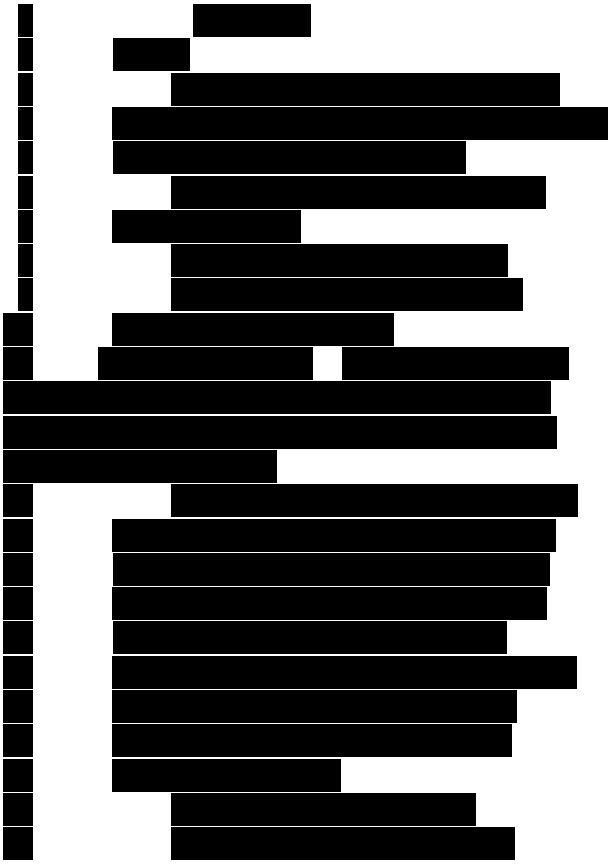

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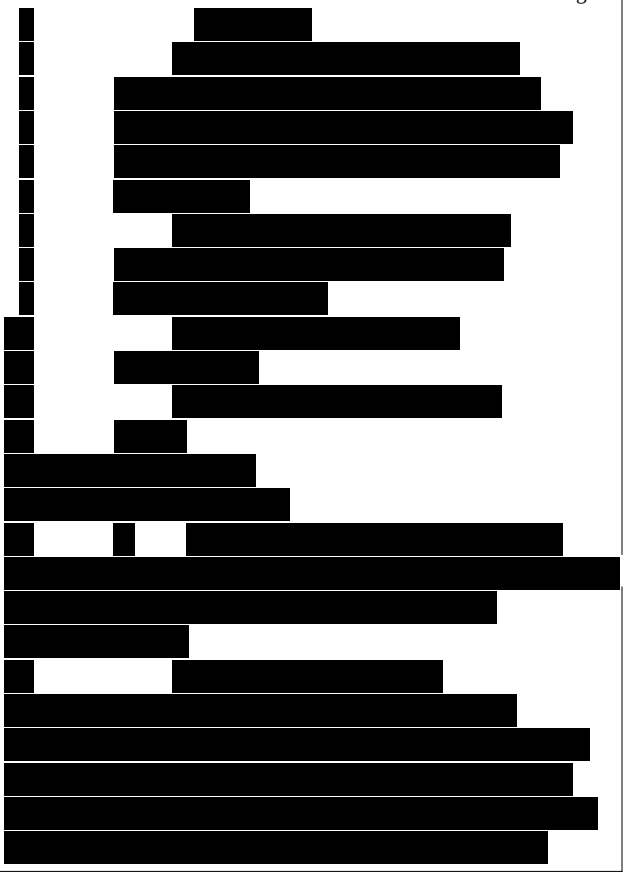

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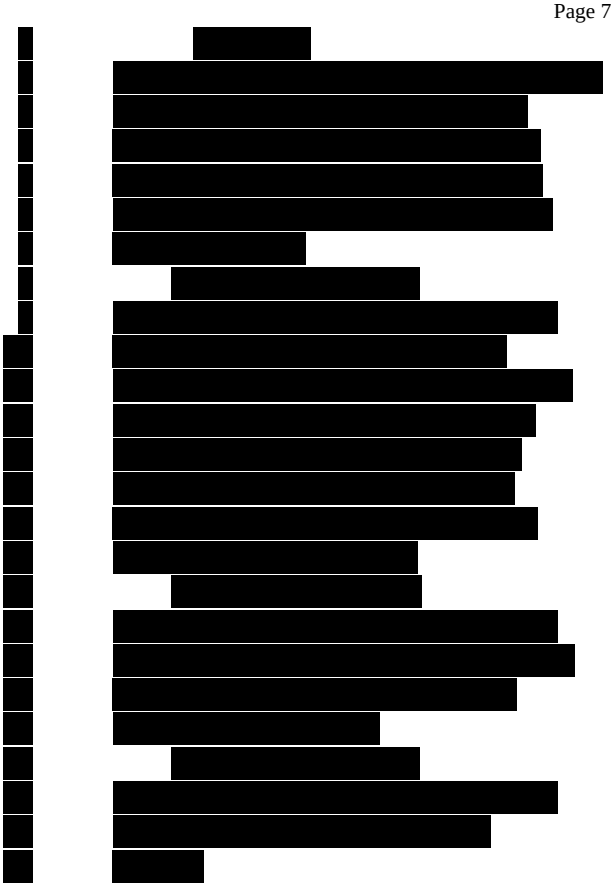

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Sucharow

A Tall order.

Starting with college?

Q Yes, please.

A I went to the Baruch School of the City College of the City University of New York, where I received a bachelor of business administration cum laude. I then went to Brooklyn Law School, evening session, where I received a JD cum laude.

In law school I applied for a private practice firm as a law clerk. Coincidentally, that firm, in 1973, actually practiced securities class action derivative litigation, which, to my knowledge -- I had no knowledge of that field even, and they were probably one of ten firms in the United States that even practiced it.

Two or three years later, I answered a blind ad for what turned out to be my current firm, under a different name, Kass, Goodkind -- and then there were a lot of name changes over the years -- where I became an associate in the securities litigation class action area.

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The firm probably at that time -- 1977-1978 -- probably had less than 20 lawyers, most of whom practiced corporate -- billable corporate, trust and estate law. I think the firm was formed in 1965 by three or four Yale Law School graduates who -- Yale and Harvard -- who believed, after serving their ten years at large firms, that they could deliver better advice faster, more personable, at cheaper rates. I assume that's the way most of those firms started.

The class action department grew rapidly while the business -- while the classic corporate billable practice did not. That led to a lot of tension. Somewhere around -- it's about me, not the firm.

Around 1982 I became a partner. Somewhere around -- I don't know when I became managing partner. I was in effect managing partner for many years without the title, but I became managing partner. Sometime thereafter I became chairman, without a managing partner. So effectively, while I thought my duties would be diminished, in fact I had now undertaken two

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roles, as chairman and managing partner.

I don't know if there's more you want to know.

Q Could you just tell me, Larry, how did the practice of the firm change over the last ten to 15 years?

A Well, there was a lot of tension between the billable people and what they believed they should be earning, class action people and what they believed they should be earning. It required a lot of juggling, a lot of stress. Somewhere around ten years ago we brought in a management consultant -- actually at the suggestion of Bob Goodkind, who was then chairing the billable department.

She did whatever analysis she did, and told us that our best route to success was to split apart, that billable people were like horses and class action people were like zebras; they look alike, but you're not the same, your goals are different, your risk tolerances are different, what you think you're entitled to is different. And we proceeded to implement that.

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Q Sounds like a marriage counselor.

A Very much so. A partnership, to me, is very much like a marriage, actually.

We proceeded to implement that. The billable people basically left, and we continued on with a clearer goal in mind of what we wanted to be and what we wanted to become And we believe we achieved that; that is, we set a goal as being among the top five respected securities class action firms in the United States.

Q And in the course of your securities class action work, Larry, did you -- prior to the State Street case, did you have contact or a working relationship with the Thornton law firm?

A Working relation -- contact, yes. Working relationship, yes.

Q And what did that consist of?

A Well, I don't think I prosecuted any cases in conjunction with the Thornton firm, but my partners did, so I know there were matters -- I don't have the names of

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the matters, but we did prosecute cases, and I was consulted on some of those cases.

Q So there was some history with Thornton before the case?

A Before this, yes.

Q And how about Lieff Cabraser, was there any history there?

A Yes. Long history with the Lieff Cabraser firm.

They're among the finest firms in the United States, not just on securities class actions, but on class actions generally. I have a lot of respect for that firm, and their partners.

Q So let me bring you up to the State Street litigation and your role in it.

Could you tell us in general terms what your connection to the case was, and then we'll work back to some specifics?

A Sure.

I was not necessarily aware of the case when it was brought into the office because I was not asked to prosecute. I think my partner, Joel Bernstein, was the senior

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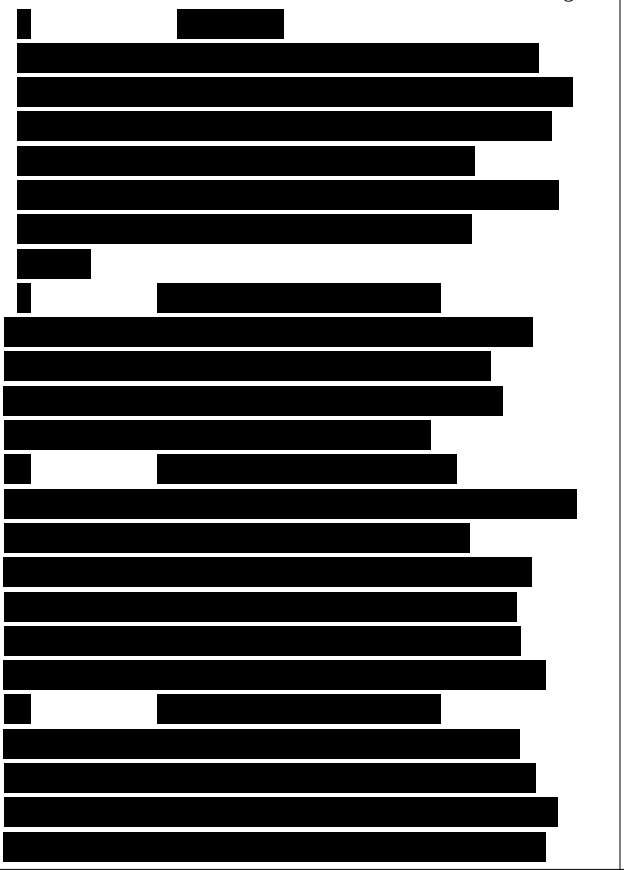

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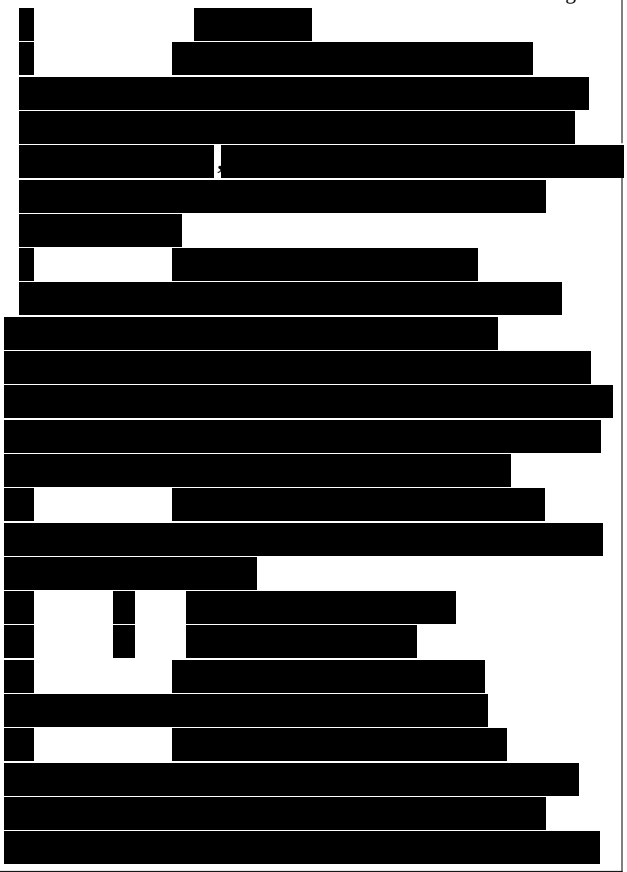

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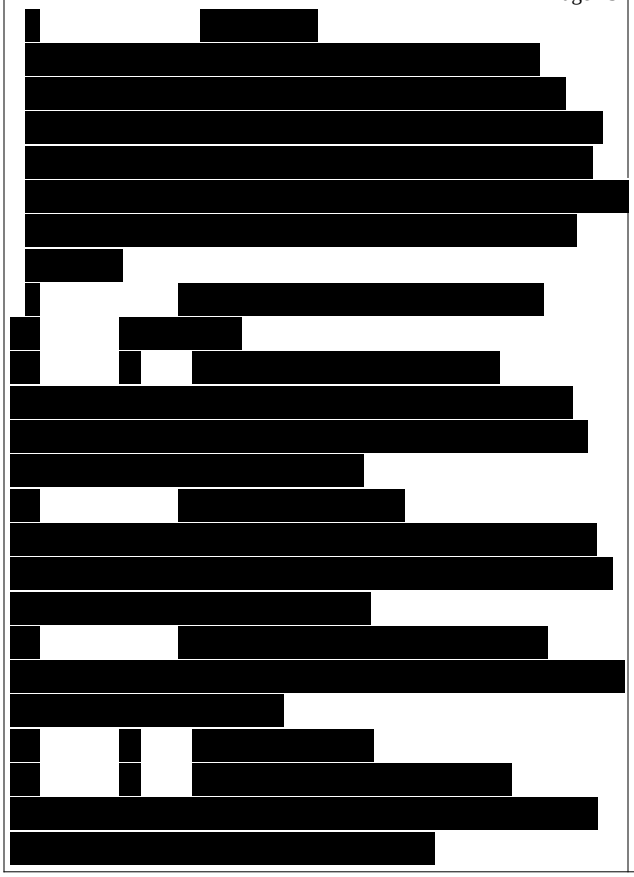

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you know, without getting us involved in a class action. And we agreed to try to come up with some format that would allow for a long-term mediation at the same time that the case itself would proceed.

And I believe there was a presentation to the court, and the court said, "That sounds fine, I want to be sure that when you guys come out of the tunnel, either with an agreement or not, that this case is ready to go; we're not just going to waste time."

So we committed to the court that we would conduct our discovery at the same time that we were mediating, and that it would not be long to trial, whatever happened at the end of what was then perceived to be two years.

We went back for several periods of additional time, making the same commitment to the court, and came out ultimately at the last -- I don't want to say at the last minute, the negotiations were all cordial, but we never knew that they would actually take fruit, but we came out with the agreement that you've seen and presented to the court.

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JUDGE ROSEN: Your lawyer's going to tell you not to speculate.

MR. STOCKER: I think you might find it helpful.

JUDGE ROSEN: Okay.

THE WITNESS: Lodestar is a precious commodity, right, because we're sitting here about a case that was awarded a fee based on a percentage, and yet this whole thing is going to be about lodestar. So somehow lodestar always comes up, whether it's in fee negotiations among the counsel or in discussions with the -- you know, presentations to the court. So firms like to have lodestar. And if it's on -- if it's brought over to these books, then these people have lodestar, and that's their lodestar, so if you ask them, "Well, what did you do," they say, "Well, we put in ten hours, we put in five hours, we got twice as much work as you, and therefore we should get" -- it's not symmetrical, it

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doesn't mean you're going to get twice as much, but it's an argument you can make. So people like to have lodestar, they like to possess lodestar --

JUDGE ROSEN: Which means the firm giving up the allocated attorneys in their lodestar is making a pretty big sacrifice; yes?

THE WITNESS: No, not if that's the arrangement. You're going to pay for it one way or the other. The intent is not to cheat the other party, the intent is if you're going to take the economic risk and reimburse us at the time, then you should be entitled to the value that that time accrues to.

There's two ways to do it. One is it's on our books, a difficult mathematical calculation, but it can be done, they have computers. If we have it on our time and then we segregate it out, if each hour of time is worth the same amount of money, plus the multiple, then that's what you would

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get. If it's on yours, and your time is already segregated out -- in other words, we reach an agreement among ourselves how to split the fees, then it's the same difference.

I don't see it as a sacrifice; it's just two different ways of arriving to the same point.

JUDGE ROSEN: Well, the lodestar's going to be the same overall --

THE WITNESS: Correct.

JUDGE ROSEN: -- it's going to be the same. But --

THE WITNESS: Correct.

And I was working with friends, and we knew that we'd have a discussion and a negotiation. It wasn't a -- this wasn't a hostile arrangement with a forced marriage; each party brought something to the table.

JUDGE ROSEN: It just seems that doing it that way rather than just a straight "Here's your share" based on

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number of hours, "Here's an invoice for it," you can claim that as an expense later rather than doing a separate lodestar petition, it's a much simpler, cleaner, less risk-free way to do it.

THE WITNESS: I'm sorry, I missed the part about expense. I apologize. I zoned out on you.

JUDGE ROSEN: Okay.

So one way to do it, we've said, is you simply send a bill every month to Thornton -- right -- and say, "Here's your share of the expenses for the staff attorneys who are doing document review, please pay us this," and they send you a check. Thornton can then claim that as an expense in their fee petition.

THE WITNESS: Well, it's not a -- it's not an expense. They're attorneys hired by the firm, same as any other attorneys.

JUDGE ROSEN: Not by their firm, by you. Because these are

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employees of yours --

THE WITNESS: It's hard for me to argue. I did not know about -- nobody asked me, I did not know about the arrangement. I don't know whether I would have said, "Hey, that doesn't make a hell of a lot of sense to me, why aren't we doing it some other way."

JUDGE ROSEN: But therein lies the difference, and the potential for confusion.

The numbers on the lodestar comes out the same, so in an institutional sense no harm, no foul. The numbers come out, your lodestar would have been the same whether these folks were on your --

THE WITNESS: The total lodestar?

JUDGE ROSEN: Yes, would have been the same.

By allocating it to Thornton, it allows them to -- rather than simply pay the 40 to 50 bucks, or 30 to 40

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bucks an hour that you would bill them as an expense, it allows that firm -- and I'm not criticizing Thornton, or criticizing you, but it allows them to put in for rates, and established rates, rather than simply putting it in a petition as an expense, or whatever you want to call it. It allows them to bill specific rates and pump up their lodestar.

THE WITNESS: I -- I can't get my head around the term "pump up the lodestar" if the lodestar's going to be the same.

If we give up -- if we're entitled -- because we're paying them and supervising them and they're my employees --

JUDGE ROSEN: Thornton's lodestar --

THE WITNESS: Sorry.

JUDGE ROSEN: -- pump up Thornton's lodestar, as opposed to the total lodestar.

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THE WITNESS: I don't see a mathematical difference. I don't.

JUDGE ROSEN: There's a huge difference.

THE WITNESS: Well, if we're charging them --

JUDGE ROSEN: But you're not charging them at $420 an hour --

THE WITNESS: That's correct.

JUDGE ROSEN: -- you're charging them at 30 or $40 an hour, and they would then pay you whatever invoice you sent them for 30 or $40 an hour.

Right?

THE WITNESS: We would.

JUDGE ROSEN: You wouldn't charge them $400 an hour?

THE WITNESS: Correct.

JUDGE ROSEN: So they pay you that. And, yes, you take the same attorneys, and then you claim it on your lodestar at -- at the higher rate, because they're your employees, they

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were working for you; right?

So by allocating it to Thornton, and allowing Thornton to claim, you know, the same thing you would have claimed, it dramatically pumps up their lodestar. Not the total lodestar, Thornton's.

THE WITNESS: But I'm saying if it's lodestar, it's lodestar. I don't understand the difference.

An argument could be made -- and it gets more complicated -- that by them reimbursing us the cost of paying them, they really weren't our employees, and they should get the lodestar.

I mean, the way you're doing it is they have an expense and we have the lodestar. That's actually more of a charge to the case.

JUDGE ROSEN: Um --

THE WITNESS: It's lodestar, plus the expense that they pay.

JUDGE ROSEN: I'm not sure how

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it's more, but it just seems to me that it's -- it seems to me that the perhaps unintended consequence, but I think probably intended, is that it allows a firm to claim a billable rate for people they don't really have a relationship with.

THE WITNESS: I think -- again, speculating -- with the confusion that happened and everyone claiming everybody, that that was the unintended consequence. There was no real understanding as to what was going to happen, who was going to get that lodestar. And that, I think, is where the problem arises.

I think if we gave up that lodestar and it appeared in Thornton, or Thornton gave up that lodestar and it appeared in ours and we made an adjustment at the end, I don't see any harm or foul or -- or anything.

Our problem evidently -- because I was not part of it -- was

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that nobody had thought it through to the end as to what does it now mean.

We wanted to get compensated for the financial exposure --

JUDGE ROSEN: So let me give you a different perspective, a judge's perspective on this.

Judge gets a fee petition for lodestar, and judges do different things with lodestar fee petitions. A judge looks at these petitions and says, "Okay, Labaton has X number of hours at X rate and X attorneys, Lieff has X number hours at X rates and X attorneys, Keller has X number of hours at X rates. They've really sunk a lot of their own treasure and wealth, because these are people who are working for these firms."

Judge gets a petition and says, "Okay, Thornton also has ten staff attorneys, and they've sunk a lot of treasure in this of their own," thinking that these people are really

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Thornton employees.

It could impact a judge's thinking about the respective roles of the firm in the case, what they did, how much work, how much risk they took, all of that.

You don't see that?

THE WITNESS: It's not that I don't see that. I see it coming out basically the same at the end -- in the wash. Which is why I -- which is why I advocate a percentage of the fund, which is why I think that district went with a percentage, so we don't have the judges dealing with all of those issues.

I mean, the money was paid and the time was spent. And maybe I'm making it too simple.

JUDGE ROSEN: Okay.

THE WITNESS: But I think what happened indicates that it wasn't an intentional effort to mislead anybody. It was a --

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JUDGE ROSEN: That's not the issue.

THE WITNESS: So you have it both ways, actually -- or maybe three ways. You can test which one is the best way by -- we all reported it.

JUDGE ROSEN: Well, I think maybe we would all agree -- if you disagree, tell me -- the best thing to have done would have been to be fully transparent about what was happening, that these were Labaton staff attorneys who were allocated for purposes of the fee petition to Thornton. Fully transparent in the fee petition.

THE WITNESS: I don't disagree. But people have different perspectives as to what that means.

Evidently our firm, whoever made the decision to include it, said, "This is our lodestar, and we'll deal with it later." The Thornton firm said -- I'm presuming, I had no conversations, no knowledge -- said,

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"We paid for these people, their lodestar belongs to us," and we did it both ways.

JUDGE ROSEN: Okay.

THE WITNESS: I don't mean that --

JUDGE ROSEN: I know you don't mean it facetiously, but from a judge's perspective, looking at a lodestar petition, it makes a difference. Because one of the things a judge is looking at, in something like this, is did firms have disproportionate risk in terms of the cost, especially in a risky case, like this was.

Judges are looking to see which firms -- some judges, not all. Look, some judges just say, "Okay, $300 million settlement, 75 seems about right, let me look at the lodestar. Okay, it's not" -- for sure some judges do that.

Other judges -- and I would put Judge Wolf in this category -- are

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going to be much more -- drilling down much more deeply and meticulously. And if you're looking for which firms really had the risk here, and which firms really dedicated the resources in making some kind of determination, it may be significant to some judges as to which firms really had the resource commitment, which firms really bore the risk with their own employees.

It would make a difference to some judges. Maybe you don't agree with that, but it would.

THE WITNESS: I don't disagree with that. I certainly don't disagree with transparency. I'm not sure that we realized that it was opaque. And that's a bigger problem when we get to the language thing, you know. You can ask me about transparency in that.

JUDGE ROSEN: You realized it when the Boston Globe article came out.

THE WITNESS: Realized in what sense? I'm sorry. Which aspect of the

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article?

JUDGE ROSEN: Well, the Boston Globe article said that Thornton had contract attorneys -- I'm paraphrasing dramatically here -- but that Thornton had contract attorneys that they were paying 40 to $50 an hour for, when in fact they had -- well, they had one contract attorney.

THE WITNESS: I think in our mind, rightly or wrongly, we allocated those people to the Thornton firm in our mind, they were paying for them. But I hear all the other arguments the other way, so I didn't realize that.

JUDGE ROSEN: I'm not trying to make arguments, I'm just trying to suggest other perspectives in the way this can look.

MR. STOCKER: And I'm going to butt in because I want to understand. You're making an important point, I want to make sure I understand it.

How, in your view, do you think

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Judge Wolf's perception of proportional risk borne by the firms would have been different if it had been known that while the Thornton firm was paying for these staff attorneys, they weren't actually physically located at the Thornton office and they weren't employed directly by the Thornton office?

JUDGE ROSEN: I can't answer for Judge Wolf. He may have said, you know, no harm, no foul. He might have.

Other judges I think would look at it and say --

MR. SINNOTT: It's a sham.

JUDGE ROSEN: -- it's a sham, and they're drafting on the work that Labaton did and the risk that Labaton took, or Lieff took, in terms of the commitment of resources and people.

I can't explain it any better than that. I mean, maybe I was on the bench too long, but it -- it matters. To some judges. To other judges, you

Sucharow

know, not so much.

THE WITNESS: I'm not disagreeing.

There's no question pending, so I'm just shutting up.

JUDGE ROSEN: It's a discussion.

THE WITNESS: I'd love to have that with you further --

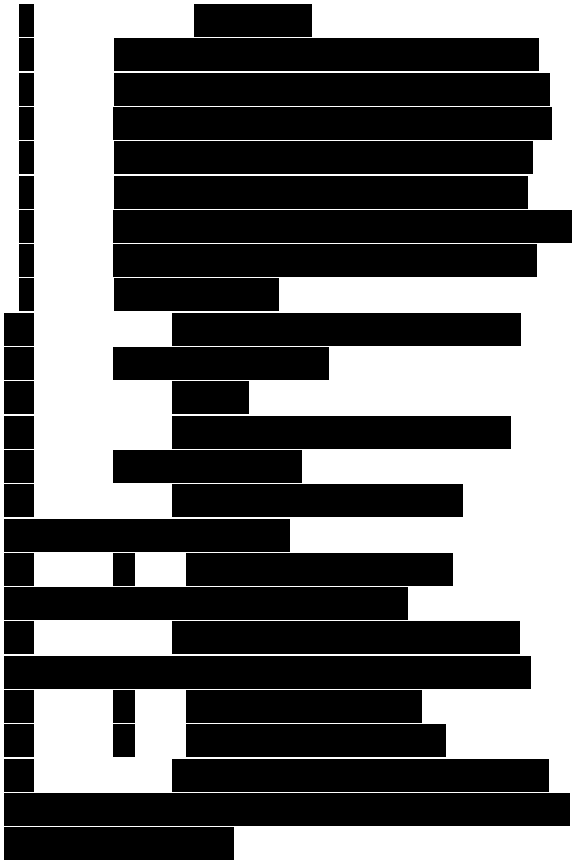
JUDGE ROSEN: Sure.

MR. STOCKER: Not here.

THE WITNESS: -- down the road.

JUDGE ROSEN: I ask these questions because one of the things Judge Wolf is looking for from us is best practices recommendations for the future to avoid these kinds of issues, the public perception of the legal profession, which is important to Judge Wolf -- well, to every judge -- and we've got to be thinking of best practices to recommend.

One of the things we've talked about internally is what effect does



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A I was presented with drafts, I reviewed and made corrections where I thought corrections were appropriate, and then executed it.

Q Was there anything in there that struck you as being out of whack, or warranted further investigation?

A I haven't looked at it in quite some time. I believe it was the paragraph before -- the paragraph, you know, focusing principally on -- with the word "charged" in it, because I wanted the description of what we did and kind of why we did it to have more bite.

Q Here (handing).

And paragraph seven, I think, is the paragraph that you're referring to.

A That's the one with the "charged," but the one I changed -- the one I changed -- I mean, I read that, and stopped and then proceeded, but the paragraph I was talking about was three.

Q Okay. And tell us about that.

A This summarizes how I started this office, what my role was and how I

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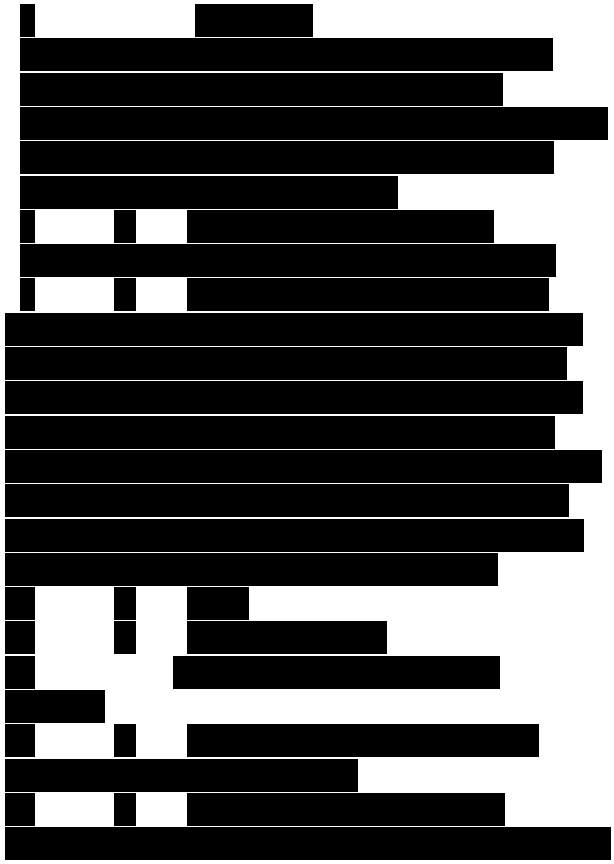

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too long and he was seeing things a certain way, during my interview I kind of said the same thing, and that is, I've been practicing class action securities litigation for 40 years, there's a lot of language that I know that a lay person may not interpret the same way. I would not necessarily perceive it that way until someone says, "Well, why did you say this?"

When I signed this and saw the phrase "firm's regular rates charged" I focused more on the "regular rates" than did I on the word "charged."

We had in the past used phraseology "charged and paid by billable clients," and we had eliminated that last part to reflect the fact that we generally did not take on billable work.

But I've been trying to think, since the informal discussion we had, what would I have said if it wasn't "charged"? Would it be "referred to"? Would it be "told to"?

We do have inquiries, "What are your rates?" And we provide these rates. So it's not charged, but it's our rates.

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contingent fee in any event.

So what I wanted to convey was these are not rates -- our rates are not rates that we either set for the State Street case in particular, for class actions in general or for billable clients. These are our rates. They're the same rates that we charge straight through, because I think that's the purpose of saying "charged and paid for by billable clients." Somehow if somebody's really willing to actually pay that rate, that gives an imprimatur that it's a better -- that it's right.

I would say that, even at the defense bar, different rates are charged by different firms based on their experience.

I would venture to guess that Cravath's rates are very different than some two-person firm, maybe even my firm when it did business where they said we could do it better, faster and cheaper. That's who they were going to compete against. But there is an interest in hiring Cravath, depending on what you want done.

So I don't think that there's, you know, one rate that's appropriate for any

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BY MR. SINNOTT:

Q Did you have a role in the writing of a letter to Judge Wolf as a result of all of these things?

A I don't believe so. I don't believe that the time allowed for it. I know we wanted to get the letter out quickly, and where I was located didn't really lend itself to my wordsmithing. And people knew more about it. I still was not understanding it.

I think in Kenya was where I learned that Trump became president as well, so my whole world was shaken.

JUDGE ROSEN: That will be the headline of my report.

BY MR. SINNOTT:

Q Let me ask you a couple of questions, Larry, about the Thornton law firm.

THE WITNESS: I mean, I -- I will tell you --

JUDGE ROSEN: We'll talk later.

THE WITNESS: Okay.

Q Were you aware that Garrett Bradley's brother, Michael, was doing document

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review work in this case?

A No.

Q When did you first become aware of that?

A Probably in whatever article first related it.

Q My understanding is that Garrett Bradley at some point was of counsel to your firm.

A Yes.

Q Are you aware of that?

A Yes.

Q How did that come about?

A [redacted]

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[redacted]

EX. 17

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Case No. 11-cv-10230 MLW

- -x

ARKANSAS TEACHER RETIREMENT SYSTEM, et al.,

Plaintiffs,

-against-

STATE STREET BANK AND TRUST COMPANY,

Defendant.

- -x

JAMS
Reference No. 1345000011

- -x

In Re: STATE STREET ATTORNEYS' FEES

- -x

June 14, 2017
12:26 p.m.

B e f o r e :

SPECIAL MASTER HON. GERALD ROSEN
United States District Court (Retired)

Deposition of ERIC BELFI, taken by Counsel to the Special Master, held at the offices of JAMS, 620 Eighth Avenue, New York, New York, before Helen Mitchell, a Registered Professional Reporter and Notary Public.

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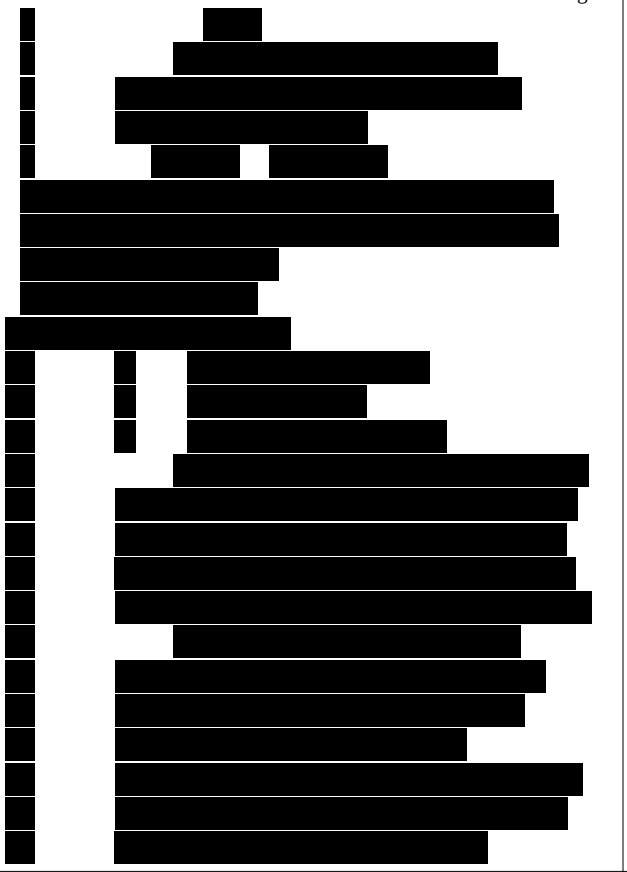

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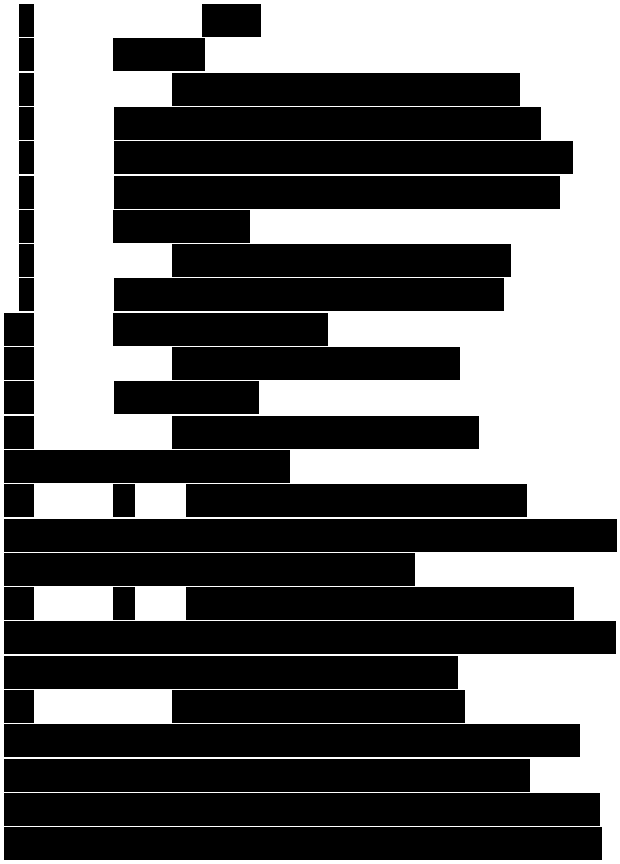

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Belfi
prosecuting cases.
After that, I joined a firm
that went through a number of different name
iterations, but the last was Murray Frank &
Sailer. That's S-a-i-l-e-r.
After working there, I joined
the Labaton firm in May of 2006, and I have been
a partner at Labaton Sucharow since May of 2006
to present.
Q And what kind of work have you
done? What practice areas have you engaged in
at Labaton since May of 2006?
A I primarily worked with client
relationships.
When I joined the Labaton firm
in 2006, I had a number of institutional
relationships that I brought over to Labaton,
and since 2006 I've expanded those
relationships, and I work with many of the
firm's clients, and I'm the direct contact, you
know, updating my cases and keeping apprised of
new cases that are out there.
Q Let me direct your attention,
Eric, to the State Street case, and ask you to

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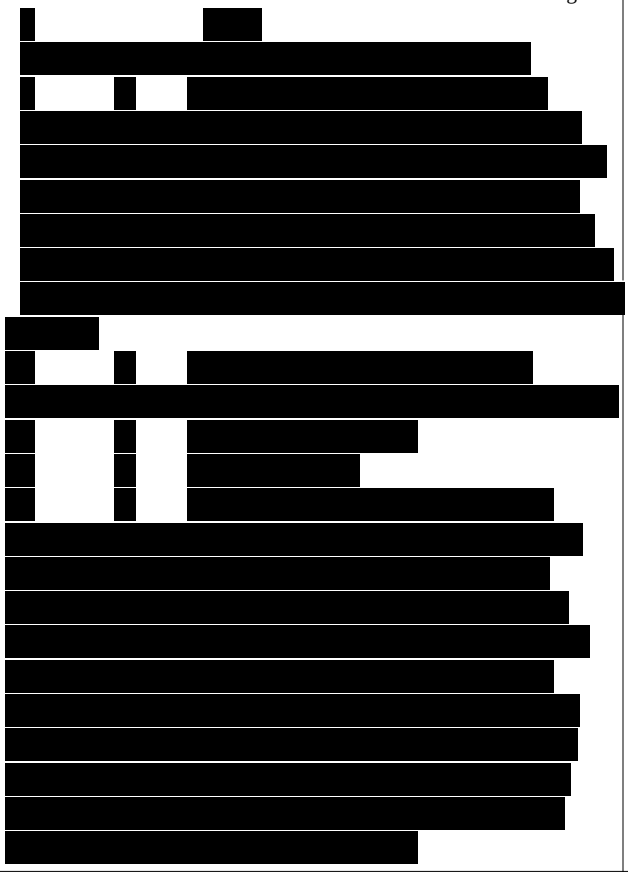

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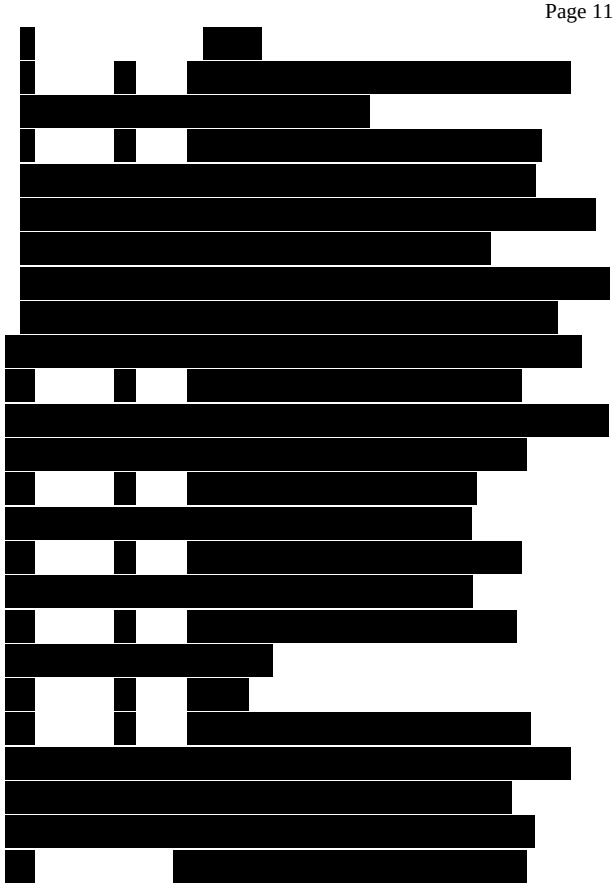

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if I can go any further as far as client communications here.
MS. LUKEY: In terms of conversation with him?
THE WITNESS: Yes.
MS. LUKEY: If it's important to you, we can go have him ask George.
Q No, I think you've kind of given me what I was looking for with that question. Obviously, feel free with future questions.
Had you dealt with George previously?
A We had represented Arkansas in a couple of cases before.
Arkansas was a -- had been a firm client prior to George arriving, and at the time we may have represented them on maybe two or three cases.
Q And how did you wind up becoming the relationship partner with ARTRS?
A I just got to know George. We reached out to him, and I got to know him, and the two of us got along really well, and so then

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respective disclosures?

A I don't know. I just was told it was significant.

And we regularly deal with very large volumes of documents, so if someone told me it was significant, I would assume that it was quite a few pages.

Q Now, on January 9th, 2015, if I were to say that you entered time for strategy and discovery issues, would that refresh your memory as to when that later disclosure came? Does that sound about right?

A That sounds about right.

Q At that time or some other time, Eric, was there a discussion about sharing of costs for document review?

A Yes.

Q Tell us about that, as best you remember.

A My recollection was we knew these documents were coming in, and we had to find a way to make sure that we reviewed them, and I think we had to review them fairly quickly because, as we've been talking, this case was

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going on for a long time, so I think people wanted to, you know, really get through the review quickly. So the strategy was to -- was to build a big group of reviewers so that we could get through the documents quickly.

And we talked about back when you did the interview, I was concerned about the status of where the case was, and the risk to our firm, so I wanted to make sure that this review was shared equally among the three firms and that we weren't going to just bear all the heavy lifting. So there was a process that was started to try to figure out a way for us to have these documents reviewed between our firm, the Lieff firm and the Thornton firm.

Q And were you part of that process?

A The only way I was -- the only part I was part of the process was Garrett Bradley contacted me and asked if we could hire some reviewers for his firm, since we had the setup in our office to review documents since we were doing this on a regular basis, where the Thornton firm did not do this. And I said that

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I would talk to my people to make this happen for them.

JUDGE ROSEN: Now, when he said "hire," did he use the word "hire" in the sense of going out and getting new people, or allocating your existing people to Thornton? Or didn't you have an understanding either way?

THE WITNESS: I didn't have an understanding either way.

I would not have gotten into that granularity of that analysis, because we have a number of people that -- that deal with that issue, and I -- I basically would have just said, you know, "See what you can figure out with -- with the Thornton firm so that we can get them reviewers."

And maybe they would have been existing, they could have been ones that we would have to go out and hire, but they knew we had a really good source of document reviewers.

Belfi

BY MR. SINNOTT:

Q Did Garrett and you discuss designating attorneys by name that would be considered to be Thornton attorneys, but working at Labaton?

A We never would have gotten anywhere near that granularity.

I don't even think we discussed -- we may have discussed numbers. I just was focused on making sure that we were dividing it three ways.

Q So that everyone could share the cost and the risk?

A Correct.

JUDGE ROSEN: One of the things that we've been talking to people about and asking questions about is why the allocation of these attorneys to Thornton, and allowing them to claim the fees for them. The fee petition would have been the same if they were working for you, working for Lieff, so why allocating them?

They could have -- Thornton, to

EX. 18

JAMS, Inc.
Reference No. 1345000011
----------x
In Re State Street Attorneys Fees
----------x

June 6, 2017
10:25 a.m.

BEFORE:
Special Master Hon. Gerald Rosen, United States District Court, Retired

Deposition of STEVEN FINEMAN, taken by Counsel to the Special Master, held at JAMS, Inc., 620 Eighth Avenue, New York, New York, before Jineen Pavesi, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and Notary Public of the State of New York.

Job No. CS2629875

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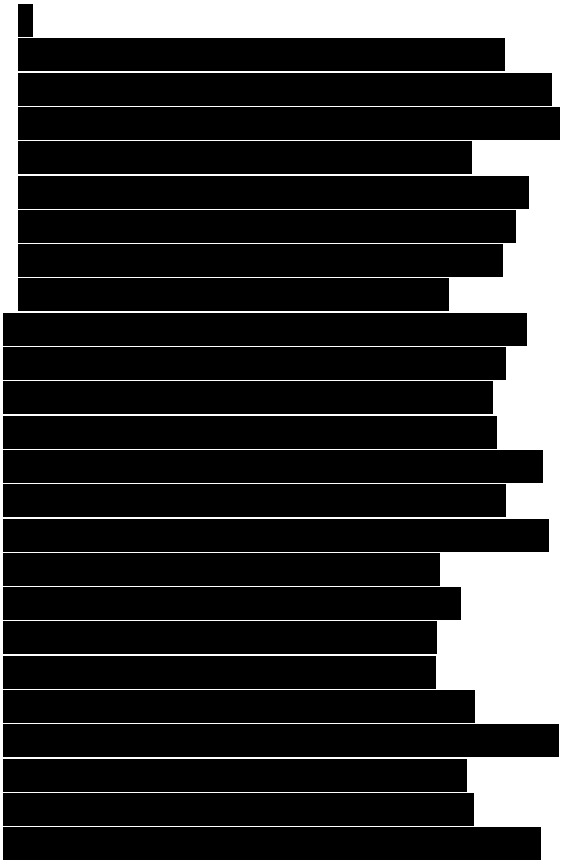

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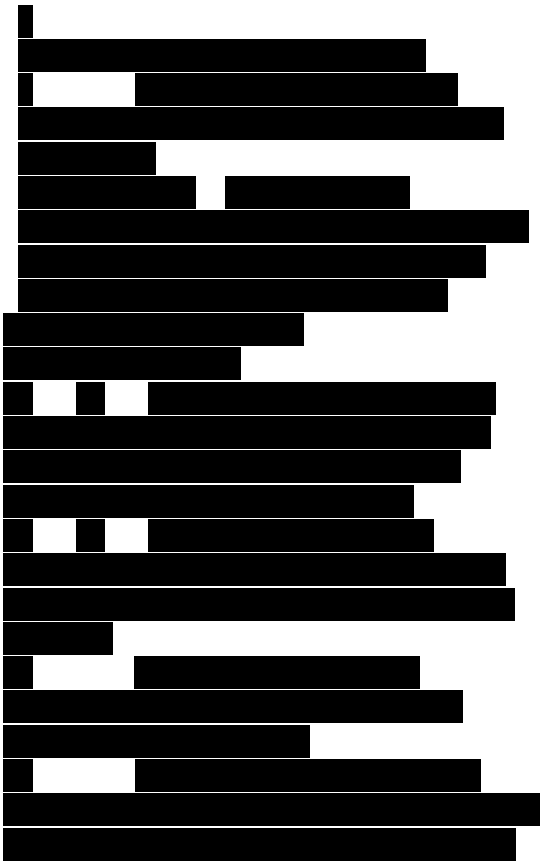

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after a very brief period of time and beginning in January of 1991 started with Leiff Cabraser in San Francisco.
Q. You have been with Leiff Cabraser continuously since then?
A. I actually took a year-and-a-half off in the -- in 1996 and beginning of 1997.
I had moved to New York for reasons that had nothing to do with the practice of law, personal reasons, I worked with a firm called Weitz & Luxenberg for a year-and-a-half and when the firm decided to open a New York office, I came back to the firm and have been with the firm since 1997.
Q. Describe, if you would, your previous work on class action litigation on behalf of Leiff Cabraser.
A. I am not sure how to answer that.
Since I started with the firm in 1991, a large portion of my practice over the years has been doing class action

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FINEMAN
litigation in financial fraud, securities fraud, consumer fraud cases.
In the early days we did mass torts that were also class actions, as time wore on in the Nineties, those cases sought being class cases became a bit more mass actions.
I more or less have done class action practice since I started in mid-1991.
In recent years I've also done a fair bit of nonclass direct action litigation for institutional investors and, as you know, I am the managing partner of the law firm, so I spend a fair bit of my time on management as well as practice.
Q. Could you tell us how you became involved in the instant matter, to include the lead-up to it?
A. I have never been involved in the substantive part of the case.
The firm was involved in the False Claims Act case in California

FINEMAN

involving State Street and there was a time when we talked about doing a class case as well and I was involved in trying to identify potential clients for the State Street class case that would ultimately -- that we hoped we would file at some point.

I think I had some, you know, consulting kind of relationship with the lawyers who were doing the False Claims Act case.

I am not a False Claims Act lawyer so it really wasn't my area of expertise.

I was in and out at a very superficial level of the substantive part of the cases.

Q. When was your first contact with the false claims portion of the case?

A. I don't remember the dates, but it was beginning of the time the case was filed.

I remember the firm being asked to participate in the case by Mike

FINEMAN

Thornton.

Q. Was that approximately 2008?

A. Sounds about right.

Q. Describe Mike Thornton's pitch to you and to the firm.

A. I never got a pitch.

I think what happened is that Mike had already been involved in investigating these cases for some time and he approached Bob Lieff about the firm being involved, I think in part because the firm had a long-standing past relationship with the California Attorney General's Office.

Bob brought the opportunity to the law firm and then the firm decided that we would get involved.

At that point my involvement would have been as a member of the executive committee in approving the case, but I wasn't involved in the substantive development of the case.

Q. Were you involved in the drafting of the complaint or amended

FINEMAN

complaint?

A. It is possible that I reviewed it, but I don't have any specific memory of it.

Q. Once Lieff was involved, could you describe the progress of the case?

A. I can't really, actually, I don't have any memory of how the case progressed, I wasn't dealing with the day-to-day of the case.

Q. How about when The Bank of New York Mellon case came to be, were you involved at all in that?

A. Again, only very superficially.

The day-to-day handling of that case was managed by my partner, Dan Chiplock, and Dan and I are in the same office, two offices down from one another, and I am the senior securities financial fraud lawyer in the New York office, so I would periodically talk with Dan about the case.

But I wasn't involved in the day-to-day of that case.

FINEMAN

Q. Was that a foreign exchange --

A. It was; substantively the same as the State Street case.

Q. Did Lieff have a client at that point?

A. Which case?

Q. In the State Street case.

A. No.

We didn't have a client --

Q. I'm sorry --

A. We didn't have the client for the class case; in the BoNY case we did, in the -- if I remember correctly, that case started off in California and we had a client, I can't remember who it was, then the case went to New York where it got combined in front of Judge Kaplan with the Kessler Topaz case that I think had come from Philadelphia, and along with a case, an actual 10b-5 case that was being handled by Bernstein Litowitz, and at that point we had Ohio Pension Fund as a client.

Q. Are you able to draw a

FINEMAN

comparison between the case before Judge Kaplan and State Street as far as the complexity or difficulty of the case?

A. Not really.

I think the cases were substantially similar in terms of the factual allegations.

Obviously in the BoNY case we litigated the case further than we did in State Street.

In the BoNY case there were, I don't know, more than a hundred depositions taken and the case was heading towards trial, the case advanced much more quickly and there was more done I think than in State Street.

Q. Were there depositions done in the BoNY case?

A. More than a hundred.

Q. Did the work of Lieff's staff attorneys differ between those two cases?

A. I think only to the extent that, because the BoNY case went further, the staff attorneys did a step beyond what

FINEMAN

they had finished in State Street.

In other words, in State Street, my understanding is the attorneys got through to review and analysis of documents, drafting an issue memoranda, but we didn't do specific witness kits because we didn't depose any witnesses.

In the BoNY case they prepared witness kits, so they went the next step because the case was more advanced.

Q. Did that distinction impact the rate that the staff attorneys were billed out at?

A. No.

Q. What was the range of rates, if you recall, for the two cases?

A. So in the State Street case, the rates that were used were the rates at the time of the fee application in 2016 and the rates were $415 per hour for the staff attorneys, with a couple of exceptions, I think some were 515.

The BoNY case, I don't really remember, I think the actual rates were

FINEMAN

higher in BoNY because I think the fee application was 2015 and I think a lot of the rates were higher in 2015 than they were in 2016.

Q. In a little while I will ask you about how rates were arrived at --

A. I will add that that's -- all the details of that are in the documents we produced.

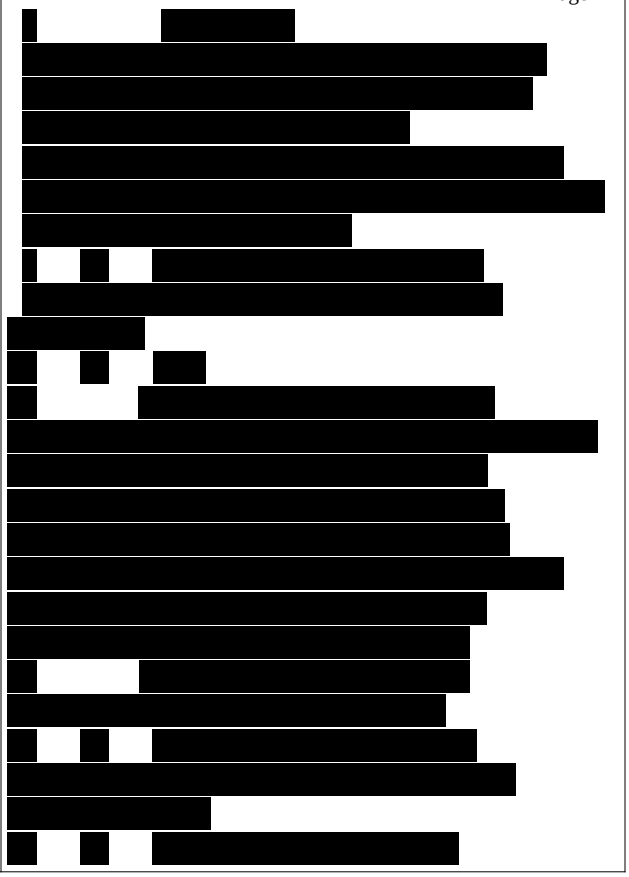
Q. One of the documents that you provided in interrogatory response, you referenced [redacted] settlement with State Street, also on foreign exchange claims.

Were you involved in that case at all?

A. I don't think it was a case, I think we had talked to [redacted] about them serving as class rep in the case that was ultimately filed in Boston and I was not personally involved in that, no.

Q. Was Kirti Dugar involved in that in any level?

A. Kirti would have only been



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the work that was done in that case, the pleadings, the depositions, the settlement negotiations, the resolution of the case, arguments, everything was determined jointly with our co-lead counsel.

Q. I think you testified that in the State Street case, Lieff did not have a client, is that correct?

A. That's correct.

Q. What was Lieff's role in the State Street case?

A. To litigate the case.

We were co-counsel on the case along with Labaton and Thornton and we -- you will have to ask Dan Chiplock the specifics, but generally speaking, we worked cooperatively with the other lawyers on the case to prosecute the case.

Q. What were the skill sets or tools that Lieff brought to that partnership?

A. Well, generally speaking, our experience in prosecuting complex cases and our capacity to do the work that has

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to be done in a case like that, both in terms of personnel and our ability to help finance the litigation.

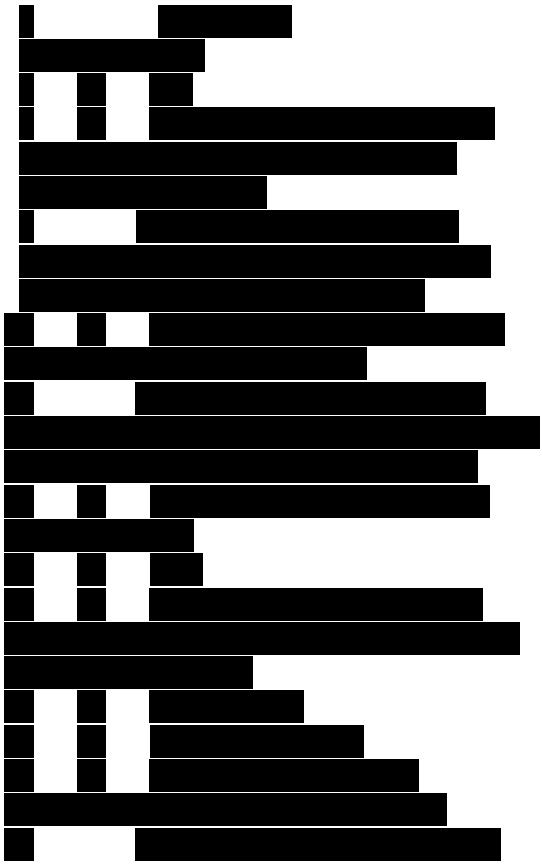
Specifically, we have the benefit of having been through the BoNY Mellon case and so we had a tremendous amount of institutional knowledge of the issues involving FX litigation.

Q. Beyond the objective of, financial objective, of a judgment or settlement in the State Street case, were there any other benefits that Lieff foresaw in affiliating with the case?

A. Not that I can think of, nothing is coming to mind.

We had been involved obviously in State Street, we had tried to get a client to take a leadership role in State Street, that didn't work out, we were included I think -- Labaton and Thornton wanted us involved in the case, we were happy to be involved, we liked the case.

Q. Did you see this case as being an entree into other work or other



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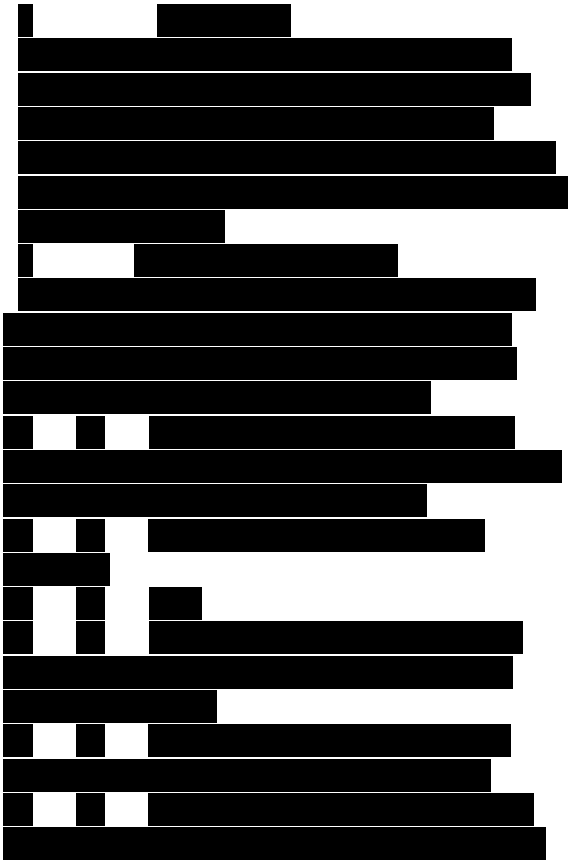

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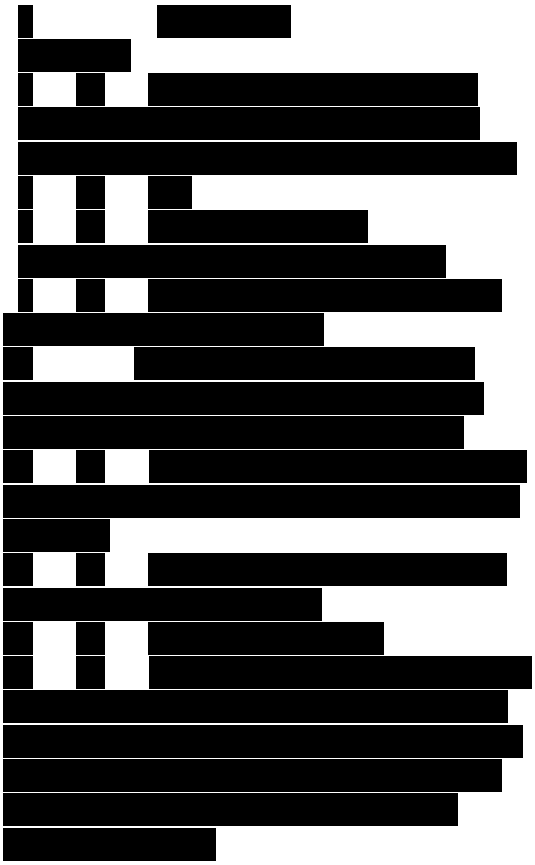

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So other than the general types of risks we face in all of our cases, I wasn't particularly aware of anything specific to the case.
JUDGE ROSEN: I think what we're looking for here is, all of these cases have risks, but the specific legal risks, if you know; it sounds like your substantive involvement in the case was not deep, is that correct?
THE WITNESS: Correct, it was not deep.
JUDGE ROSEN: So we've heard during the interview stage from other witnesses that there were significant challenges on issues like Rule 23 commonality, potential barriers to class certification, ERISA preemption, whether State Street was even a fiduciary since it was a custodian, existence of trading relationships that may have allowed them to fall within exemptions, all of these things.
And so what we're trying to

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understand, and you may not have the knowledge, maybe Dan Chiplock would be the better witness on this, but we're trying to understand that when you took this case on, which obviously was going to be a commitment for the firm both in terms of financial resources and human resources, how or where were you of the substantive challenges the case faced.
THE WITNESS: I have no doubt at the time we decided to take the case we were presented with the strengths and weaknesses, but sitting here today I don't remember what those were and I am not the best person to ask the question, I think Dan is definitely better.
JUDGE ROSEN: But you would have been involved, as a manager, you would have been involved in the decision to either green light it or red light it or amber light it and say let's go slow?
THE WITNESS: I think that's all true, that also would have been at the time we got involved in BoNY Mellon.

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I don't recall how different it was when we got to State Street.
Every case the firm takes has to be approved by the executive committee.
So at some point whenever that case was presented to us, we looked at the strengths and weaknesses.
JUDGE ROSEN: At the time were you chairing the executive committee?
THE WITNESS: Yes.
BY MR. SINNOTT:
Q. If you recall, Steve, do you remember whether you considered this case to be of equal risk or difficulty to the Mellon case, was it more difficult, less difficult?
A. I don't recall what I thought at the time, I probably thought it was going to be as difficult as BoNY Mellon was and BoNY Mellon was hard, really hard, and so I expected State Street would be the same.
Q. Were you, during the crafting of the allegations in this case, were you

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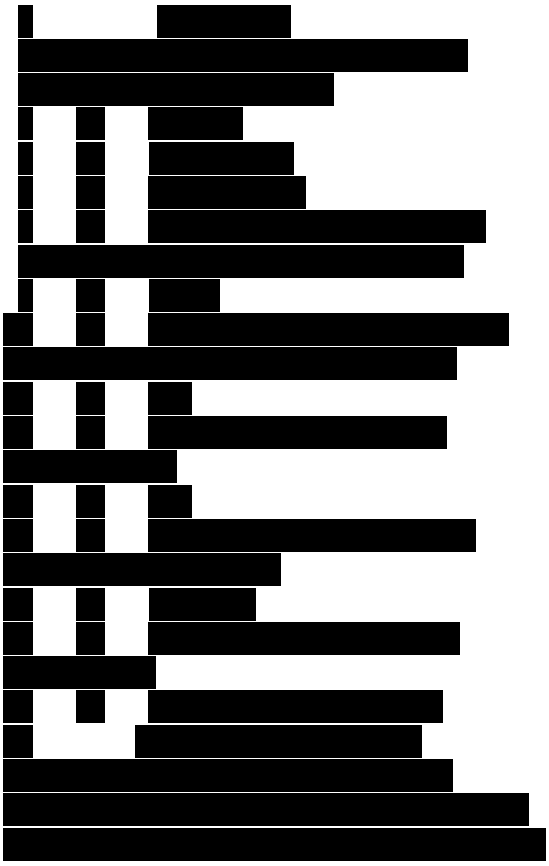

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But we didn't -- because the case was in that posture, we didn't get to depositions or other pretrial activities or class cert.
Q. But did that production prompt the firm to ramp up, if you will, with the document review?
A. I don't know the connection between the timing of the productions and settlement discussions.
Q. Were you part of the process of shifting staff attorney resources from Mellon to State Street?
A. I was not.
Q. Who would have been involved in that?
A. Dan would have made the request and our partner, David Stellings is our staffing partner, he is responsible for basically making sure that all of the -- all cases get the staffing they need.
So if a lawyer is looking for staffing for a particular case, they go to him and say I need, you know, an associate

FINEMAN
or I need a partner or I need staff attorney support.
In this particular instance, Dan will be the better source for how the specific people ended up on this specific case.
I think, as we told you before, I think most of them came from -- transferred over from BoNY Mellon when the BoNY Mellon case was completed, when their work was completed, we moved them into the State Street review, so it was a natural shift.
I am not sure they even had to go to David for that.
Q. How many total shifted into or were hired into the State Street review?
A. I don't remember the exact numbers, it is in the materials; I think it was something like 13 or 14 of the 18, something like that.
JUDGE ROSEN: I think you told us in the interview at the time you had 28 staff attorneys, does that sound right?

FINEMAN
THE WITNESS: Yes, that's all in the materials we produced, the exact numbers.
I think today we have around -- I would have to look at the actual --
MR. SINNOTT: 28 staff attorneys?
THE WITNESS: We have about that, somewhere around 28 to 35 staff attorneys, lawyers, who are on the Leiff Cabraser payroll working in our offices, and then we have -- right now we have like 30 or 40 additional lawyers that are working for us through agencies.
We're just rolling out of a couple of very, very large pieces of litigation that required a lot of additional help that we don't have on staff.
JUDGE ROSEN: When you have that, you go to a contract firm?
THE WITNESS: We use an agency if we need -- you know, if we need additional support doc review that's not

FINEMAN
covered by our additional staffing, we'll go to an agency.
It could be maybe for doc review, it may be for translation purposes, depending on the case.
BY MR. SINNOTT:
Q. As far as staff attorneys that are engaged in document review, are they full-time employees?
A. Yes -- well, yes and no.
We have staff attorneys who are full-time employees and we have other doc review attorneys who work on part-time schedules, depending on their circumstances.
Q. The staff attorneys, are they all paid by the hour?
A. No.
Here's the way we have it set up; I am not sure of the exact numbers, it is around 22, 23 staff attorneys who are salaried employees of the law firm, they get a salary and they get all the bells and whistles of being in the law firm,

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benefits and all that kind of stuff.
We have an additional group of staff attorneys who are not -- they are on LCHB payroll, but they're not full-time employees, they're more on a contract basis, and that's for various reasons.
Some of them want part-time schedules, some of them want flexibility of working remotely, some of them want the flexibility of taking on other jobs while they're working for us; they functionally are the same thing but have different relationships with the firm.
The third category would be the contract lawyers who are working through agencies who again do functionally the same work, but they are specific to specific pieces of the litigation.
Q. As far as the staff attorneys are concerned, Steve, are all of them eligible for benefits or does that depend on whether they are full-time or part-time?
A. The answer is a little

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complicated.

The lawyers, the staff attorney lawyers who are full-time employees of the law firm get benefits, the same benefits that everybody else has, so medical, dental, life, 401(k).

The other group of lawyers on payroll do not have firm benefits; the reason is complicated, because we had been preparing to make an overall shift in light of the Affordable Care Act Employer Mandate on providing health insurance, and so this is -- this was part of an overall exercise to shift all these people into the place where we would provide benefits.

As we don't know what's going to happen with the Affordable Care Act, it sort of went on hold and it actually works better for the people who are still in that category because of their personal circumstances, they by and large want to be in that category, they don't want full-time employment or they want the flexibility of being able to go do other

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things.

JUDGE ROSEN: We heard for some of the staff attorneys you give them a stipend of some sort to participate in Healthy San Francisco, it is called, for the California folks.

Is that in lieu of health insurance?

THE WITNESS: No, it is just an additional benefit.

We provide full medical benefits for all of our people.

Q. Steve, can you give us an idea as to the average or range of compensation that goes to your staff attorneys?

A. So currently the staff attorneys who are on salary have a base of a hundred thousand dollars and then they are eligible for year-end bonuses.

JUDGE ROSEN: Which range?

THE WITNESS: I think last year they all got something in the 3,000 to $5,000 range, that was the first year we had done it, I suspect it will be more

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this year.

And we haven't yet adjusted those salaries, but I'm sure we will.

A. The other payroll group, the other group of staff attorneys on our payroll are paid by the hour and based on the projects they are on and that will range depending on the projects they are on and how much time they are spending working.

It can be around or more than a hundred thousand dollars if they're working more time.

JUDGE ROSEN: What's the range on the hourly?

THE WITNESS: In terms of salary, how much they get on annual basis?

JUDGE ROSEN: On an hourly basis.

THE WITNESS: The ones on our payroll, they are around somewhere in the 50 to 60 range; again, it is in the materials we produced.

The agencies, we pay the agency

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of course, so we don't actually know how much the agency is paying the lawyer, but I think it is roughly the same amount.

Depending on what it is, like if you're using an agency for a Korean or a Japanese or a German translator, you know, we're paying a lot more.

Otherwise I think the range is roughly in the same ballpark as what we're paying those people.

JUDGE ROSEN: Is that true across your offices, San Francisco, New York?

THE WITNESS: Yes.

JUDGE ROSEN: So the 50 to $60 range, is that roughly all of the staff attorneys, because we heard from one of the staff attorneys that at the time she was making $40.

THE WITNESS: It was possible at the time she was.

I would have to go back and look at the paper to tell you what the staff attorneys were getting.

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Q. If I were to tell you that the submissions indicate that Lieff pays an average of $55 an hour, in a range of $40 to 67 per hour, would that sound about right to you?

A. Yes.

Q. Are your salaried employees eligible for overtime?

A. Yes.

Q. Are the hourly employees eligible for overtime?

A. I believe the answer under California law is yes, but I am not positive.

Q. Do all of your staff attorneys who are working on document review work out of an office location or do any of them work remotely?

A. Some people work remotely.

So depending on how many people you have at a particular time, what the facility situation is like, what a person's needs are, where they are living, we've had people that work with us for a

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long, long time doing review projects who have relocated and we wanted to keep them working for the firm so we allow them to work remotely because we know their work.

It varies.

Q. To your knowledge, in the State Street case, was everyone working out of the San Francisco spaces?

A. I couldn't tell you specifically, I would doubt it.

I would think -- I think there is a couple of people in there who generally work remotely for us.

Q. Somehow do they report their hours?

A. Same as everybody else, they enter them either directly into the system that we use --

JUDGE ROSEN: Do you have a system like Rainmaker?

THE WITNESS: Elite.

A. Or they transmit them in some fashion to an administrative assistant who takes care of their time.

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Q. Was Elite in effect during the State Street case, do you know?

A. Yes.

Q. Your expectation was that they would enter hours through that platform?

A. I don't think I had a specific expectation how they would enter their time in this case.

People submit their time differently, some -- the younger people who know how to use the technology better tend to enter it directly, whereas some people still write their time and submit it to an assistant who then transcribes it.

Q. Steve, you talked about these staffing agencies and the attorneys that Lieff utilizes through them.

How are they compensated?

A. We pay the agencies.

The agency sends us an invoice; so in this particular case, in the documents we produced, we produced the invoices between us and the agency with

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respect to the staff attorneys that worked on this case through an agency.

Q. Does the work that the agency attorneys perform differ from what the Lieff staff attorneys work on?

A. Generally speaking, I think the answer is no.

Q. Who supervises them?

A. Lawyers are supervised by the lawyers in charge of the case or however that partner staffs or supervises the case.

So in some instances, like the partner in charge of the case will supervise everybody on the case, including all the lawyers and including the staff attorneys and the paralegals and analysts and everybody else.

I think more frequently what happens is that the more senior people will delegate that responsibility to somebody else on the ground.

I think in this particular case, and you'll get this from Dan

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Chiplock, but I think Dan had Kirti Dugar, who was our -- he was managing in a sense the platform for the review of the documents, he would sort of oversee what was going on on a daily basis and then they would report up to Dan or -- I am not exactly sure the extent of his involvement, I think Nick Diamand at Dan's request was also involved a little bit in the supervision of the staff attorneys on the case.

I think at various points in the case, once you get to a certain point and memos were being written, you know, a more senior lawyer like Dan would have been involved in discussing with the staff attorneys what he wanted to see in the memos.

Q. So Dan wouldn't go through Kirti, he would go directly to the staff attorneys?

A. I don't know specifically in this case, but generally speaking, that's how it would work.

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Dan will tell you how he managed it.

Q. If you know, Steve, when State Street was going on, was Kirti involved in other document review matters?

A. I'm sure he was.

Q. So he was overseeing staff attorneys on multiple cases, is that correct?

A. Yes, I would have to go back and look, but I would think -- when I say overseeing, he is not micromanaging staff.

You have met some and you will meet more later, they are professionals, they know what their job is and they have been trained what to do and they do their work and they are entering all of their work into the database and they are identifying the documents that we'll need later for prosecuting the case.

So on a daily basis, I don't think that exercise requires a tremendous amount of oversight.

At some point, and Dan will be

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the one to tell you this, at some point when we moved onto the memo writing, as you see in the memos we have produced, those memos all have links to numbers of documents that we would then be using in the next phase of the case to take depositions and things like that.

At that point, you know, the lawyers are getting more and more involved.

How this case progressed, other lawyers would have gotten more involved in preparing for depositions and things like that.

Q. Who kept track of the time that was submitted, who oversaw that process?

A. All the time is entered and we have people in the office whose job it is to make sure all the time is entered and then it is in the system, it is in the Elite system, and then that time can be produced in reports electronically.

A normal practice of the firm is for a partner in the law firm who is

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supervising a case to periodically review the time.

You can ask Dan, I think Dan did that in this case, where he periodically kept an eye on what was going on.

I don't recall in this case if Labaton instituted any requirement that we share lodestar on a periodic basis.

Like in an MDL, you're -- usually leadership requires that you share your lodestar periodically.

JUDGE ROSEN: Benchmarking it as you go through the case, sort of seeing where you are on lodestar?

THE WITNESS: For whatever reason, to keep track of the overall numbers.

In an MDL case, as you know, you might have lots and lots of lawyers and people want to keep track.

It is less prevalent in a case where there are so few lawyers and we know these firms, we have worked with these

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firms in the past.

I am not sure it was as critical and I don't know in this case if we did it or not.

Q. Let me talk a little about the cost-sharing arrangement --

JUDGE ROSEN: Before we get to that, before we leave the staff attorneys, what I will call the contract lawyers or agency lawyers, the staff attorneys are fully onboard as employees.

I assume they get W-2s?

THE WITNESS: Right, which have all been produced -- actually, every lawyer who is on our payroll gets a W-2.

JUDGE ROSEN: The agency lawyers I assume do not.

THE WITNESS: They do not, because we don't pay them directly.

JUDGE ROSEN: You pay the agency.

THE WITNESS: Right.

JUDGE ROSEN: When you do a fee petition for lodestar purposes, you have

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your staff attorneys and you assign a lodestar rate or number to them?

THE WITNESS: Yes.

JUDGE ROSEN: How do you handle staff attorneys -- sorry, agency attorneys?

THE WITNESS: Same.

JUDGE ROSEN: What's the justification for that?

THE WITNESS: They are doing functionally the same work.

JUDGE ROSEN: But they are not employed by you, I am going to push back on you because this is a big question in the case, they are doing the same work, but they are not employees, you have a fixed cost and they are not receiving benefits, you don't have the same overhead, so you have a very fixed cost and it is an understandable and predictable cost.

So why would, for lodestar purposes, for the agency attorneys, why would it be the same for the folks who you

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have the employment relationship with?

THE WITNESS: Because the amount we pay the lawyers is not relevant to our discussion about how much we're going to peg their hourly rate at.

That's a function of what the market in our view pays for those people and how much we pay them is insignificant.

It is like an associate, we don't decide how much we're going to bill -- we don't really bill, as we talked about, but the hourly rate for an associate is set based on what we understand to be the market rate for legal services provided by that person, not based on how much we pay that person.

JUDGE ROSEN: Irrespective of whether they are employed by you or not?

THE WITNESS: Irrespective.

JUDGE ROSEN: But you don't have the long-term carrying costs of a long-term employment relationship, you don't have the benefit costs, you don't have all the other staff costs, the

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administrative costs that we have been talking about, figuring out healthcare and everything else?

THE WITNESS: It is true that for somebody who is coming through an agency --

JUDGE ROSEN: In other words, it is a fixed cost.

THE WITNESS: Well, it is a fixed cost in the sense that we pay the agencies certain amount of money for every hour that person works, so it is a different cost if they work ten hours or 40 hours.

And it is a different cost depending on how much additional resource the firm uses to support that lawyer, so if that agency lawyer is working in our offices and using our facilities and requiring administrative support, word processing support, whatever it is, then there is an overhead factor applied to that person.

It is hard to peg a specific

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overhead figure to those people, to all these people, because it varies from case-to-case and from day-to-day and we don't entirely know.
Again, we don't set our rates based on how much we pay people, we don't do it for partners, we don't do it for associates, we don't do it for staff attorneys, we don't do it for the agency hires either.
JUDGE ROSEN: I am still trying to understand the economic justification in the market for billing out people who are employed by others, agency lawyers, that you are contracting your services for, and then when you do a lodestar calculation, marking it up to commensurate rates with your staff attorney employees, a theoretical justification.
THE WITNESS: Again, the assumption you're making is that how much we're paying to have an employee matters in how we set the rates.
We don't take into account how

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much we're paying somebody in setting the hourly rates, we set the hourly rates based on our understanding of what the market will pay for that person's services.
JUDGE ROSEN: I understand there is a market element to this, but it seems to me in terms of your risk factor, your risk with folks who are not employed by you is not as great as it is for ongoing people who you are carrying and have the ongoing -- all of the ongoing, not just costs, but relationship costs, the staff attorneys and your associates are sort of in the same boat, they are employees, they are onboard.
The agency people is a much more predictable cost, so I am trying to understand the economic justification where you have a fixed cost.
You wouldn't, for example, mark up, if you contracted out your xerox costs, not that these people are doing xeroxing, but you wouldn't mark that up,

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would you?
THE WITNESS: I am not marking anything up.
What we're doing is we're including almost entirely here -- by the way, for lodestar cross-check purposes, right?
JUDGE ROSEN: Yes.
THE WITNESS: We're including as an hourly rate the rate that we determine the market will pay for those people without consideration at all of how much we pay for -- we pay those people or we pay the agencies for those people.
So I am not sure -- I think the problem here is that we're not running through a process of trying to justify an hourly rate by how much we pay a person or what our overhead factor is for any particular category of person working for the law firm.
JUDGE ROSEN: I am looking for a comparison, a copying service is not quite the same because here you're paying

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for professional services.
You contract out other services and you put those on the expense side, right, in your fee petitions?
THE WITNESS: No, the fee petition doesn't include how much I pay for an equipment lease or how much we pay for the person to come in and fix the copying machine, that's overhead.
JUDGE ROSEN: But it includes, for example, it includes copying costs when you ship documents out to have them copied?
THE WITNESS: Well, if I send documents out for copying charges and a copying charge is an acceptable expense in the jurisdiction which we're submitting a fee application, we will include that expense.
But I don't equate the work being done for us by the lawyers with somebody running a copying machine, it is not a legal service.
JUDGE ROSEN: Okay.

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With respect to one group of costs, you've got a fixed cost, you know what your cost is going to be on these contract lawyers and you hire them for one project and one project only and that's your cost.

For the staff attorneys and associates, there is an ongoing relationship and ongoing carrying costs that don't seem to exist with the contract lawyers.

I am trying to understand what the justification for that is; it is not your cost, the staff agencies, you hire them, and I know other firms do it, including defense firms.

MR. HEIMANN: Do what, I don't understand that.

JUDGE ROSEN: Bill staff attorneys to clients at a marked up rate -- I'm sorry, not staff attorneys, contract.

THE WITNESS: This is the way we've done it and we have never been told

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by any court it was inappropriate to do it that way.

As we understand the case law and the law on this and the scholarship on this, at least the best scholarship on this, is that you charge the market rate or you bill the market rate for the service, legal service, that you're providing, which is what we do.

So I am not sure how else to answer that question for you, judge.

JUDGE ROSEN: Okay, that's an issue obviously I'm going to have to deal with and an issue I'm going to have to think deeply about, and we may ask you folks to weigh in on that and provide me with something.

THE WITNESS: Happy to do it.

JUDGE ROSEN: And I will consider it.

BY MR. SINNOTT:

Q. Let me follow up on that, Steve.

Beyond the agency --

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JUDGE ROSEN: I'm sorry.

You didn't have that many agency attorneys on this, how many did you have?

THE WITNESS: I can't recall, to be honest with you.

The vast majority of these people had been with us on BoNY and came over to this case, so I don't know many of them were agency people.

Q. There were at least two that were --

A. There might have been.

Q. -- double-billed in this case, if I recall correctly?

MR. HEIMANN: That's right.

JUDGE ROSEN: Agency.

A. Double-counted, yeah.

Q. Let me follow up on the judge's questions and ask you about the nonagency attorneys.

Do you have a process in place for determining billing rates on an annual basis?

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A. Yes.

Q. Tell us about that.

A. So what has happened over the years is, beginning of the year -- so, you know, we have years of hourly rates, right, and we have -- that we've set in all these preceding years -- and we have years of those rates being used as part of lodestar cross-check in class cases when it happens, it is actually relatively a more recent phenomenon.

You go back more than five or six years ago and there was very little lodestar cross-check, it was almost straight percentage of recovery without doing a lodestar cross-check and there was relatively little lodestar-based fee awards in class cases, it pretty much became percentage recovery pretty much everywhere.

Several years ago the rates became an issue as far as lodestar cross-check is concerned.

And so we have years of courts

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looking at those rates that we are including in our lodestar cross-check and approving those rates.
So bearing that in mind, at the beginning of the year I get in touch with the director of our operations, Joe Dragicevic, and the communication with Joe will be what do you know about what's going on in the market, the billable rate market, and we'll talk about if there is any new surveys out, sometimes you get the surveys from American Lawyer, who does the survey that publishes all the big law firms, and we'll look at those.
We'll look at whatever other publicly available surveys might be available on rates, we'll discuss it.
I will ask him if he heard anything in his world, which is sort of law firm management world.
We'll see if there is anything we can find publicly about our competitors' rates.
Now, firms in my business,

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typically because we're not billable rate law firms, you don't usually see our firms in the surveys and we don't respond to the survey questions generally.
So you have to find publicly available fee applications in order to see what people are doing, you can't, you know, as the judge knows, you can't go asking other leaders of other law firms how much they're charging for rates because then we get ourselves in all kinds of trouble.
So we don't do that; we look at what's publicly available and then I make a proposal based on that conversation, which frankly has pretty much consistently resulted, as you will see in materials we produced, in incremental increases in the rates on an annual basis in most instances.
And then sometimes there are anomalies that have arisen, a lawyer may have joined us laterally and come in with a certain billable rate and we will decide

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at some point we have to adjust that rate to be consistent with what the law firm is customarily charging.
I'll send that proposal early in the year to the executive committee and then the executive committee generally -- what happens is at the following executive committee meeting it will be on the agenda, we will discuss it, it will be approved, and that will become the rates for the year.
Sometimes there will be some followup e-mail communication, modest e-mail communication with people asking questions about the rates.
It is really quite simple.
JUDGE ROSEN: Are there any sort of clearinghouse associations or organizations; ever since I have been named special master, I have been getting e-mails from an organization called National Association of Legal Fee Analysis and I'm wondering --
THE WITNESS: There is a lot,

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there is one called Valeo, you have to pay for it, so most of these you have to pay for.
We've looked at them periodically, I actually -- we actually looked at one not too long ago, but it is hard to know how reliable they are because they don't really tell you what their methodology is for collecting data.
For example, we looked at the Valeo one, which I think I mentioned when we talked last, and they have a category for staff attorneys; the challenge is they don't define staff attorneys.
JUDGE ROSEN: We don't know if they are agency --
THE WITNESS: I don't know, so you do the best you can.
We have the benefit of having submitted our rates in lots and lots of cases where the rates were approved as part of a lodestar cross-check, so if I'm setting rates in 2016 and I have cases from 2015 with Federal judges approving

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our rates for lodestar cross-check purposes or in the rare instance when we have a billable client who has paid those rates, I'm comfortable with the rate and I know that everybody else in the world is raising their rates the following year and so we'll raise them.

We raise them incrementally, like 20 bucks, so if you haven't seen already, when you see the schedule we have produced, you will see it goes up very incrementally on an annual basis.

And we haven't gotten to a place where we've had any court tell us they thought our rates were out of line.

I suppose if I get to that point I will have to rethink how we're doing it, but this is the way we have been doing it for a long time.

JUDGE ROSEN: And I know you have had your fees approved at relatively comparable rates as in this case by courts.

Have you had your fees for

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lodestar cross-check purposes approved by courts for agency attorneys?

THE WITNESS: Yes.

JUDGE ROSEN: In a reasoned opinion; by reasoned, I mean an opinion that actually looks at it and says, okay, we understand you're paying X dollars and you're claiming Y dollars, has there been a reasoned opinion that you would like me to look at that analyzes that issue?

THE WITNESS: I don't think we have an opinion that analyzes the issue in quite the way you just put it.

Let's take a step back; in most of the lodestar cross-check cases, we submit either a summary of the lodestar or a summary with the description of the work that had been done.

Only if asked by the court -- as the law says, the courts are not bean counters here for lodestar cross-check purposes, so they have asked us for information about what's our lodestar, what's the range of rates, but they don't

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typically ask us for individual billing rates.

There are cases where we've done that, we did it in BoNY Mellon, Judge Kaplan had before him all of the specific rates for all the categories of lawyers.

JUDGE ROSEN: Including broken down by agency lawyers and your staff attorneys?

THE WITNESS: I don't know that in that submission we draw a distinction between lawyers who were agency lawyers versus lawyers who were employees and on the firm's payroll, I couldn't tell you that without looking at the material.

To my knowledge, that issue has never come up in any case we have had.

JUDGE ROSEN: One of the issues that we're hearing on the defense side is, for a large firm who gets paid by clients on an hourly basis, is that when these firms use agency lawyers, they have the client pay the agency directly so there isn't, you know, that sort of differential

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in markup.

I know you don't have a client --

THE WITNESS: Well, our retainer agreements in class cases aren't really concerned with hours, so that's one of the issues here, right, our agreements with our clients are -- in the class cases, they'll say something like you get a percentage up to a certain percentage but subject to court approval in a class case.

There is no reference to hourly rates typically in those kinds of agreements because the client is not interested and we're not asking them to pay us on an hourly basis.

The hourly rate issue really only comes up in a class case if the court wants to do either a lodestar cross-check or decides to do a lodestar-based fee analysis.

And then it is up to the court, the court will advise us the degree of

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detail he or she wants on the lodestar cross-check.

Some courts want very little detail, they want a declaration that says what the lodestar is with some support for it and other courts want like the hourly work.

So it is judge-by-judge.

JUDGE ROSEN: Right.

I am trying to think of this within the paradigm of comparable rates for comparable services by comparable firms.

And as I've told you candidly, you folks, Labaton and Lieff, Keller Rohrback, Thornton, as commensurate with any of the other large firms that bill on an hourly rate, bill clients on an hourly rate, I believe you have the same level of sophistication, same level of approach, ability, so I view you in that same range.

What I'm struggling with here is where you have those firms who do have paying clients, who when they need it,

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when they hire an agency lawyer, they simply have the client pay directly so there is not that increased differential in which the firm makes a profit, that we're aware of, now maybe there is.

But as we understand it, in most of these cases, these firms are paying the agencies directly, so how do I --

THE WITNESS: I don't have clients in those cases who are paying us anything, our clients don't pay us directly for anything.

We advance all our costs and we bear all the risk of the case, so it is not really comparable.

They have a client who pays on a monthly basis hopefully, right, they pay their hours and they pay their costs, all their costs.

In our cases, our clients don't, unless we prevail, we get our costs at the end of the day, but we advance all the costs, nothing comes out-of-pocket.

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BY MR. SINNOTT:

Q. But you do have cases where you bill hourly, correct?

A. We have had a few.

Q. For example, you represented the [redacted] in a case?

A. I did.

Q. The [redacted] case?

A. I did, yes.

Q. And what did you bill in that case?

A. My memory is that was two rates, it was 600 and 400; 600 for partners and 400 for everybody else.

JUDGE ROSEN: And this was a public service, you were hired by a public agency?

THE WITNESS: I was hired by the [redacted] to represent the office in a case that had been brought -- sorry -- yes.

So I was hired to represent the [redacted] in a civil rights case that had been

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brought against two employees of the [redacted]

The [redacted] were third parties in -- because we were the ones producing all the discovery in the case and I had represented the [redacted] in securities fraud cases and so they asked me to take this on, I said yes, they said, you know, we talked about appropriate rates that we can all live with and that's what I agreed to.

JUDGE ROSEN: Was there any kind of discount given for the fact this was a public agency?

THE WITNESS: There was a big discount; we went --

JUDGE ROSEN: Because it was a public agency?

THE WITNESS: Yes.

JUDGE ROSEN: In that case in which you were being paid by the hour, did you use agency lawyers?

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THE WITNESS: No.
JUDGE ROSEN: If you had, would you have billed them at a higher rate than what you were paid?
THE WITNESS: If I had, they would have been at the $400 rate; it was only two rates that we had agreed on, 600 and 400.
Q. Steve, there was also a New York State Superior Court case, [redacted]?
A. Yes, that was a typo, it was actually in the Southern District of New York.
Q. And that was an hourly billing?
A. That was an hourly client, right.
Q. Who did you represent?
A. I knew you were going to ask me that.
It was a [redacted]
Q. Understanding from your submissions, the billing range was between $375 and $435 an hour?

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A. Right, that's my understanding.
Q. How was that determined?
A. They were whatever the rates were for the lawyers that were working on that case in the time period that case was being litigated.
Q. So you didn't set the rates?
A. No, I don't believe there was any negotiation over the rates in that case; those were the rates that the people -- that were in our hourly rate schedule, they paid them.
Q. What weight did you give those two cases, for example, in the setting of current rates or rates since 2012 and 2015?
A. I don't know that I gave it specific -- I think we just figured in the overall mix.
I think if we had had clients who were, you know, protesting our rates, it probably would have influenced me.
But I think the fact that the rates were just being paid that were

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comparable to the rates that we were using in the lodestar cross-checking cases, I don't think it registered -- it would have registered with me if we had a problem.
Q. Do you think these were outlier cases --
A. No, outlier cases, no.
Q. Previously when we talked, Steve, you and Richard had talked about how associate rates are determined and I believe you said the principal factor was the years out of law school?
A. Yes.
Q. And you talked about rate equivalency.
Can you explain that to us.
A. Staff attorneys?
Q. Staff attorneys.
JUDGE ROSEN: Yes, it was in the context of staff attorneys.
Q. Staff attorneys as related to the associate pay.
A. I am not sure if this is where

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you're going, but for a number of years with our staff attorneys and agency lawyers, we tried to match their rates with the rates of a comparable lawyer in the law firm.
So if you have been practicing law for eight years and you're a staff attorney, we would look at what an equivalent rate would be in the office already.
JUDGE ROSEN: So you peg them to --
THE WITNESS: Whatever their year was, right.
A. As I mentioned to you when we talked before, we got to a point where just both intuitively and also watching what's happening in the case law, we knew those rates were too much, it wasn't rational, and that's when we decided we would make the rates uniform.
Trying to distinguish -- as you know from having met some of the staff attorneys, some of them have been

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practicing quite a long time and you can't really start -- you couldn't use the rates that you're charging for a 20-year lawyer for those people, it just wasn't appropriate.

And so we spent some time discussing at a meeting what's the right number given this and we decided that a fourth-year associate, at the time we did this, 2016, was the right number and that's I think the conversation that we had.

Q. In the State Street case, the BoNY Mellon rates were referenced in the fee petition.

A. Yes.

Q. How was that decided?

A. They were the rates as of 2015.

Like I said, those rates I think were actually higher than the rates for 2016 when we made our fee submission here.

Q. Did you consider the venue of the case as being Massachusetts in the fee

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petition?

A. Well, yes, in the sense we had to follow First Circuit authority in making our fee submission.

No in the sense that we didn't alter our hourly rates because the case was in Massachusetts or in the Federal Court in Boston.

JUDGE ROSEN: Did you look at the question, there were cases for circuit cases that seemed to indicate you get compensated, or for purposes of lodestar, compensated, I use that in quotes, at the rate of the venue, not at the rate where the work is performed, did you consider that?

THE WITNESS: I did not have anything to do with preparing the fee application, so I don't know what they considered.

But we would have -- with respect to the percentage of the recovery certainly and law for approval, we would have followed First Circuit authority.

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As to the point about the marketplace, I don't know an answer, but --

JUDGE ROSEN: Would that be a question for Dan?

THE WITNESS: You could ask if they considered it, but I will tell you I am not aware of an instance where we have altered the hourly rates for purposes of lodestar cross-check based on being in a different marketplace, New York or San Francisco.

JUDGE ROSEN: Even where the law of the circuit might say that you should?

THE WITNESS: I am not aware of us having done that.

But generally --

MR. HEIMANN: Well, with the law being as it is, as you suggested.

THE WITNESS: Also, I don't know the answer to this question, but I don't believe -- I doubt very much the marketplace for legal services in Boston

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is much different than San Francisco, which is the principal basis for setting our rates.

Our rates tend to be lower than our competitors in New York and mostly pegged to what's going on in San Francisco because that's where we're based.

Q. Let me ask you about the cost-sharing agreement with the other firms, Labaton and Thornton.

Were you involved in that process?

A. I was not.

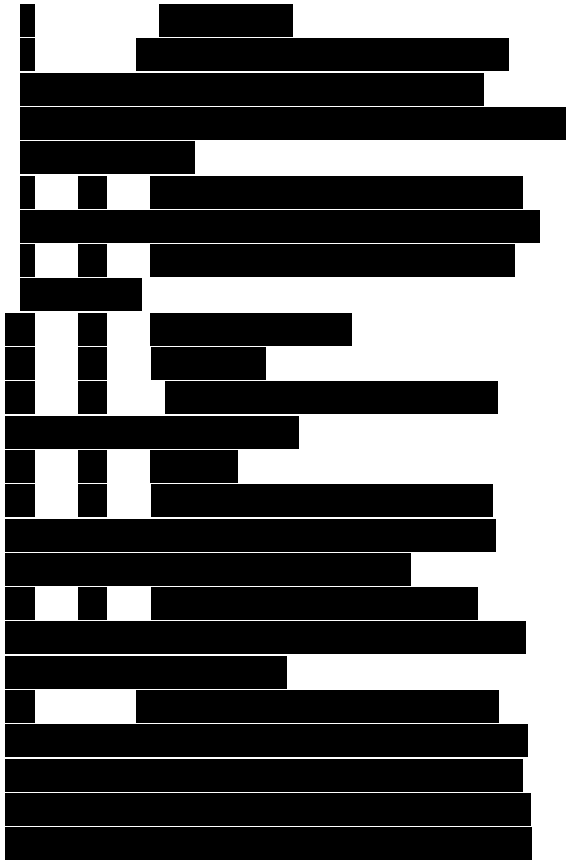
Q. Do you know how it came about?

A. Other than the fact that we were invited to participate in the case with these guys and there was some agreement, no.

Q. As far as splitting the costs, you don't know about any discussions or agreements?

A. I wasn't part of that.

Generally the cost split follows the fee split.



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JUDGE ROSEN: What's your understanding of why it was done, why was it done that Thornton was allocated five staff attorneys or six staff attorneys from Labaton and five or six from Lieff, what's your understanding?

THE WITNESS: My understanding is that there was an effort to balance out the lodestar so expenses would correspond in some fashion to the fee split.

So my understanding was that Labaton -- in order to get Labaton enough work in the case -- Thornton, I'm sorry -- in order for Thornton to have work in the case, they would pay for the staff attorneys.

JUDGE ROSEN: Was it also to sort of spread the risk and cost burden?

THE WITNESS: I think that's always what we do in these kinds of cases, try to spread it around.

That's one of the reasons we were asked to participate; aside from our substantive knowledge, obviously to help

FINEMAN

spread the risk.

JUDGE ROSEN: Because Thornton was a much smaller firm and didn't have the capacity to undertake this kind of a case without a much bigger firm like yours and Labaton's.

THE WITNESS: Okay.

JUDGE ROSEN: Right?

THE WITNESS: As far as I know, yeah.

JUDGE ROSEN: But at the same time, they were going to be asked to share the cost burden and associated risk?

THE WITNESS: Yes.

Q. Were you aware, Steve, that Zaul and Jordan were assigned as Thornton staff attorneys?

A. No -- I mean, not until now in this process.

Q. Let me ask you a general question, if you know.

Why was it necessary to assign them to Thornton rather than just Thornton paying its one-third share of the cost?

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A. I don't know.

JUDGE ROSEN: Who would be the best to answer that?

THE WITNESS: I think the idea was that we had lawyers that were working on the case and one way of dealing with that was for the Thornton firm to pay for some of those lawyers.

JUDGE ROSEN: You can split the question.

One is the need to get Thornton to contribute on the cost and share the risk.

The other is why do this through the device, I don't mean that pejoratively, why do this through the device of saying, okay, we're going to allocate these staff attorneys to Thornton and let Thornton claim the fees for that, because you could easily have just -- easily is maybe not the right word -- somebody could have gone to Thornton and say, look, you're participating in the case, we want you to share the risk and

FINEMAN

we'd like you to contribute X amount of dollars, so why go through -- I'm looking for a better word than device -- why go through the process?

MS. McEVOY: Machination?

JUDGE ROSEN: That's aneven more negative connotation.

I am trying to understand, and I asked the Thornton folks and I am going to ask when we get to Mike Thornton and Garrett Bradley, why go through the process of titularly assigning staff attorneys to them and billing them for the staff attorneys rather than just sending them a bill for an appropriate cost, because it does have the effect of permitting them to claim your staff attorneys, who you're paying for as employees, to raise their lodestar.

So I am trying to understand why it was done that way rather than just sending them a bill.

THE WITNESS: I don't know, the answer is I don't know how this

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arrangement came to be or why they did it this way.

I am trying to imagine how you would just send them a bill, though, it doesn't seem --

JUDGE ROSEN: Is that not the practice in these kinds of cases, where if you have firms who are sort of taking the leading ore and asked to share the cost, is it not the practice that part of sharing the cost -- I don't know the answer to this at all, but I am trying to understand what the practice was or is this the practice, where you allocate specific people by name, even though those people are not being supervised at all by the Thornton firm?

THE WITNESS: So, yes, the practice with respect to costs is to share costs and that can be done either by directly asking for contributions or by setting up a cost fund.

In the instance of the -- Dan will correct if I get this wrong -- with

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respect to the agency lawyers, Thornton paid them directly, but these were not cost items.

As we discussed earlier, the lawyers doing the document analysis, it was lodestar time, not a cost.

I am not aware of a situation where we have in a case billed somebody for later to repay us for lodestar for time.

It wasn't a cost, it was the lawyer's time.

JUDGE ROSEN: As we understand it, and correct me if I am wrong, but as we understand it, Thornton was billed by Lieff and Labaton for the hourly cost, by cost I mean what the staff attorneys were actually -- here I'm talking about staff attorneys, not agency attorneys -- what the staff attorneys were actually being paid by the firm.

So they were invoiced, you know, if a staff attorney worked in a month 150 hours and that staff attorney

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was being paid $50 an hour, they were just sent a bill for that.
THE WITNESS: Right, we invoiced Thornton for two lawyers, that's my understanding.
JUDGE ROSEN: So my question is, and I am trying to understand this, I'm certainly going to ask the Thornton people this, my question is why not just, rather than allocating these lawyers to them for purposes of working and allocating them, and just, you know, ask them to make a cost contribution commensurate with that rather than allocating the specific attorneys to them, even though they weren't being supervised, or as near as we can see so far, they weren't doing any work specifically for Thornton, you and Labaton were directing the work?
THE WITNESS: The answer to the specific question is I don't know.
JUDGE ROSEN: As far as you know, was there an agreement with Thornton

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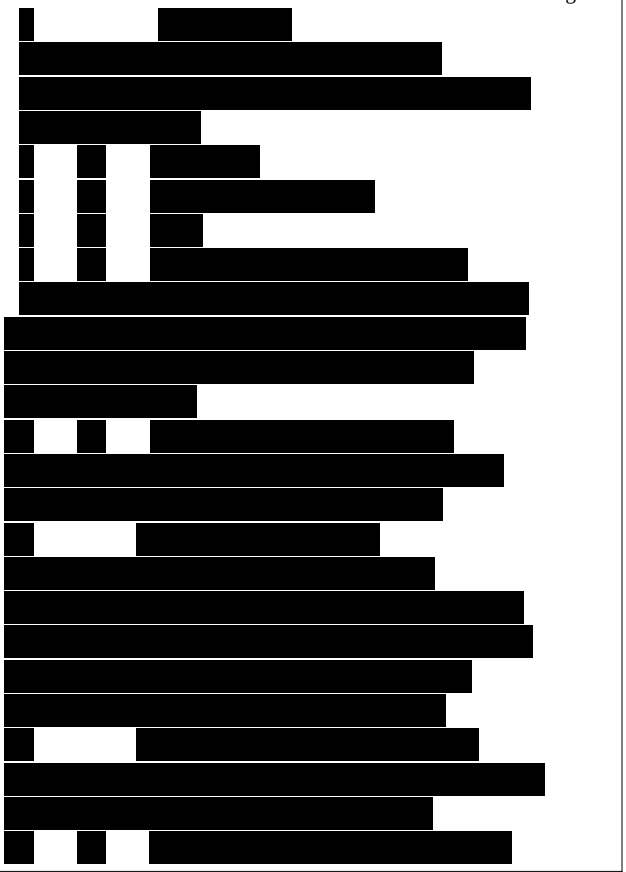
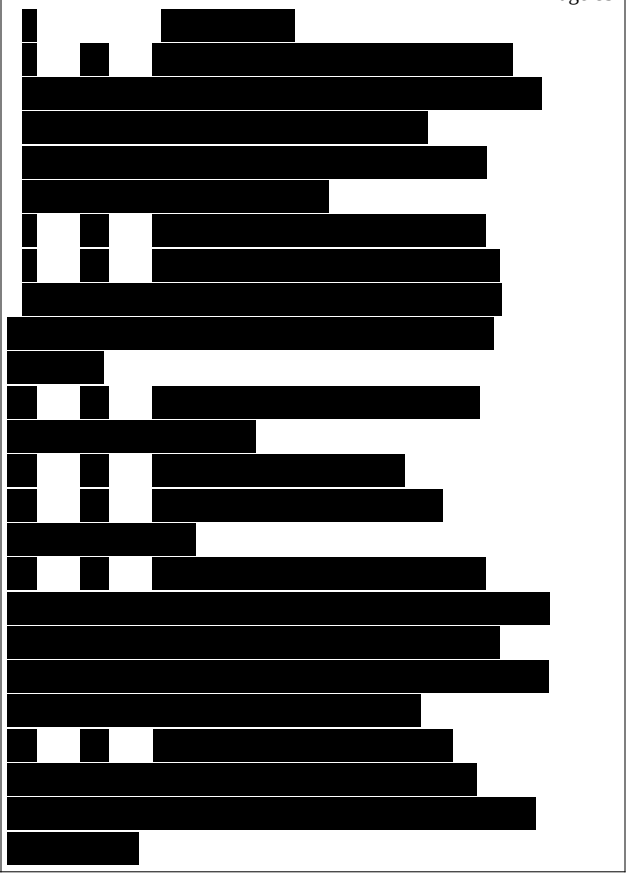
to do this so that they can participate when it came time to lodestar at a higher level?
THE WITNESS: I am not sure I understand that last part of the question.
The idea was for Thornton to be able to have lodestar in the case, that's why --
JUDGE ROSEN: That answers the question, okay.
MR. HEIMANN: Well, okay.
I thought you said you didn't know and now you know.
I think you need to ask Dan the question, Steve does not know the answer.
JUDGE ROSEN: You don't know what the thought process was?
THE WITNESS: No, I wasn't there.
BY MR. SINNOTT:
Q. By way of comparison, Steve, if you know, there was a case called In re Lithium Ion Batteries Antitrust Litigation and in that case, as we understand it from





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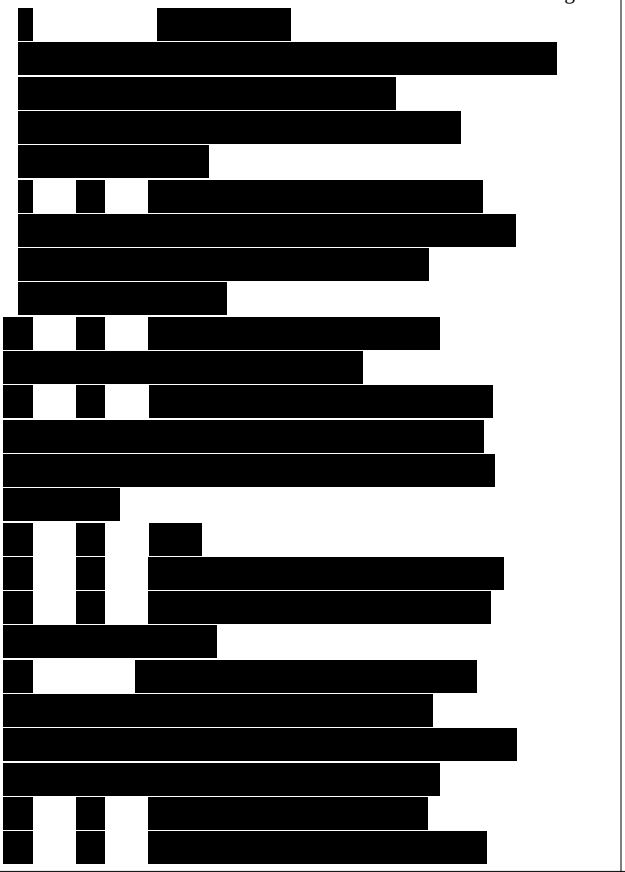

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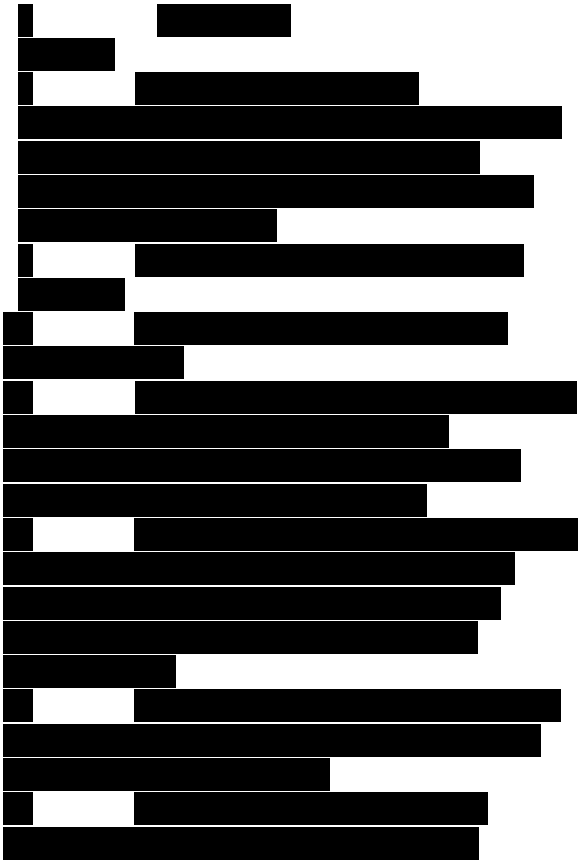

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one of them.

You're talking about -- there are more than one, I knew Lynn Sarko.

Q. Did you have any contact with Mr. Hopkins or anyone else?

A. No.

Q. Or any of the plaintiffs, and I take it the answer is no.

Steve, we asked you this during the informal interview process, but I am going to ask again.

What steps could your firm have taken to prevent the problem, if any, that we're faced with here, the Globe story and all of that unpleasantness?

A. If you mean what we could have done to prevent the double-counting?

JUDGE ROSEN: I think there are two aspects to it for purposes of your firm, of course we'll ask the other firms the same.

One is the double-billing and two is the representations that were made in the fee declaration that Judge Wolf has

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alluded to, including at the hearing, in which the declarations refer to -- I ask this because this is obviously part of my charge and Judge Wolf has zeroed in on this himself.

Paragraph 5, this is Dan Chiplock's fee declaration, "The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions," so it is a two-part question, one on the double-billing and two on the declaration statement.

A. So what could we have done to prevent that; well, in retrospect, you know, it is possible I guess if Dan had looked or somebody had looked more carefully, I guess, at the time submissions for the staff attorneys that were being paid by Labaton.

You know, the thing is, we didn't have the other applications, so I

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am not sure we could have done anything.

If we looked at it and thought these people shouldn't be here for this time period -- remember, part of the problem that we had was we didn't have anybody else's time or fee --

JUDGE ROSEN: You didn't see Labaton's and --

THE WITNESS: That's my understanding; you can check with Dan, my understanding is we didn't.

JUDGE ROSEN: That went to my question I asked you earlier about the double-billing, about whether or not anybody was looking at and monitoring to make sure that Thornton -- that you weren't claiming what was allocated to Thornton and why was this allocated to Thornton and whether that was the regular practice in this kind of case.

MR. HEIMANN: I haven't heard a question.

JUDGE ROSEN: There are too many questions, you heard two or three or

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five questions, that's the problem, that is a classic compound question.

One of the points of my questions earlier, is this a practice in plaintiff large class action cases where attorneys, staff attorneys, are allocated, without the firm to whom they are allocated being supervised for purposes of claiming a fee petition in the fee petition?

So the question I ask is is this a standard practice, is this done?

THE WITNESS: Are you talking about is the arrangement we had with Thornton done in other cases?

JUDGE ROSEN: Yes.

THE WITNESS: I think that was the subject of one of the discovery requests and my response was the instance I was aware of where we were involved in it is the example we put in the discovery responses that we talked about earlier.

MR. SINNOTT: In re Lithium Battery.

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THE WITNESS: Right, I am not aware of another case that we have where we have done this.

JUDGE ROSEN: How about in the industry?

THE WITNESS: I couldn't say, I don't know.

JUDGE ROSEN: One of the mandates that I have is to make recommendations and so I'm searching for a way here where firms, if this is a standard practice, can make sure this doesn't happen.

So that's really I think what Bill is getting at.

MR. HEIMANN: But there is still no question.

JUDGE ROSEN: Let me put the question then very clearly.

What could have been done here to have prevented that?

THE WITNESS: The answer is, obviously I'm speculating about what could have been done, if we had had or somebody

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had had all of the lodestar in front of them, they could have I suppose seen that the same people were being claimed in different declarations --
JUDGE ROSEN: Somebody did, Labaton.
THE WITNESS: I told you I don't know how that process worked, I don't know who did what.
As far as we're concerned, I don't know what Dan could have done, you can ask him what he could have done differently given whatever information he had at the time.
JUDGE ROSEN: Would it have been helpful if Dan had been involved in the fee declaration with, I think Nicole Zeiss was ultimately doing it, with her so that he would have also had eyes on all of the different fees, would that have been helpful?
THE WITNESS: Maybe.
JUDGE ROSEN: Meaning they might not have caught it anyway?

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THE WITNESS: I don't know, I don't know how it looked physically, so I don't know, I don't know what they would have seen or how they would have approached it.
JUDGE ROSEN: One more question.
I take it you have never had this happen before, the double-billing?
THE WITNESS: Double-counting; we didn't bill anybody.
No, it has never happened before.
JUDGE ROSEN: Are you aware of it ever happening in any other case to any other firm, have you ever heard of it?
THE WITNESS: No, I am not aware of it.
JUDGE ROSEN: Never heard of it?
THE WITNESS: I haven't heard of this, no.
JUDGE ROSEN: Do you have anything else you would like us to

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consider from your perspective, from your firm, given the issues in the case; is there anything else you would like us to consider?
THE WITNESS: Not in the context of deposition, no.
JUDGE ROSEN: Anything else you want to tell us about the issues that Judge Wolf identified in the order of appointment?
THE WITNESS: Not in the context of deposition, no.
Q. On that note, though, Steve, as Judge Rosen alluded to, we're very much interested in lessons learned, so beyond the context of your deposition, we welcome any feedback.
JUDGE ROSEN: We're going to talk about among the team, we haven't quite gotten to it, but what kind of opportunity we want to give to the firms to have input before the report is submitted to the court.
We do want to give you an

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opportunity to have input and we're just not sure, I haven't decided at what point that should come, in fairness to you, because we want -- you know the issues that Judge Wolf identified, so we want to give you an opportunity to weigh in on some of these issues that we've discussed and perhaps other issues.
MR. HEIMANN: I guess I would say yes, we know the issues that the judge has identified, but they are stated in such broad terms that it is a little difficult for us to respond.
So I think it would be useful, if you're intending to give us an opportunity to weigh in, to put specific questions to us.
JUDGE ROSEN: I have not discussed this with my team, but I have been giving this a lot of thought and I think in fairness to the firm, the firms, that the firms should have an opportunity to weigh in with some kind of pleading.
Before we come to conclusion on

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this we will certainly consult with you and give you an opportunity.
And there are factors to weigh in a lot of different ways as to how you do have input, but we definitely want to give you an opportunity to weigh in, because I want to consider some of the issues we have discussed and some of the other issues in the case.
So we do want to give you an opportunity; before we submit our report, you'll have an opportunity to weigh in, you, all the firms, plural, to weigh in.
(Continued on next page.)

[redacted]

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[redacted]

EX. 19

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Case No. 11-cv-10230 MLW
- -x

ARKANSAS TEACHER RETIREMENT SYSTEM,
et al.,
Plaintiffs,

-against-

STATE STREET BANK AND TRUST COMPANY,
Defendant.
- -x
JAMS
Reference No. 1345000011
- -x
In Re: STATE STREET ATTORNEYS' FEES
- -x
July 17, 2017
8:40 a.m.

B e f o r e :

SPECIAL MASTER HON. GERALD ROSEN
United States District Court, Retired
Deposition of RICHARD M. HEIMANN, taken by Counsel to the Special Master, held at the offices of JAMS, 620 Eighth Avenue, New York, New York, before Jessica Taft, a Registered Professional Reporter and Notary Public.

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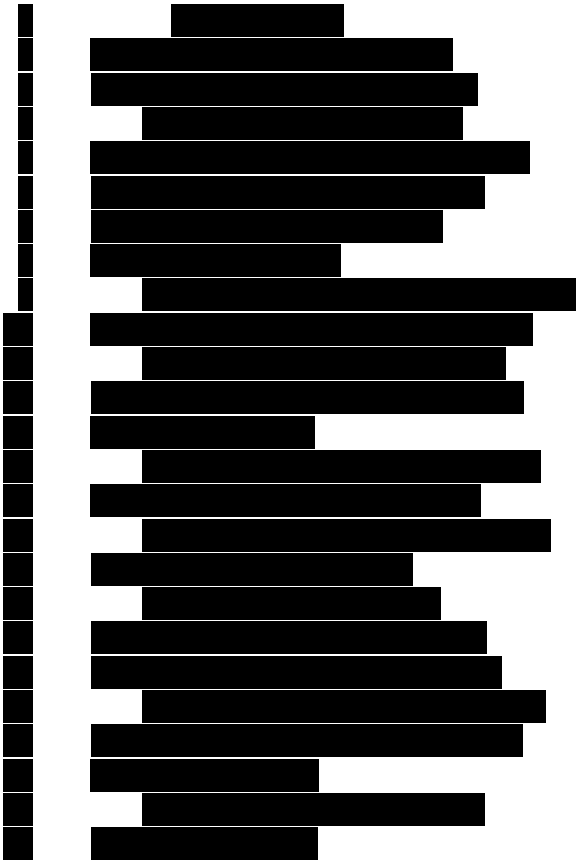

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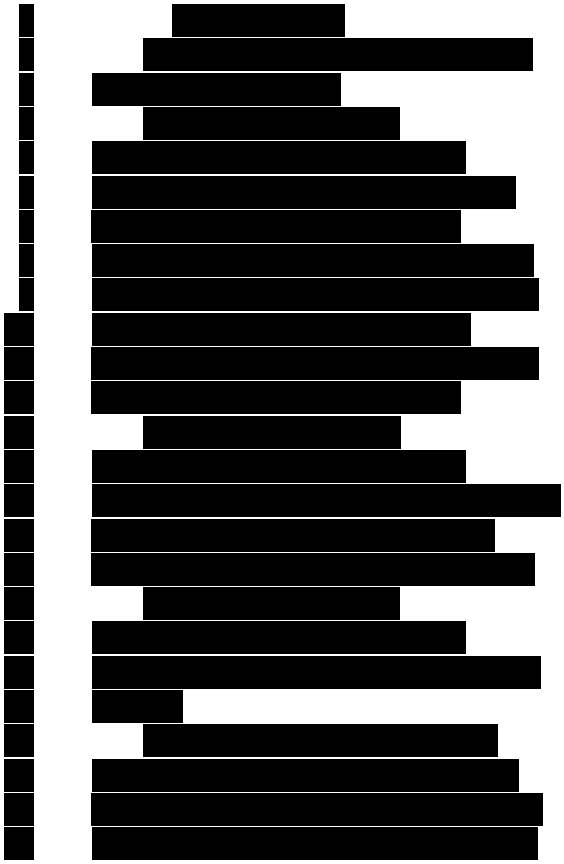

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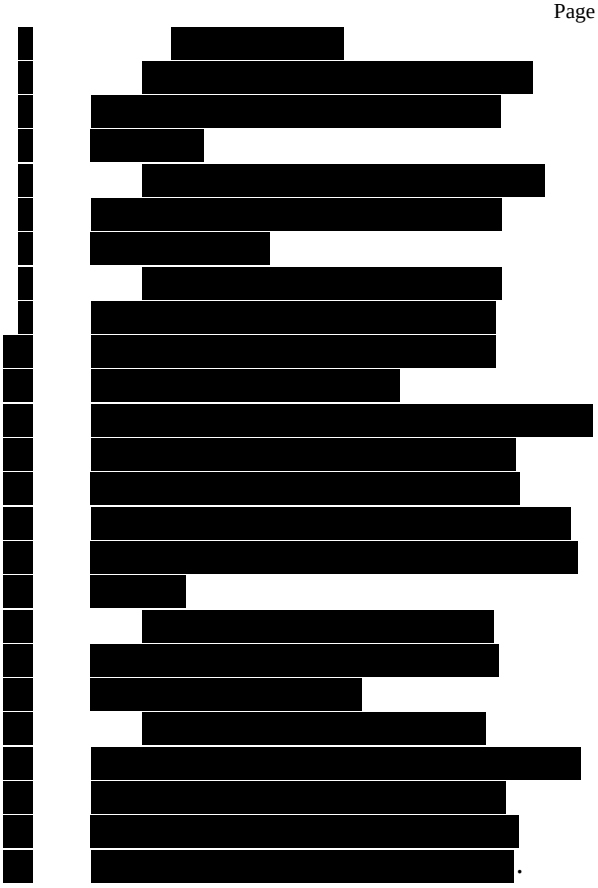

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be reduced.

"(e), whether any misconduct occurred in connection with such awards and if so,(f), whether it should be sanctioned."

So that's why we are here. At this point, I would like to begin the examination of Mr. Heimann.

BY MR. SINNOTT:

Q Good morning, Richard.

A Good morning.

Q Richard, could you tell us something about your background beginning with your education?

A I graduated from the University of Florida in 1969 with a degree in business; from Georgetown Law School in 1972 with a J.D.

My first job out of law school was as a deputy public defender with the public defender's office in Philadelphia.

After several years there I moved to California, and my first job in California was as a deputy district attorney

in Tulare County, which is in the Central Valley of California. I was there for a year and a half or so, and I then moved to the San Francisco Bay area where I was employed by a sole practitioner in Oakland in a general civil litigation and trial practice. I was with him for several years and then I left and formed my own firm in what we call the East Bay in the San Francisco area, two-person firm. Again, a general civil litigation trial practice.

So that was in about 1980 I have gotten up to. And then in 1985 or 6 I left that firm and joined together with Bob Lieff and Elizabeth Cabraser to found the firm Lieff, Cabraser and Heimann, in my view. Lieff has a different view of when the firm was founded. And I have been with that firm since then, which has grown over the years both in terms of the numbers of attorneys and in terms of the practice areas.

When we began in 1985 or '86 it was primarily a practice in class-action litigation, securities cases mostly. So

that brings us to the present day.

Q And tell us in general terms, Richard, what the practice is nowadays. How has it evolved from those early days?

A Certainly. We currently practice -- I made notes to myself so I wouldn't forget.

We have a securities and financial practice group as one. That is the firm, that is the group that I head up. We have an antitrust practice as well, an employment practice, a consumer or consumer fraud practice, a mass tort practice, which is primarily in the area of product liability involving medical devices and pharmaceuticals.

We also have an individual high damage tort practice, meaning one-off cases as opposed to the mass torts.

Then we have a noninjury product liability product practice. I think that's a fair way to describe it. And then we also do qui tam.

[redacted]

obviously we will get into some details later, could you give in general terms an idea as to what your role was in the State Street litigation?

A The only role I played with respect to the State Street case was at the very outset of it. It goes back I think to 2008 or 2009.

I was present at a meeting -- I believe it was in Sacramento -- with the California Attorney Generals or representatives from the California Attorney General when we interviewed the relator, what became the relator in the State Street case, who was a fellow who was an actual trader, foreign exchange trader at State Street.

The balance of my involvement in State Street was attempting to obtain a class representative, to serve as a class representative in a class action. And I met or spoke with a number of potential class representatives, primarily the folks from [redacted]. I know that I met

with them on at least one, maybe two occasions and spoke with them by telephone a number of times. Beyond that, I really didn't have any role.

Q Did any of those potential plaintiffs work out of the [redacted] or others?

A No.

Q And, Richard, at that meeting in Sacramento with the relator and the California Attorney General, who else was present, as best you can remember?

A Yeah. I think Bob Lieff was there. There would have been at least two folks from the Attorney General's Office. There must have been somebody, I would have thought, from the Thornton Law Firm, but I can't remember for sure.

Q Okay. And as far as the firm's decision to get involved in the State Street case, were you involved in that, or was that strictly Bob Lieff's call?

A It wasn't Bob Lieff's call. I am not sure Bob was even with the firm at the

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retained us on an hourly basis. That's the case that I know about.
The other cases that we have had as hourly cases I did not have any involvement in that I recall and knew very little about.
Q Okay. Has the firm worked, has the firm used hourly rates in mass tort class actions, to your knowledge?
A Well, in the sense that in all of the cases that we are involved in, we maintain the time devoted to the case on a contemporaneous basis. We record our time, and whether or not we are going to be compensated on an hourly basis or not and -- I am sorry, I lost your question now.
Q Has it used the hourly rate in mass tort in class actions?
A We used -- the hourly rates that are set annually for the lawyers are used for all of the cases regardless of the practice area. So, yes, they retain or maintain our time for mass tort cases even though in all likelihood our time is going

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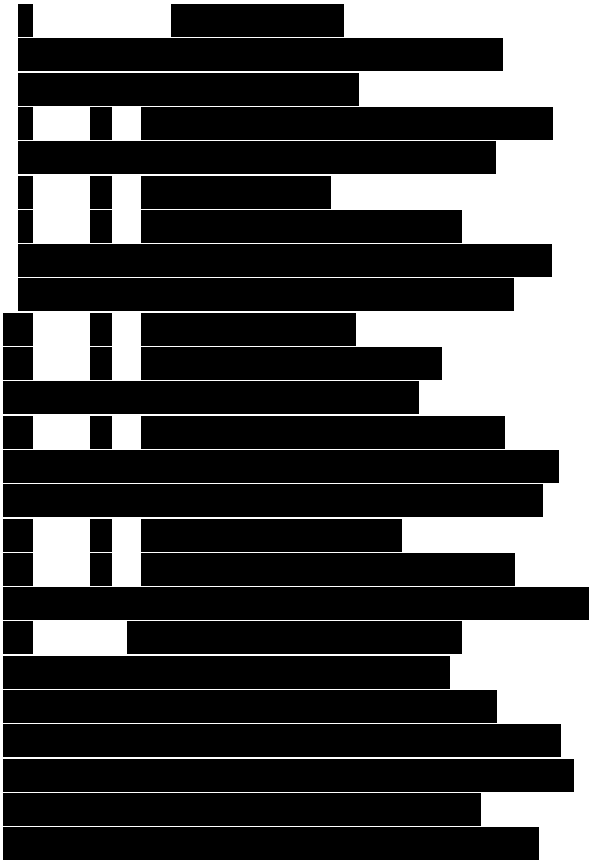

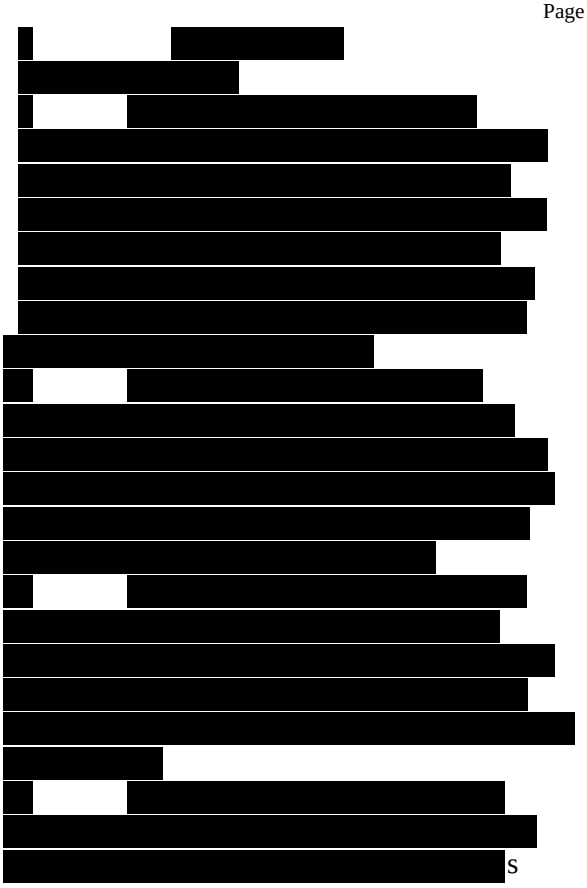

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that took place during that day, they would pick a rate at the extreme ends of that, whether it's a buy or a sell, depending upon whether it is a buy and a sell, they would collect a rate, arbitrarily a rate, that most advantaged them as traders and most disadvantaged the client or customer as the actual principal in the trade.

Q And that tactic or strategy on the part of State Street was the same in both the BONY Mellon case and the State Street case, is that correct?

A Yes.

Q Now you indicated that the State Street case -- the instant case was actually filed first. But is it fair to say that the BONY Mellon case moved into a litigation posture long before the Boston case did?

A Yes.

Q And were you able, was the firm able to take lessons learned and experiences from the BONY Mellon case and apply them to the State Street case?

A Yes.

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Q How so?

A Well, the foreign exchange trading world is a mystery to those outside of it.

In fact, one of the reasons that the custodian banks were able to conduct what I will call a scheme for so long and so profitably was just that, because it's not apparent to somebody outside of the foreign exchange world what's going on behind the doors of the trading activities.

So, I am sorry, I have lost your question now. Can you tell me again?

Q I believe my question was in what way did the, your work on the BONY Mellon case inform you in the State Street Trust case?

A So we learned in the course of the discovery in the BONY Mellon case all of the intricacies about how the trading took place and how the banks dealt with their customers. And we learned the language and we learned -- which is not easy. They have their own vernacular inside the foreign exchange trading. And so we learned how it

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operated and that, by the way, was not easy.

For example, I took depositions of a number of people who should have had, based on their positions, firsthand knowledge of exactly how the trading went on inside the banks. And if you read those deposition transcripts you will see how, how they fought mightily, even in the depositions, to keep us from understanding what really went on inside. They obfuscated continuously and tried to avoid acknowledging what they had actually engaged in. So it was not a simple process to ferret out what I just described a few moments ago about how the transactions or the trading was actually conducted.

And that is what we learned in the course of multiple depositions and document reviews and examinations in the BONY Mellon case. So we had all of that to use when it came to the State Street case. So we were actually, you know, any number of steps beyond where we started from by the time we got in to trying to look at the

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State Street documents and understand what happened in the State Street side.

Q And, Richard, with respect to the document review, what lessons did the firm learn based on the BONY Mellon case?

A Well, I didn't do the document review myself. The only documents that I would have reviewed were those that were selected for me to review in preparation for depositions.

What I would say generally speaking, what the document reviewers would have learned in the BONY Mellon examination was what documents to look for and what issues to focus on and where they would most likely find information and documents that would be useful in presenting and proving the case.

And so that covers the gamut with all of the issues that were involved. But that knowledge that you don't have at the outset and you learn over time was then able to be applied in the State Street case so that we weren't starting from the beginning

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again. They already were armed with all of that information that they could use to their advantage in reviewing State Street documents.

Q What member of your firm oversaw the document review in the BONY Mellon case?

A Well, oversaw in -- Kirti Dugar certainly was involved in that and Dan Chiplock, if you are talking about overseeing the document reviewers performing their work.

Beyond that, when it came time for depositions, at least I did this and I assume that most if not all of those that were charged with taking depositions met with the document review or reviewers who were the ones who were responsible for putting together the package for the individual deponents, and went over with them. Or actually I should put it differently, I took advantage of the opportunity of having them walk me through the documents to explain to me what the documents were, why they were important, how

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they could be used and what they meant.

So in that sense I reviewed the work of those document reviewers, but it was in the sense of them teaching me what they had ascertained from the document review that they had done.

Q Earlier you said that in the [redacted] matter, ultimately the [redacted] ended up settling the case on their own.

But is it fair to say that Lieff had an active role in the case for some time?

A Well, active in the sense that we put the case together for them based on the information that we had from the relators and based on the investigation that we had conducted and based on the analysis, particularly that Kirti Dugar had done, of their own records and so forth. And so that was the information that we provided to them, primarily in our efforts to induce them to be willing to come forward as a class representative.

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[redacted]

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you are asking.

Q Okay. In the BONY Mellon case, is it fair to say that Lieff was appointed as co-lead counsel?

A Yes.

Q And what does that mean, practically speaking? What are the roles of lead counsel or co-lead counsel in a matter that differentiated from being just a regular partner in a case?

A So typically the function and responsibilities of a lead or co-lead counsel are set forth in an order entered by the court, particularly if it's in federal court, at the outset of a case.

But generally speaking, lead or co-lead counsel is responsible for, as the term implies, leading the case. I mean in making the decisions about the strategy and tactics to be employed in the case, about what lawyers do, what will be involved in the working of the case and what they will do.

So ultimately it is the

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[redacted]

meetings in California with the attorney general.

[redacted]

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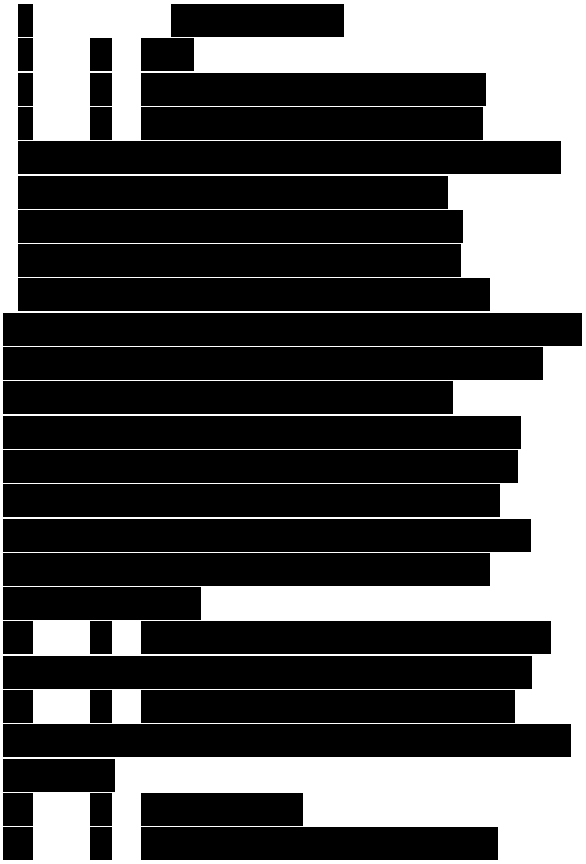

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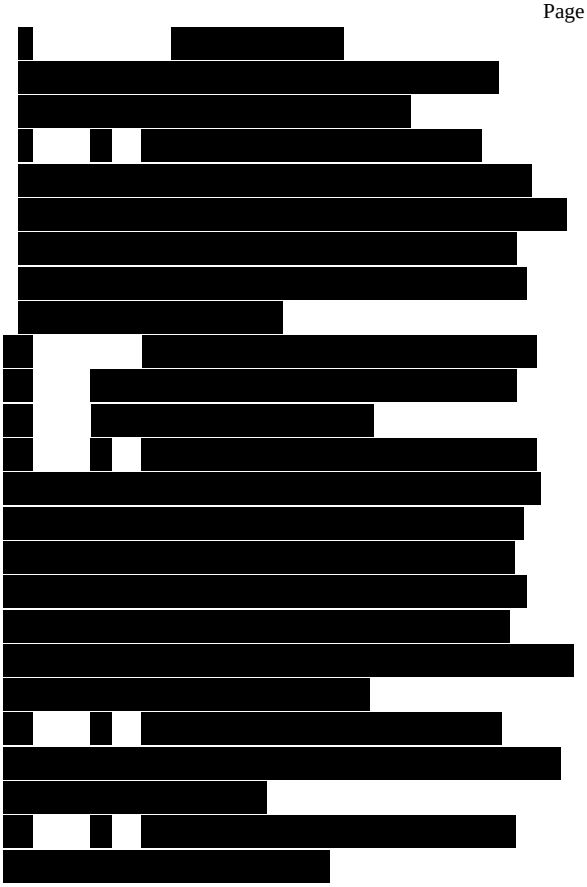

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Q Okay.

A So in no particular order, but I will say the very first one is probably as important as any. The cases were novel. The pursuit of the claims against these custodial banks was new and had not been attempted before, to our knowledge any way. So there was no track record, judicial track record, that one could look to to assess the likely outcome of the case.

So just to do this by example, federal securities class actions have an enormous amount of jurisprudence about them, and they are highly predictable in terms of the risks involved and the likely outcomes. And, therefore, in some respects, they are relatively simple cases despite the complexity, depending upon the particular case that they may have to them.

This was not that situation. This was a situation where we didn't have any kind of road map to follow, which among other things means that we had no clue going in as to what, how a judge would view the

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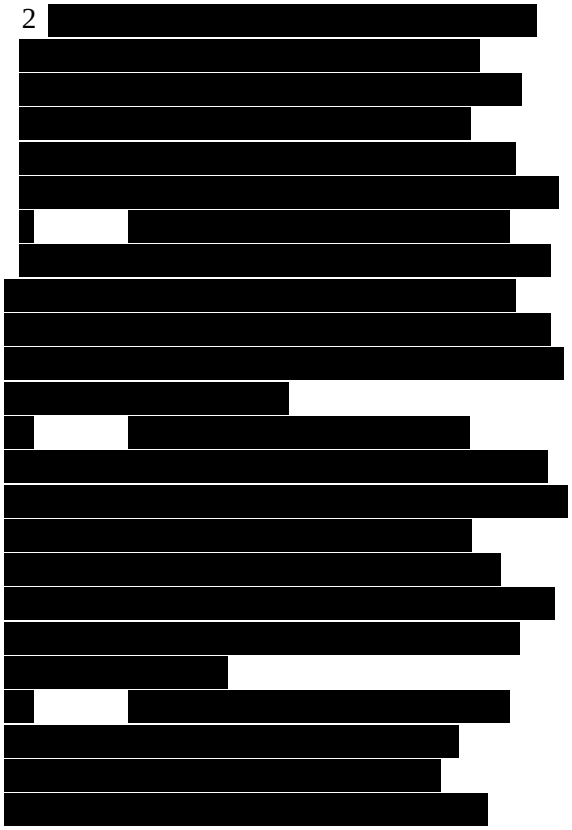
claims in the case.

Secondly, and in some ways related to that, there was some unfavorable court decisions with respect to this notion of whether or not -- in a foreign exchange world, the trader, if you will, was acting as a principal or an agent. And that was a huge issue as it turned out in these cases because the position taken by the custodial banks was that in acting as the trader for foreign exchange, the banks were acting as principal, not as agent for the customer. And, therefore, they did not have any fiduciary or any obligations to the principal. It was a caveat emptor situation.

In fact, when I took the deposition of one of the more senior people at BONY Mellon, he told me that it was just like your buying a car from an automobile dealer. You have no right to know what the car cost the automobile dealer when you are the customer buying the car. His customers had no right to know at what prices they



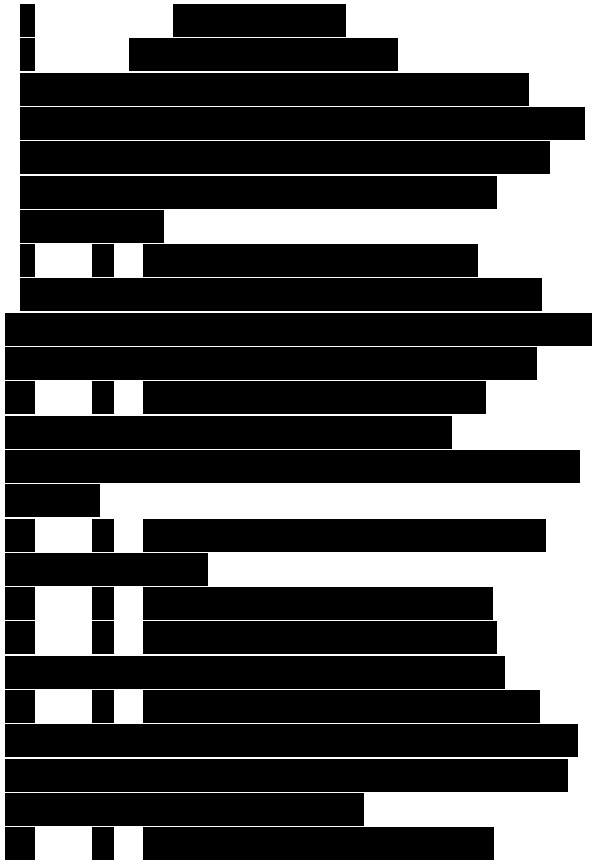
trading activities and dealings with their clients. And we knew going in that we were going to have to penetrate, if we were going to be successful, that opaque and complex way in which they did business to get to the actual facts that would prove our case.

In addition, there was a term that we used or that was used by, in the industry, best execution.

Best execution in the equity world has a fairly well-understood meaning.

(Thereupon, Jonathan Axelrod entered the deposition via teleconference.)

Q If you would continue, Richard. Thank you.



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report their hours?

A Specifically, no, other than I am sure that they were expected to accurately and contemporaneously record the hours that they worked and to report those on a periodic basis to whomever they were supposed to report those to.

Q Is there at some point a central repository for that information, as far as hours worked, at the firm headquarters?

A I assume so but again that's not something I have specific information about.

Q Do you know how the firm contracts with temps or third-party staffing agencies?

A No.

Q And to follow up on that, would you know of any substantive differences between the work being performed by staff attorneys and those performed by contract attorneys? Is it the same, is it different or don't you know?

A That I do know. It is the same. It is exactly the same. There is no

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distinction that I am aware of between the work that's assigned to attorneys who are employed by the firm directly and those that are employed through an agency. There is no difference between the expectations for the work to be performed by those lawyers. There is no distinction with respect to the quality of the work that is expected to be performed by those lawyers. There is no distinction between how those lawyers are trained to to their work. There is no distinction between how they are supervised in connection with the work that they do. They are one and the same.

Q Okay.

JUDGE ROSEN: May I ask? How about in the expectation of what they are to produce?

THE WITNESS: Same. No difference.

JUDGE ROSEN: Do agency attorneys produce memorandum?

THE WITNESS: Generally speaking? Certainly they can be

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called upon to do that.

JUDGE ROSEN: In this case, do you know?

THE WITNESS: I can't tell you specifically in this case being State Street, I don't know specifically whether the lawyers who were working on document review in that case -- that came through agencies, whether they actually did any of those research memos or not. Certainly easy enough to check.

JUDGE ROSEN: We heard testimony of course that a number of the, what we have been calling, staff attorneys had prepared legal memoranda either on issues or deposition witness, witness memoranda based upon the documents that they found in the search. We have not heard that any of the agency attorneys did that. We don't know. But we have not heard that they have.

THE WITNESS: Well, my

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understanding -- and I am stepping somewhat outside of my role as a witness, but my understand is that we have copies of all of the research memos that were prepared in State Street. I think we produced all of those to you. And I believe that the author of those memos is identified in the memo itself or in a, in e-mails. So it should be a simple matter of lining up the names on those memos with the names of the staff attorneys to see whether or not any of them were prepared by attorneys that were through agencies or not.

JUDGE ROSEN: But you don't know one way or another --

THE WITNESS: I don't know.

JUDGE ROSEN: -- of your personal knowledge.

THE WITNESS: It never occurred to me that that was a matter of any concern or importance. But now that you have made it a matter of concern

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or importance, I assume we will figure it out.

BY MR. SINNOTT:

Q Richard, were there any monetary financial benefits to the firm in using temporary attorneys over using staff attorneys?

A Well, I am not sure what you mean by temporary attorneys. If you mean --

Q Contract, contract attorneys.

A Meaning through agencies?

Q Yes.

A I don't know. My guess is if there is a difference, it is not much.

Q In a response to one of the interrogatories it was indicated that several staff attorneys were paid by the staffing agency and then later paid by Lieff Cabraser, and three names come to mind: Nutting, Bloomfield and Leggett. Do you know why?

A Do you mean that they were initially employed through an agency and then subsequently we employed them directly?

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Q Yes.

A I don't know why. But other than, again, I will tell you, I don't know how to emphasize this any more than I can, we didn't make any distinction between the two.

Q And has that been the case in past cases where you had staffing agencies involved in a document review?

A It has been the case since forever. I don't even know how many years we started using what we are calling staff or contract attorneys. But as far as I know there has never been a distinction made whether they come through an agency or whether they work directly for us.

Q With respect to how they are reported in fee petitions, has that remained consistent?

A Whether they are from an agency or whether they are employed directly, makes no difference whatsoever in terms of what we assign for billing purposes, rates we assign to them for billing purposes. It doesn't

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matter.

Q So if -- is it fair to say if you are billing a staffing agency attorney out at the same rate, let's say $415 an hour, as a resident staff attorney, is the firm making money on that because it is not paying overhead for the staffing attorneys?

MR. FINEMAN: Objection, lacks foundation.

THE WITNESS: I don't know. Never considered it.

BY MR. SINNOTT:

Q So you don't see any dichotomy there?

A I don't think what we pay any of our lawyers has any relevance to what a reasonable billing rate is for any of our lawyers. That's not a factor that is relevant. It's not a factor that is relevant from our perspective. And as far as I know, with some outlier judges and others, it's not a factor that the courts consider relevant.

In fact, I can give you chapter

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and verse of courts who said it is not relevant. The relevance is what is the accepted market rate for the lawyers performing -- the quality of the lawyer performing the work involved. And that's what you look to in terms of determining what a reasonable rate is, not what that lawyer is paid by the law firm for which he works or she works.

Q Does Lieff use paralegals for document review?

A Paralegals may assist lawyers in conducting document review, but I don't believe we use paralegals to do the substantive document review.

Q And why not?

A Because we don't consider them qualified. We think that the document, the types of document review that we do and the types of cases that we are involved in require the use of lawyers who are familiar with both the legal and factual issues in the case so that they can perform the document review in a way that ultimately

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benefits the case and benefits the lawyers who are going to be involved in the subsequent discovery efforts.

Q It is your view that that is beyond the capabilities of most paralegals?

A Generally speaking, I would say most paralegals who don't have a legal education don't have the qualifications that are necessary. Now, I am sure that we could find paralegals that are bright enough and well-enough informed that could conduct document review at least in some circumstances. But generally speaking, no.

Q Let's talk about -- do you have anything on else on that, Judge?

JUDGE ROSEN: No, I think we have heard enough on this.

BY MR. SINNOTT:

Q Let's talk about how hourly billing rates are determined.

Earlier you had mentioned that the executive committee, at least theoretically, decides what cases acts as the gatekeeper for cases.

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Does it have a role in the determination of billing rates as well?

A So let me make sure my comment about the executive committee is not misunderstood. The executive committee does make the decisions about what cases to accept. The executive committee may be influenced by the presentation that the advocate for the case makes, but the ultimate decision is made by the executive committee.

Now with respect to the issue of hourly rates, yes, it's my understanding and my experience that the executive committee ultimately decides what rates on an annual basis to assign to the lawyers in the firm.

Most of the groundwork that goes into that ultimate decision is made by Steve Fineman as managing partner working together with Joe Dragiceuic and others in the firm, and is essentially then reviewed and commented upon by members of the executive committee. But ultimately the executive committee makes the decision as to what

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those rates will be.

Q Are you currently on the executive committee?

A I am.

Q Were you on the executive committee that determined the 2016 billing rates?

A I am on the executive committee every other year. Elizabeth and I trade off. So I can't tell you for sure whether I was or wasn't.

I will say that whether I am on the executive committee or not in any given year, I think it's ex officio. Is that the term for it? Where I participate in the meetings when I am not an official member of the executive committee, and would probably almost certainly have been informed of the recommendations that were made even if I didn't vote. So I would have been aware of it.

Now I am not going to say -- when I'm not on the committee I may not pay as much attention as to it as I do when I am on

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committee, but I at least would have been aware of it.

Q Richard, based on your involvement on the executive committee, is it fair to say there has been an increase in billing rates over time?

A Yes.

Q What is that attributable to?

A The market.

Q Can you describe the market or market trends that affect the billing rates?

A Sure. I mean one thing I do know is that on an annual basis and probably more than on an annual basis, on an ongoing basis, the management of the firm attempts to understand what the trends are in the market rates for hourly rates for attorneys, both on the plaintiff's side in terms of firms that are comparable to ours, if there are any, and on the defense side for any number of reasons.

But and I would say it is probably not just for purposes of setting our hourly rates, but to understand, you

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know -- for example, we are always interested in what are lawyers being paid by our competition. Not that that necessarily translates into issues or matters that are relevant to our rates, but we have to understand the market in order to be competitive.

If we are paying lawyers $125,000 an hour -- $125,000 a year that are being paid twice that by our competition, then we are at a difficult posture, so we have to understand that. So that's all part of the ongoing management of a law practice, is to understand what the market rates are in terms of what lawyers are being paid, what the market rates are in terms of what hourly rates are that are being charged and what the market is to go bear. I mean, even the work -- primarily a contingent fee firm, we have to understand what paying clients are willing to pay as well in order to understand what hourly rates are fair and reasonable.

Q Do you focus only on firms

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involved in class actions, or is there a broader consideration; for example, bankruptcy?

A I don't know that we focus on bankruptcy; probably don't, but we certainly, we are interested in and learn about hourly rates for practices other than class action litigation.

I mean keep in mind we don't just do class action litigation. In fact, probably more than 50 percent of our work is not class action work. It's in the mass tort field, for example, which is typically not conducted by way of class actions.

Q Is actualization rates or are actualization rates considered in determining the billing rates, or is that not a factor?

A All right, let me make sure I understand what the term means. That means what a law firm actually gets paid by a client as opposed to what they say they are getting paid?

Q Yes.

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A Yes, certainly something that we consider to be relevant.

Q Have you ever had a fee dispute with a client in which the firm sought to recover the value of services provided?

A On a quantum meruit basis, for example?

Q Yes.

A Not that I am aware of.

Q With respect to associates and partners, is it fair to say that the principle factor in assigning a rate is years out of law school?

A It is certainly a factor and particularly with respect to associates I would imagine -- I don't know how important that factor is in other people's thinking.

It makes sense that we would, that we would try to keep the billing rates for associates in line with each other in terms of years of experience. So, whether it's a primary factor or not, I couldn't tell you. We would have to look historically I suppose at what our billing

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rates are. I suspect it's going to turn out to be an important factor, whether or not it's a primary factor, if there's a difference there.

As to partners, no, I don't think years of out of school is a primary factor in setting billing rates for partners. I think that is much more subjective an issue and really would have much more to do with the track record, reputation and other factors that go into assessing qualitatively a lawyer's value.

Q Is it fair to say that with respect to staff attorneys, while the firm does not go by a strict years out of law school criterion, a rate equivalency is associated with the staff attorneys with respect to when they graduated from law school?

A No. We did that -- I am pretty sure that in the past the years out of law school for staff or contract attorneys, whatever term you want to use, was a factor that was considered.

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But more recently, particularly as this whole issue has been developing in the judiciary over non-partner track attorneys, we have obviously followed that jurisprudence closely, and we made a decision effective in 2016 to set those rates for contract attorneys.

I think we made a decision to make them uniform and to base that in part on the equivalency of -- I forgot what it was -- a fourth-year associate or whatever, but implicit in that is the understanding that the staff attorneys' own personal background, education, experience, years of practice and so forth, has to be beyond a certain level before we would actually use that billing rate for them. So if we got -- in the unlikely event, for example, we were using a contract or staff attorney that was just a year out of law school, I doubt very much that we would bill that person at the billing rate that we are talking about; for example, in this case 415 or whatever it was because they wouldn't have gotten past the

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threshold that we would have, that would exist for someone to be billed at that rate.

I don't know that we have any such people because most, most if not all of the folks that we have that fall into that category have far more experience than what we are talking about at the 415 level.

Q Just now, Richard, you referred to contract attorneys and staff attorneys together.

Was there any differentiation with respect to how the billing rates for the agency attorneys would be determined?

A No. And I use the term contract attorneys and staff attorneys interchangeably. I know -- I have actually read a case or two where judges made a distinction and they define one being one thing and another being another. I don't think we ever considered those terms to be different, at least not until recently.

Q My understanding from past witnesses is that the BONY Mellon rates were a factor in determining the rates in this

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case; is that correct?

A I have heard that too, but I don't know that independently.

Q So you wouldn't know the dynamic or process as to how those rates would be affected by the BONY Mellon rates?

A I did not know at the time and anything I know about it is based upon testimony that has been elicited in this case or stuff I have learned in preparing for depositions in this case.

Q With respect to venue or geographic location of a case, does the firm consider that in its analysis as to what rates should be charged?

A Not, not -- I don't believe -- let me back up. You know --

MR. FINEMAN: Just answer the question, Mr. Witness, please.

THE WITNESS: I am not by any means the most knowledgeable person at Lieff Cabraser about these, about fee applications. In fact, normally I am not involved in preparing fee

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applications, which I could go into if you are interested in knowing why that is.

But with respect to do we vary the rates that we include in our fee applications based on the geography of the court, the answer is no. However, that doesn't mean it is not relevant because if we are dealing in a situation, which would be unusual, but if we are, say we have got a case in Nashville, for example, I am making one up, where I assume the market rates are significantly different from the market rates in San Francisco or New York or Boston, for that matter.

We would have to necessarily address that issue in the fee application. We wouldn't address it, I don't think, by lowering our billing rates in a submission. But rather we would make it in the form of an argument to the court as to why the court should accept those billing

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rates even though they really aren't in line with the market rates in the legal market in Nashville. And the judge would then decide whether or not to accept our billing rates or to insist that the billing rates that the court uses in making a fee award be something less.

But I will add one more thing, which is this: That more often than not, we don't get fee awards based on our hourly billings. We get fee awards based upon a percentage of the common fund so the most that --

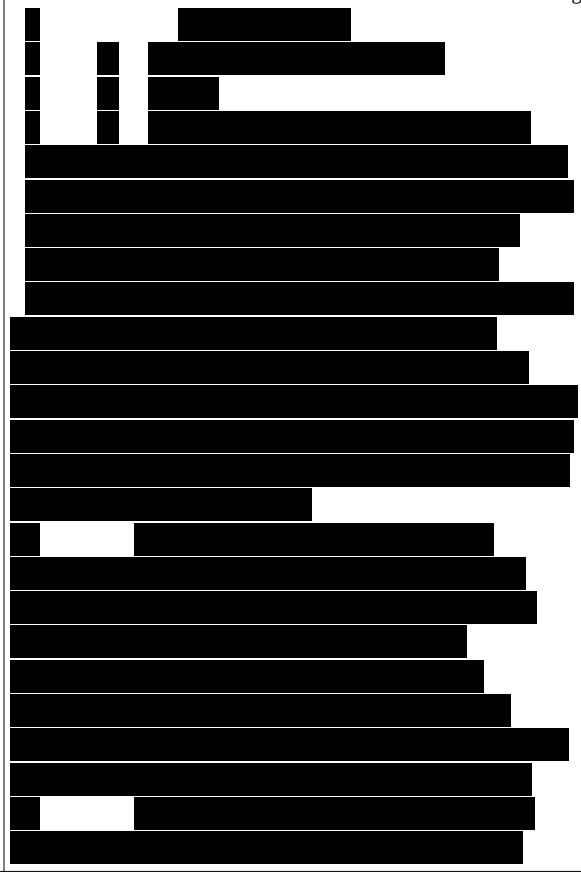
(Phone interruption.)

BY MR. SINNOTT:

Q Okay.

A I think I was in the middle of an answer.

Q I think you were wrapping up. We were talking about the venue of rates and I believe you said that the judge ultimately is presented with why a rate was charged and gives approval so the firm --



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we are not interested in that.

But Judge Rosen had a couple of questions on that as do I. But why don't you go ahead, Judge?

JUDGE ROSEN: I thought I remembered from the interviews that a number of your lawyers, at least historically, had had a number of paying clients, and they were roughly commensurate with -- if adjusted for inflation, they were roughly commensurate with the rates that you claimed in this fee petition.

Was it that you were only aware of the Merrill Lynch, or are you aware of other paying clients?

And what I am getting at is: When you have been on the executive committee and you were involved in the setting of rates, do you take into account the actual rates billed to paying clients?

THE WITNESS: I don't recall one way or the other. I mean I was,

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in answer to your unasked question, I probably was generally aware of those instances where we were doing work on an hourly basis.

But I don't really recall, and I certainly wouldn't have been aware or I don't recall any of the specifics. And but I don't recall, Judge, one way or the other whether in any year where we were setting or resetting the hourly rates for the attorneys, whether we specifically took into account what I would assume then current cases where we were doing work on an hourly basis. There would be many years, I would assume, where we didn't have any hourly billing clients. But in any event I am just, I just don't know the facts.

JUDGE ROSEN: The larger question really is, Rich, do you -- you remember that when you have had -- by you I mean the firm. When you have had paying clients, they were roughly

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commensurate with the rates that would be claimed for lodestar fee petitions?

THE WITNESS: Well, I know that now looking back. So, yes. Did I know it at the time? Can't tell you. Just don't recall.

JUDGE ROSEN: Okay. Did you have anything else?

BY MR. SINNOTT:

Q Let's talk about the cost sharing agreement with the Thornton Law Firm.

Were you involved in the decision or the agreement whereby Thornton Law Firm would hire Lieff Cabraser staff attorneys?

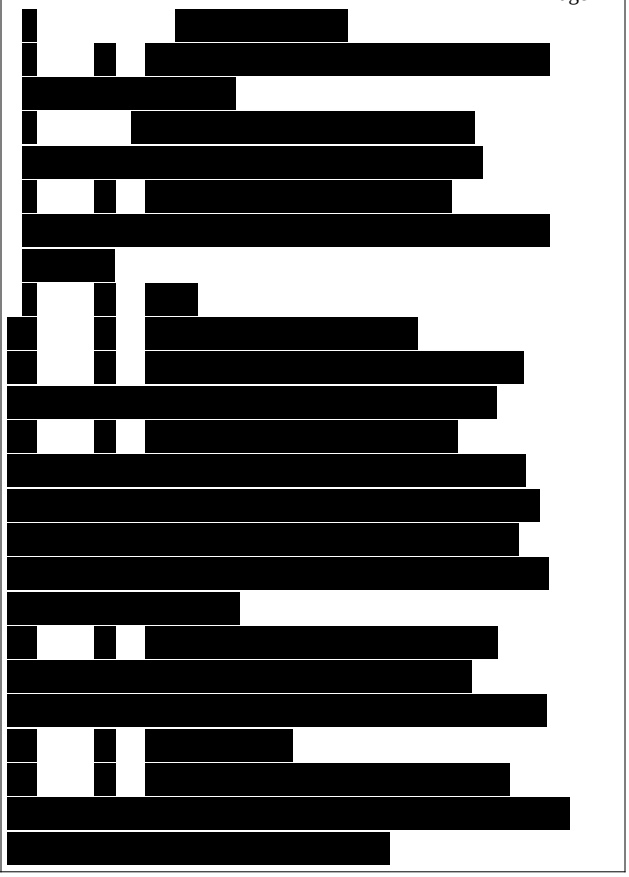
A No.

Q When did you first become aware of it?

A I think when this trouble started.

Q So approximately November of 2016 was your first familiarity with that arrangement?

A I don't even know if it was that early. But certainly no earlier.



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A Prior to these issues arising?
Q Prior to this case.
A No.
JUDGE ROSEN: Since these issues arose, are you aware of other cases in which there were these cost-sharing arrangements?
THE WITNESS: Well, I am as aware as you are. I heard the Labaton lawyers testify about it. That's all I really know about it.
JUDGE ROSEN: Not from your own experience?
THE WITNESS: No.
BY MR. SINNOTT:
Q What do you think about that arrangement, Richard?
A I think it caused us some problems.
If you had asked me that question before all of these issues arose, I probably would have said that I can understand why it makes sense to do it because what you really are talking about is trying to maintain the

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equilibrium among the firms in terms of the risks and costs that are being shared.
In view of what has happened here, it seems to me it is asking for trouble and I wouldn't do it.
JUDGE ROSEN: One thing I have been trying to understand throughout the course of my assignment here is why it would have been better, more advantageous, for the firms who were employing these folks and paying the invoices to allocate to Thornton these staff attorneys for purposes of the lodestar fee petition.
I understand from Thornton's perspective why that was desirable. I am not sure I understand why from Labaton's and Lieff's perspective that this would have been a desirable way to do it rather than simply making an agreement to share in the, share in whatever fees were awarded ultimately by settlement or perhaps by verdict.
THE WITNESS: I can't help you

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if you are asking me what the thought process was in fact at the time. I don't know. I can't answer that because I wasn't involved and I wasn't even aware of what was going on.
If you are asking me my opinion --
JUDGE ROSEN: Yes. Well, just generally what the advantage was to your firm and to Labaton.
THE WITNESS: Well, I don't think that --
JUDGE ROSEN: Either if you know in this case or generally why a firm in your position would allocate staff attorneys and allocate the lodestar for that rather than simply make an agreement.
If the reason is an equitable cost sharing and equitable division of the ultimate fees, simply arrive at that agreement rather than allocating the --
THE WITNESS: Well, it makes no difference. You are talking about why

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would it have been advantageous to us. It makes no difference in the end because whether we do it as an internal allocation that doesn't get embodied into a fee application or not, it's going, it's going to come out the same.
The Thornton firm is going to get credit, if you want, for the lodestar in terms of how we allocate amongst ourselves the fee award ultimately made. Or, if it, if they are allocated, if you will, the lodestar, for purposes of the fee application, it is going to get allocated the same way in the end. It is going to make no difference. So I mean the ultimate -- ultimately, in terms of the actual aggregate lodestar, it makes no difference. It is going to be the same number either way except for the problem with respect to the rates being assigned that are somewhat different, as I

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understand it. And I have obviously heard you express these concerns before. It may not be as clear to the court if the court is interested in assessing the risk assumed by one firm as against another, which is almost never the case, and I don't believe was the case here, but -- that's the end; it doesn't matter how you handle it.

And I can say that it doesn't surprise me, however, that one would have assumed that if Thornton was paying for the lawyers, that they would also be taking credit for the lodestar. That assumption, which I understand and you know from the testimony of Chiplock was the assumption, that doesn't surprise me.

JUDGE ROSEN: It is a bit of an artifice, isn't it, when it comes time to do the actual fee petition to the court?

THE WITNESS: No, I don't

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consider it an artifice at all. That suggests, the use of that term suggests that one is trying to mislead someone. And that is not, I do not accept that. That is not true.

JUDGE ROSEN: I don't know that I am trying to suggest that. But when a firm files a fee petition and lists attorneys paid by, employed by another firm and says these are the, whatever the language is, regular rates paid by our attorneys and approved in similar cases, that's not accurate.

THE WITNESS: That is not accurate in terms -- I agree, no question.

JUDGE ROSEN: When I say that is a bit of an artifice, that is what I mean.

THE WITNESS: That aspect I agree with you. That was a mistake.

BY MR. SINNOTT:

Q Is it fair to say, Richard, that there was no practical benefit to that

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arrangement as far as the objectives, strategy of the case was concerned?

A No, none whatsoever. That is why I say the outcome is the same.

Q Let me circle back. We talked earlier about document review, and I know you weren't integrally involved in that, Richard.

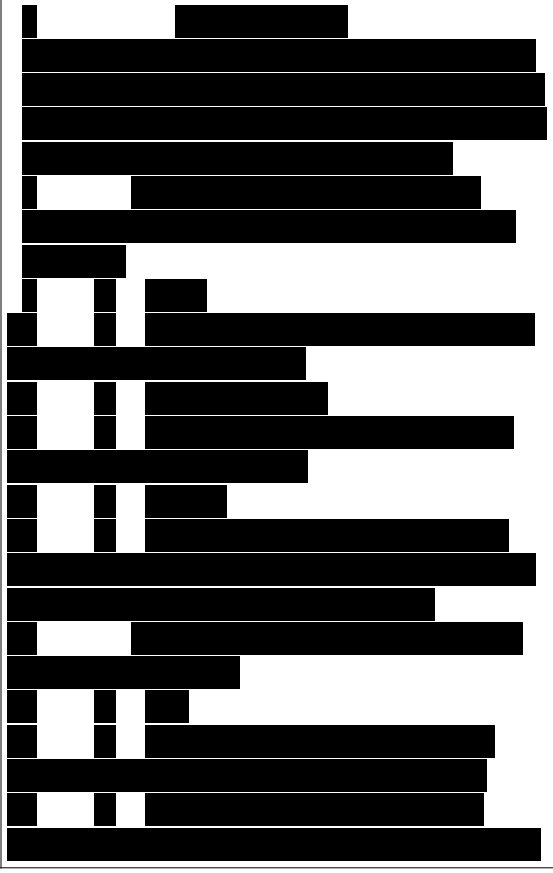
But are you aware as to how staff attorneys were assigned to the State Street case?

A Because I played no role whatsoever in the State Street litigation, the answer is probably not. But I am sure I would have assumed that for the most part, the reviewers who we were assigning to State Street, would have been the reviewers that had been involved in the BONY Mellon case.

Q Because of the experience they had acquired?

A Sure, sure. I mean that is an asset from our perspective, so why not use it.

Q Our understanding is that Lieff



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A I assume not, but I don't know. I think there is specific authority one way or the other on that, and it may vary from district to district or judge to judge. I just don't know.

Q Let me -- I am looking at Dan's fee petition, Exhibit 17, to -- his declaration, rather. And paragraph five, which you are familiar with, if nothing else from the many examinations you have attended, says that: "The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions."

Once again, that is paragraph five.

Do you agree with the language concerning regular rates charged?

A As it pertains to Lieff Cabraser, it is accurate.

Q And how so, Richard?

A Well, we have indeed on a number

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of occasions been paid by hourly clients rates that are comparable to those that are set forth in the fee application and as you know, we gave you a copy, for example, of the fee application declaration from the BONY Mellon case where that is exactly what we said in more precise, I would say, terms.

Q And I have that declaration here and to read also paragraph five in that case: "The hourly rates charged by the timekeepers are the firm's regular rates for contingent cases and those generally charged to clients for their services in noncontingent hourly matters. Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in their respective cities by attorneys and para professionals of similar qualifications and experience in cases similar to this litigation and have been approved in connection with other class-action settlements."

Is the language in that declaration more transparent in its

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reference to hourly clients?

A It is longer, uses a lot more words. And as I think I mentioned, I think it is more precise in describing the concept. But I think the concepts are the same in both declarations.

Q What would you counsel in the future with respect to the language in that particular paragraph?

MR. FINEMAN: You are talking about the paragraph in the State Street?

MR. SINNOTT: Yes. Any lessons learned out of that with respect to transparency, Richard?

THE WITNESS: Well, precision is good and the idea is to communicate to the judge accurately the facts embodied in the presentation. And the more precise one can be, the better, provided that it is a matter of significance to the court which may or may not be the case depending upon the judge that you are before. I want to

get to that in a little bit.

So, sure; the more precise, the better, as long as it is important.

JUDGE ROSEN: I have a question. Why does the judge matter?

THE WITNESS: The judge may have a different view of what is important than you do.

JUDGE ROSEN: May have been; then that's up to the judge.

THE WITNESS: We'll come to that, if you like, because you are going to ask me about what lessons learned and best practices?

JUDGE ROSEN: Absolutely.

THE WITNESS: I am going to talk about what judges should be doing in that regard.

JUDGE ROSEN: I think that would be great.

MR. FINEMAN: Are you going to do that in a deposition?

THE WITNESS: Yes, I am, if allowed.

MR. SINNOTT: We will give that you opportunity. Do you want to do it now?

JUDGE ROSEN: We might as well. I am anxious to hear that.

One of the things that we will be looking at in our recommendation section of the report is best practices going forward and that includes best practices for courts.

THE WITNESS: Okay. So, with the caveat that I am not by any means the most knowledgeable person about fee petitions in the firm because I don't normally get involved in them, I do know enough over the years to know this: There is a significant variation among the district courts, district judges, about what is important and what isn't important in terms of their considering about how to rule on fee applications.

For example, I brought with me today a copy of our local rules. This

is for the Northern District of California. That is the only rule, standing rule, in the Northern -- let me have one copy back, please.

That is the only standing rule that exists in the Northern District about attorneys' fee motions. And in subsections two and three, you will see the requirements in their entirety about what the practitioners are told by the judges in the district to include in a fee petition. All right?

So here is an order entered by one of our district judges in the Northern District. This is a case that I was preparing to try and which was settled by one of my partners shortly before trial for several million dollars.

And this is Judge Lucy Koh's addition in this case. She required, as you can see, what the local rule provides could be asked for or required; that is to say in this case

detailed billing records which normally would not be submitted to a judge in connection with a fee petition in the Northern District of California.

Okay? Now let me hand you an order. This is an order entered by Judge William Alsup also from the Northern District. This is in a case that I tried to verdict, something a little over $200 million. And this is the order that Judge Alsup entered in connection with our fee application.

And you can take your time later to look at the detail of what Judge Alsup required both in terms of substance and in form. He goes on and on and on for four full pages describing in detail what he, what he thinks is important and requires to be submitted to him.

Now, one of the things I said to Judge Alsup in this connection was that you are asking for us to provide

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stuff to you that we would not have normally generated --

JUDGE ROSEN: Could I ask, this was a class action as well? They were both class actions?

THE WITNESS: Both were class actions. Incidentally -- and I think it is only incidental. In the end, both Judge Koh and Judge Alsup, when they made the attorney's fee award, made it on an hourly lodestar basis, not on a percentage of the fund basis, although I know for sure we asked Alsup for a percentage. And I don't remember whether we asked Judge Koh for a percentage or not in our fee application.

JUDGE ROSEN: Did they both use the lodestar as a cross check then?

THE WITNESS: No, no, they didn't use it as a cross check; they used it as the basis for the fee award.

JUDGE ROSEN: With a

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multiplier, presumably?

THE WITNESS: With a multiplier in both cases, yes. But the point I want --

JUDGE ROSEN: The rule doesn't seem to anticipate that.

THE WITNESS: No, of course not. The point I want to make is this is just in one district. You can see how much variation there is in terms of what one judge versus another thinks is important. So transparency is obviously important. But transparency about what?

What we want to be is we want to be transparent about what the judge thinks is important. I don't need to be transparent about what things the judge doesn't think are relevant or important.

Now, for example, use this case as an example, Your Honor has indicated you think it is important in terms of a fair billing rate whether a

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contract or staff attorney is actually employed by the firm or comes from an agency. I don't think that is important, and I don't think many judges think it is important. In fact, I only know of one judge who has ever written anything to suggest that he thinks it is important.

So if we are to be transparent about what is important to the judge, the judge has to tell us what is important to him or her in connection with the fee application.

There are some things obviously that are, everybody thinks are important, and every judge is going to be considering. But when you get to the margins -- and I consider this marginal at best, this difference between a staff attorney and an agency attorney, we need to know what it is. And I would say not only does the judge need to tell us in an order like one of these orders I am showing you,

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but it would be best if the judge had a standing order in advance so you know before you work on a case what the judge is going to think is important in terms of the fee application, assuming one is ultimately made in a case.

And that is what I told Judge Alsup, by the way, directly to his face.

You can't tell me at the end of a case that I, that an entry for time trial preparation is not adequate. You can't tell me that I have to say specifically what I was doing in terms of trial preparation, reviewing deposition of such and such, you can't tell me at the end of the case that that is the kind of billing record I need to have. You got to tell me at the front end of the case that that is the kind of billing detail that you expect.

JUDGE ROSEN: Fair enough. So,

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does, in your view, all of this auger for at least a local rule so that there is, you know, similarity in the practice among judges, or only a standing order of a particular judge, an individual judge, in advance?

THE WITNESS: I would say if the judges in a district can agree. They are not going to do that in the Northern District, I promise you, and I doubt very much they will do it in the Southern District of New York either.

JUDGE ROSEN: Or in the Eastern District of Michigan, having served as chair of the rules committee for about 12 years, I doubt I can get my colleagues to agree on that.

THE WITNESS: So obviously the point, if everybody can agree, great; it would be best to have it as a local rule. But failing that, yes, standing order judge by judge.

And I looked. And we don't --

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curiously enough, even Judge Alsup doesn't have to this day a standing order on this fee application stuff. I think Judge Koh may, but I am not certain about that. All but at most one of our judges does not have a standing order. And, yeah, I think that would be --

JUDGE ROSEN: So a recommendation from you for best practices going forward in terms of the court's obligations is to give notice in advance to the lawyers of what is going to be expected at the end of the case should there be a fee award?

THE WITNESS: Yes. And I would add that, for example, in this case, this issue of staff attorneys versus agency lawyers, that is something that has as far as I can tell the first case that I know of that discusses it was in 2016, one of the judges in the Southern District of New York. So, as

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issues develop as they do, yes, then those standing orders need to be updated so the practitioners are alerted as to where, what a judge is thinking about in terms of these issues.

So, for example, if we had known that Judge Wolf thought it was important that there was an important distinction between those two types of lawyers in terms of bills, we would definitely have taken that into account. And we might not have changed our billing rates. We might have argued but at least the issue would have been open and for discussion and would have been taken into account, whether for good or ill for us.

JUDGE ROSEN: Well, this case has certainly raised that issue. And then maybe it's come up because the issue of staff attorneys, using attorneys from agencies, is a

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relatively recent practice.

THE WITNESS: Right, well at least in terms of the court looking at it.

JUDGE ROSEN: At least in terms of the court looking at it. But even in terms of the practice of both plaintiffs' firms and defense firms using contract attorneys.

I first heard of it certainly within the last ten years and maybe even within the last five years, when I began to get calls from hiring agencies to hire lawyers in to staffing agencies. And that's at least in my exposure a relatively recent phenomenon.

THE WITNESS: I agree with you. And I will also say -- but again this guy next to me actually could answer this question better than I could because I can't -- there are reasons that a law firm would turn to an agency. There are circumstances where

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that is a better way of getting the needs of the firm satisfied than trying to hire directly.

Now I can't tell you what those are. But there certainly are circumstances, so I understand, where that is a way. And I can imagine, you know. It's not necessarily easy to go out and hire lawyers who are qualified to do what you need to be done and particularly if you need them right away. Anyway, so that is my piece on --

JUDGE ROSEN: While we are on it, anything else for us that judges should do?

THE WITNESS: That's what I have been thinking about. There may be other things.

JUDGE ROSEN: We will give you another shot at the end. But I hope nobody believes that my recommendation section is only going to be for attorneys. I believe, I think we agree, courts have a responsibility

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here too.

THE WITNESS: I think so. I agree.

MR. SINNOTT: For the record, we have been joined in the room by attorneys Joan Lukey and Mike Stocker both on behalf of Labaton Sucharow.

BY MR. SINNOTT:

Q Let me follow up, Richard, to more nuts and bolts recommendations. I know that you weren't privy to the cost-sharing arrangement. But based on what you know about that now and your experience in past cases, what steps could Lieff have taken to prevent double counting on the fee petition?

A I don't know the answer to that question. I mean I have listened carefully to the autopsy that was performed to try to figure out what happened.

It seems to me it is an anomaly that we shouldn't make too much of. I mean we, we meaning Lieff Cabraser has been doing this for, I -- associates with Lieff Cabraser have been doing this for 30 plus

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years. This is the first and only time that this has happened. So I just really don't have a solution. I think that may be a problem for which there is no solution.

I have already said that in the future, this idea of sharing lawyers or staff attorneys in the way we did here is a complication, an unnecessary complication, that probably shouldn't be repeated.

But then I say that and I am reminded, mentally, of the fact that there is at least one instance that I have been told about, where, again with multiple plaintiffs' firms working together, one firm got assigned to do a deposition of a particular witness and the staff attorney who had worked up that witness was working for us, it was our staff attorney, and so we lent that person to the other firm so that that staff attorney could educate the other firm's deposition-taking lawyer.

And I am told that the expense associated with that was paid for by the other firm. I don't know anything about how

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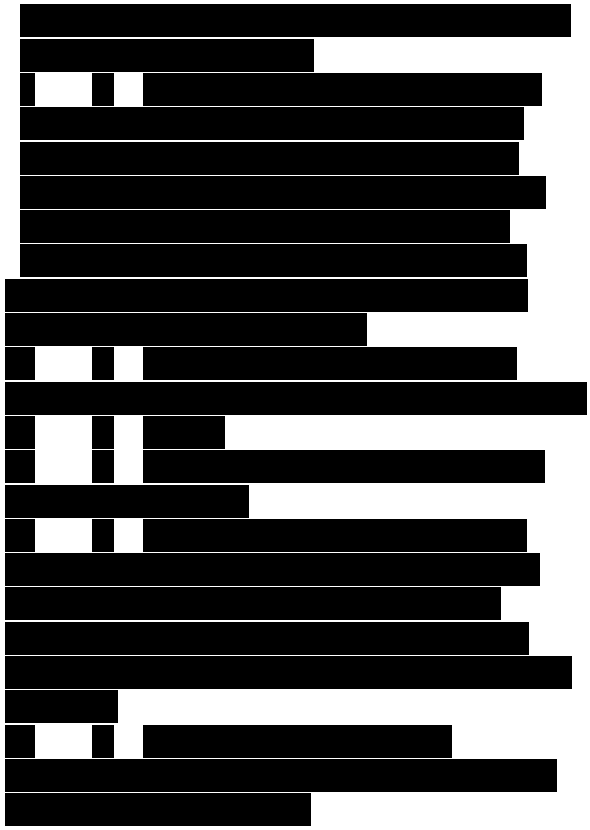
that is being handled in terms of lodestar. But there is certainly, you know, you can imagine circumstances where that's going to arise just because of the way that the responsibilities get divided among plaintiffs' firms working together.

So, again, this is a problem that has never occurred before. One would expect that the lawyers who were actually involved will now be doubly alert to prevent it.

One way has been suggested -- and I suppose it makes sense -- is that instead of having one firm and one firm alone having the, be the sole firm that sees all of the fee applications, that ought to be shared among the firms so that there is a more likely chance that errors will get picked up, if that makes sense.

On the other hand, does that make work? Is that too much work to go through to solve a problem that is not really a problem except in this one instance? I don't know.

Q All right. And on the subject of



A What is evident I think and you see in the e-mail traffic in terms of the expedited effort to understand what happened and why and to communicate as quickly as possible to Judge Wolf the fact that the mistake had been made and the impact of the error on the fee award.

Q Did you have a role in the preparation of the letter to Judge Wolf?

A No.

Q Did you read a letter to Judge Wolf before it went out, a draft?

A I don't recall.

Q Did you attend the mediation sessions?

A I did not.

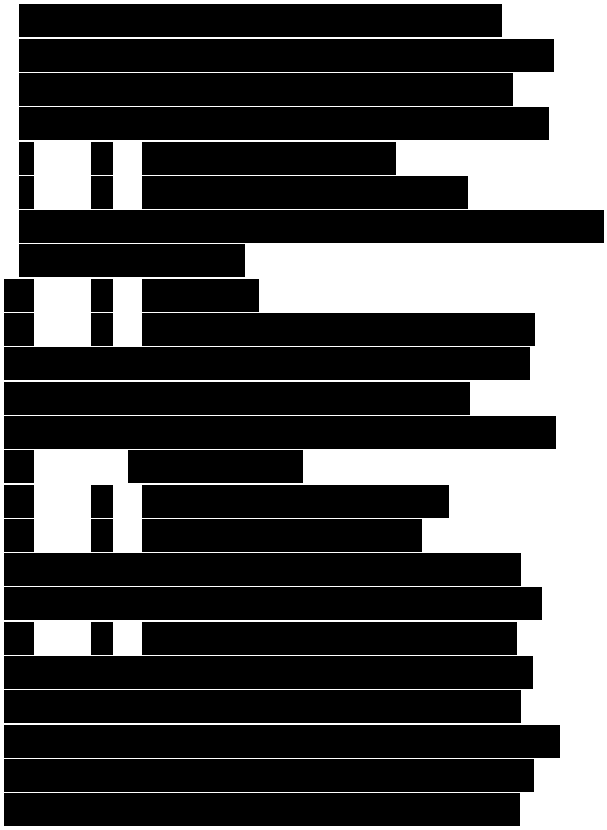
Q And prior to November of 2016, had you heard the name Michael Bradley?

A I don't think so.

Q When did you first learn of Michael Bradley's involvement?

A Again, when the issues arose. And, yeah, only after that.

Q Did you think there was anything



2016. I may be wrong about that. But my understanding is that we made a -- I think we talked about this a little bit earlier on.

We made a firm decision beginning in 2016 that our staff attorney document reviewers would be billed at 415 pretty much uniformly with the exception that I described earlier. And so she should not have been billed at 515; she should have been billed at 415.

JUDGE ROSEN: Even though she seems to have very relevant experience and have done, vis-à-vis a lot of the other staff attorneys, a disproportionate share of substantive work preparing memoranda, those sorts of things, would you still have billed her at the lower rate?

THE WITNESS: I am not saying 515 was not a reasonable rate. It is a reasonable rate for her for the work that she did. I am saying internally Lieff Cabraser had made a decision

EX. 20

JAMS, INC.

Volume: 1

Pages: 1-92

Ref. No. 1345000011

Exhibits: 0

In Re: STATE STREET ATTORNEYS FEES

Before: SPECIAL MASTER HONORABLE GERALD ROSEN,
UNITED STATES DISTRICT COURT, RETIRED

Date: June 19, 2017

Time: 2:28-4:14 p.m.

Deposition of MICHAEL LESSER, taken by counsel to the Special Master held at JAMS, Inc., One Beacon Street, Boston, Massachusetts before Cynthia Stutz, CPR, Notary Public of the Commonwealth of Massachusetts.

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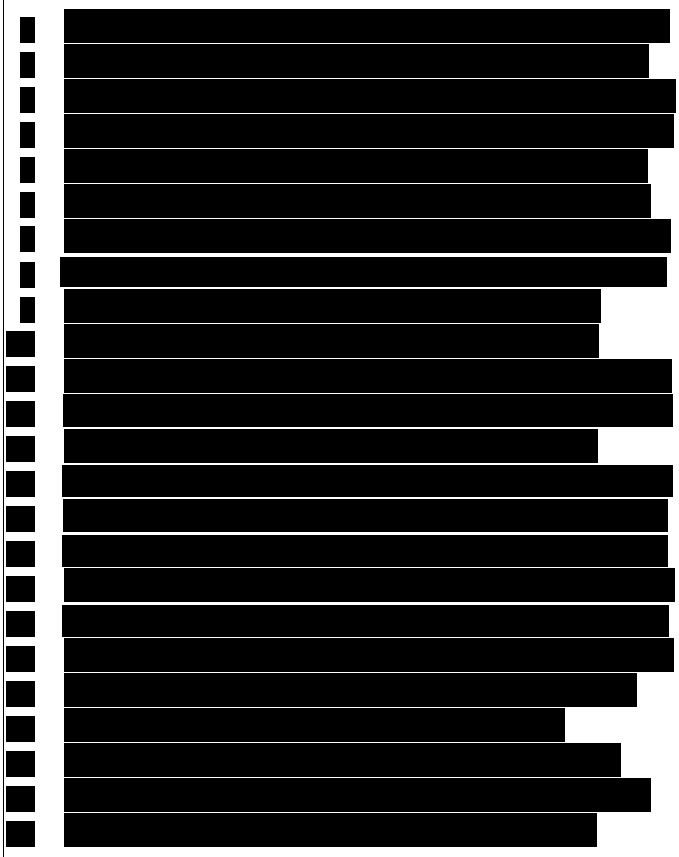

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litigation yourself or to not continue.
Q. And with respect to the California action, Mike, how had that relator come to Thornton Law Firm?
A. The co-counsel that I mentioned, Philip Michael had been working with a consultant and the client came to Philip Michael through that relationship, I believe.
Q. All right. Was that consultant Harry Markopolos?
A. That's right.
Q. And as a result, you filed in the State of California, correct?
A. Correct.
Q. And did the State of California join in the litigation?
A. They did, about a year later.
Q. And when did that case resolve?
A. That case resolved 2016, I believe.
Q. And during your representation of that relator in the State of California did any other law firms partner with Thornton and/or Thornton and Naumes?
A. Yes. Lieff Cabraser was local and

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co-counsel in that matter.
Q. And how did Lieff come to be co-counsel?
A. I believe Mike Thornton discussed the matter with Robert Lieff and it arose out of that relationship.
Q. All right. And is it a fact that Lieff is a California firm?
A. That's correct.
Q. So that was an advantage?
A. Absolutely.
Q. Were there any other advantages to Lieff Cabraser being co-partner?
A. They're excellent lawyers.
Q. And were any other firms involved in the California action?
A. I cannot recall specifically which firm Philip Michael was with at this time. There were a couple. But no, it's just those three.
Q. At some point, Mike, did Thornton in another matter partner with Labaton Sucharow?
A. An FX case?
Q. Yes.
A. Yes.
Q. And what was that matter?

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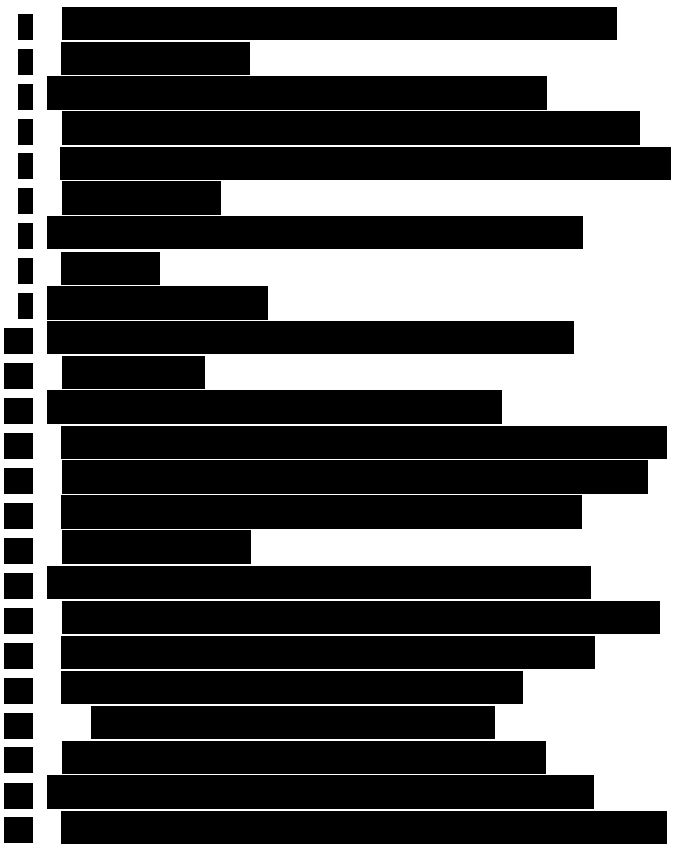

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us, from the client, and they involved foreign exchange trading data and a provision of certain documents that had been referred to in the meeting, specifically investment manager guides. And I remember we asked for the data and it took a long time, relatively speaking, for it to show up. When we received the data, we had it reviewed by a consulting expert that we had been working in with in the FX cases.

Q. And who was that consulting expert?

A. FX Transparency.

Q. And what did FX Transparencies tell you about those documents?

Q. So what did this indicate with respect to any liability or exposure or misconduct on the part of State Street?

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Q. And do you recall what that amount was?
A. I think that the average on the standing instruction trades was somewhere around 18 basis points of the trade, and the direct trades were closer to 3. So maybe a multiple of five or between five and six was the difference.
Q. So what does that mean as far as total damages?
A. For Arkansas?
Q. Yes.
A. The dollar amounts? I, I can't recall the exact number in that report. Something maybe around $1 million maybe sticks out in my head. But I'd have to look at it again to really be able to --
Q. But upon hearing this, what effect did it have on your client?
A. The client was already upset about from what he had heard and this was consistent -- It didn't make him feel any better.
Q. And were you the lead attorney for Thornton at this stage?
A. I was the lead on a lot of the substantive matters, matters ultimately relating to damages and what I would call knowledge issues on the part of

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the bank, yeah.
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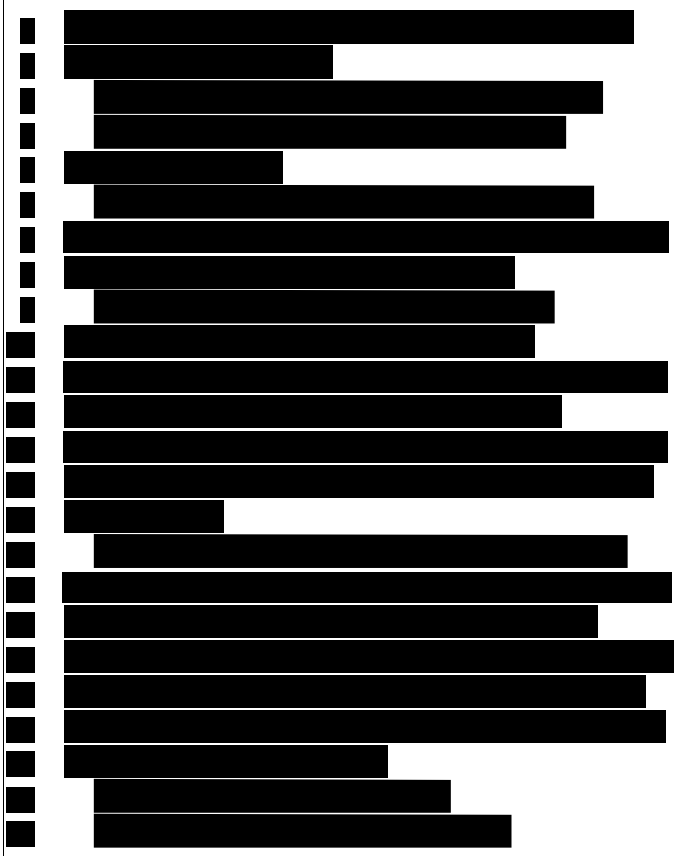

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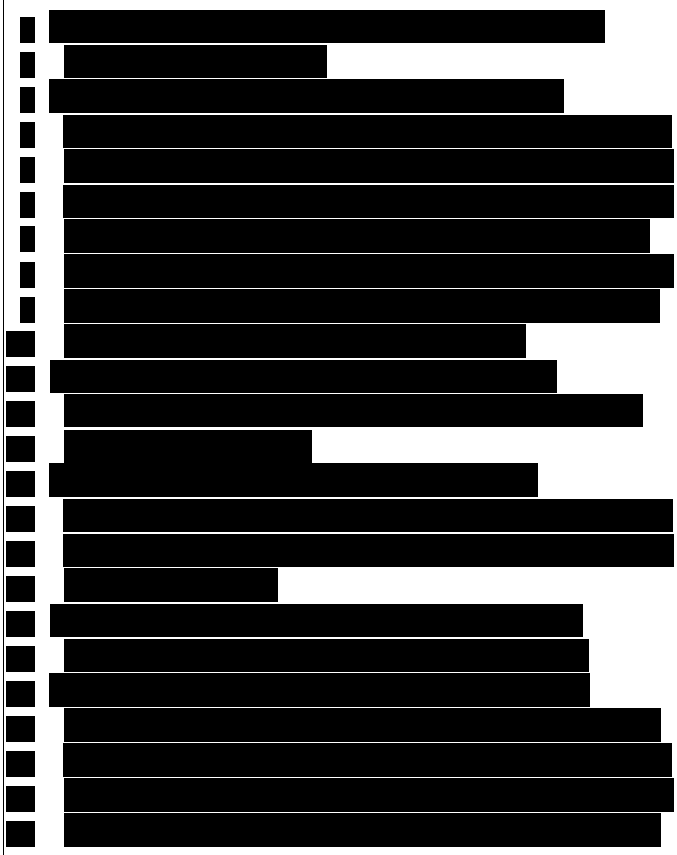

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background that you wanted people to be familiar with in order to be able to do the review effectively, and that's knowing what issues are in the case beyond what's in the complaint.

THE SPECIAL MASTER: So on that latter piece of it, did you participate in developing a binder for the staff attorneys telling them about the case?

THE WITNESS: I did participate in this phase of it, Judge. I drafted an e-mail with some of the things that I thought were important for people to look for at that time. The binder per se is something that -- Well, there are many binders. I did collect all of the memos that the staff attorneys wrote after they were done in a binder, but, and I drafted the issue memo assignments.

THE SPECIAL MASTER: Yeah, that's where I was going next. Did you participate in the development of the issues for the staff attorneys to research or to look for in their document review?

THE WITNESS: I drafted every single one, Judge. Hoffman might have done a couple at my direction, but all of the initial memo assignments -- Or strike that. I drafted 60 some odd

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assignments. I don't know if any were drafted by any other firm. I don't think so. But the ones that I sent out to everybody were the ones that were done.

THE SPECIAL MASTER: This is for the Labaton attorneys, staff attorneys?

THE WITNESS: Well, for all of the staff attorneys.

THE SPECIAL MASTER: Labaton and Lieff staff attorneys?

THE WITNESS: Yes, Judge.

THE SPECIAL MASTER: As well as those that were allocated to you?

THE WITNESS: Yes, sir.

Q. Did any of the Thornton Law Firm attorneys take on any of these topics for briefing or drafting of memoranda?

A. No.

Q. Who did, to the best of your knowledge?

A. The staff attorneys that were located at the Lieff and Labaton offices physically, including the ones that were allocated to the Thornton firm.

Q. Did Michael Bradley take any on any of those memoranda?

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and you were billed for them? By you, I mean Thornton.
THE WITNESS: Well, I understand that we actually had the direct financial responsibility for at least some of these folks, Judge, and then there were others that were reimbursed, but, however it's phrased, yes, I don't recall that we've done this before.
Q. Why was, why were certain attorneys at Lieff and Labaton designated as Thornton attorneys?
A. Well, everything we'd done through the discovery process with Lieff and Labaton had been a joint effort and we had achieved some level of parity. And we had started with contributions to the litigation fund. Every time Catalyst needed more money or Jonathan Marks needed more money, which was a few times because of all the mediation sessions, we contributed equally. And the division of the staff attorneys was a logical progression of that kind of parity between the firms.
Q. But in this particular case there were by name designations of attorneys at Labaton and Lieff as being Thornton, as working for Thornton, correct?
A. I believe that's the case, yes.

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EX. 21

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
- - - - - - - - - - - - - - -x
ARKANSAS TEACHER :
RETIREMENT SYSTEM, :
et al., :
Plaintiffs, : CA No. 11-10230-MLW
v. :
STATE STREET BANK :
AND TRUST COMPANY, :
Defendant. :
- - - - - - - - - - - - - - -x

July 6, 2017
Washington, D.C.

Deposition of:
CARL S. KRAVITZ,
called for oral examination by Counsel to the Special Master, pursuant to notice, at JAMS, 1155 F Street, Northwest, Suite 1150, Washington, D.C. 20004, before Christina S. Hotsko, RPR, of Veritext, a Notary Public in and for the District of Columbia, beginning at 10:20 a.m., when were present on behalf of the respective parties:

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litigation department?
A. I have been or I was for well over a decade. I think that position has sort of decreased in its importance, given the change in our management structure and also my advancing in age.
Q. All right. And could you describe the work that Zuckerman Spaeder does, practice areas that it's involved in?
A. Sure. We, I would say, are best known for our white collar criminal defense practice. We, however, do -- more than half our work is civil litigation.
Historically we've been sort of capped at 15 percent, contingent fee, the rest hourly work. Although, in the last couple of years the contingent/class action work has increased to maybe up to a quarter because we added a practice in our New York office that is on the plaintiff side.
But the best description of our firm is litigation boutique.
Q. Thank you, Attorney Kravitz.
Could you give us an overview of your firm's role in the State Street Trust litigation

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that brings us here today?
A. Yes. We were asked to come into the case by Brian McTigue on behalf of the Henriquez plaintiffs. And we participated in the case in that role, and also I would say generally as one of the ERISA counsel because we worked cooperatively. And the "we" is Brian's firm and my firm worked cooperatively with Keller Rohrback and the other ERISA firms.
Q. And when did you first become involved in the Henriquez complaint?
A. Best of my memory is September of 2012.
Q. And were you involved in that matter when it was removed and transferred?
A. No. My understanding is that there was a case filed in 2011 in Maryland that -- at some point I thought it had been dismissed without prejudice and re-filed in Massachusetts. But I wasn't involved at that point. By the time I got involved, the case was in Massachusetts and had been assigned to Judge Wolf.
Q. And were you involved when the Andover Companies complaint was filed?
A. Yes. Shortly after we got involved, Lynn's firm, Keller Rohrback, filed the Andover

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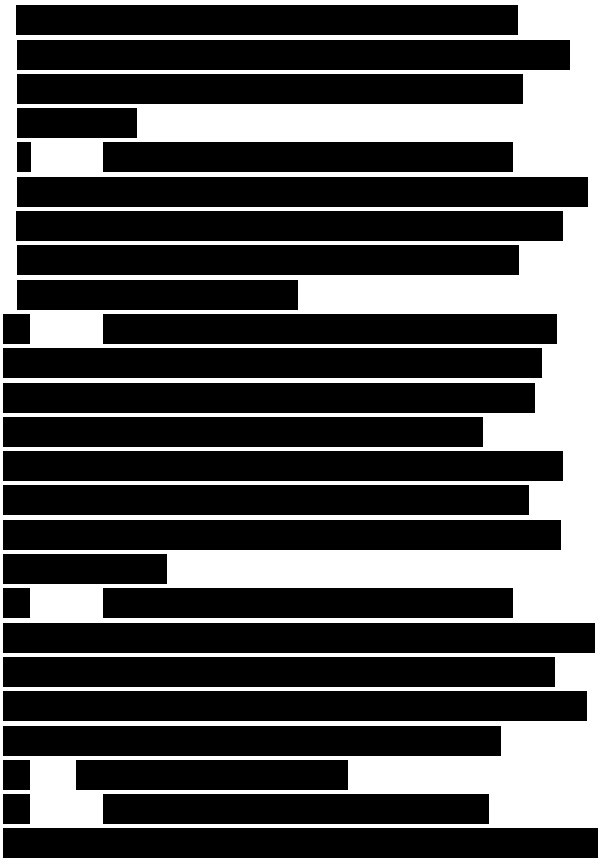

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Q. Okay. And with respect to the Henriquez complaint, what were -- in your assessment and in your discussions with co-counsel, what were the risks of bringing that complaint? And did the risks that you considered differ at all from the risks that the consumer class firms were confronting in the case?

A. Let me see if I can answer both parts of it. But yes, I can try to describe to you what I recall the risks to be. And the answer to your question is, yes, I do believe that the risks differed.

In terms of the main risks that I recall -- and I just need to have a caveat here, which is that I can't with a hundred percent certainty say that that's exactly what was in my mind or the firm's mind in September of 2012 because this case went on for a long time. But let me see if I can get to the risks and do my best.

Q. Sure.

A. I recall that there was an issue of whether or not the bank was actually an ERISA fiduciary. The issue of whether a entity like the bank is a fiduciary. It would turn on a number of

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things, but in particular whether it exercised discretion in what it did. That was a major factor.

So that was one issue. And, obviously, if we didn't establish that the bank was an ERISA fiduciary, that would have been significant, both as to breach of fiduciary duty claim but also the prohibited transaction claim.

I must say that Brian was way more of an expert on the prohibited transaction side. But that was definitely an issue, were these, in fact, prohibited transactions, in which case, if they were, then the bank would just be liable.

There were issues and risks -- and I don't know if it goes directly to the strength of our claim. But there were issues at the beginning concerning preemption. And that, in my memory, took two forms. One is, with the ERISA claims that we had alleged, did they preempt the state law claims that the consumer people had alleged. So that was an issue.

The other issue that I know that we considered was whether or not there were state law claims that had been -- that had not been alleged by the consumer people that might not be

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preempted. So I recall that.

And the last thing that I recall in terms of case risks, sort of on a general level, is how you would measure damages in a case like this. You know, what was the baseline that one might use to calculate the delta and what the actual damage was. Was it going to be the entire markup or was it going to be the markup of something in particular?

And as to that, we did consult an expert named Stephen Glass to help us with that concept and also some of the internal details of the foreign currency transactions.

Those, as I sit here right now, are the main risks that we were considering or issues we were considering at the outset, on top of which, you know, it's a big case defended by a powerful institution and a Class A law firm, Wilmer -- whatever they're called right now. And they were going to put up a terrific defense.

SPECIAL MASTER ROSEN: How large was the issue of whether State Street was a fiduciary within the meaning of ERISA, such that State Street could be subjected to ERISA liability?

THE WITNESS: I don't know exactly how to

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answer. It's a good question. I --

SPECIAL MASTER ROSEN: I mean this in the context of risk analysis.

THE WITNESS: Yeah. I think that we considered it a significant enough risk that we, you know, put it into our, you know, calculation of the case.

I do believe that, over time, I felt like we had a good argument on that. But, you know, it was a big risk. And if we lost it, we were in a world of hurt in the case.

SPECIAL MASTER ROSEN: Other legal hurdles as well, whether procedural, jurisdictional, or substantive?

THE WITNESS: Well, there were -- well, for sure there were other hurdles. I mean, there was the preempt -- in terms of our participation in the case, if in fact -- well, let me back up for a second.

The class definition of the consumer people technically covered our clients. There was definitely a faction on the consumer side that said we represent these people, what are you doing in the case? Now, they didn't assert ERISA claims and, as it turned out, it was important that we

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did. And I think it was important to the outcome.

But there was a risk that we were going to be somehow shunted to the side. And that was a big risk that we considered in terms of our taking the case. So thank you, Judge Rosen, for reminding me of that. I sort of forgot --

SPECIAL MASTER ROSEN: I didn't want to ask a leading question.

THE WITNESS: Well, I would say that you refreshed my memory.

And I will also tell you that we seriously considered the procedural issue of whether we needed to intervene in the consumer case. And we did fairly extensive research on that, and we may have even drafted a motion. We did not end up filing it because, as things started to play out, we were able to participate in the mediation. But that was a significant risk.

SPECIAL MASTER ROSEN: What about other potential procedural obstacles.

THE WITNESS: Whether it was class certification. And I have not answered, by the way, the second half of your question, which is were there differences between the ERISA case and

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transactions, you don't have the sophistication of the client defense, you know, in terms of, you know, did they actually rely on this, did they know?

So those aspects, which can be characterized as individual issues, in my opinion, were absent on the ERISA side. But on the other hand, we had the fiduciary issue and this. And also, obviously, with the prohibited transactions, if there were a couple of, you know, sets of transactions that basically fell within a certain form, in my opinion that would be easier to certify.

But this was a debate in the case and this was a risk particularly for us coming in because the consumer people didn't really want us coming in and taking a chunk of their case. And those were all issues.

SPECIAL MASTER ROSEN: And if a court were to find ERISA preemption vis-a-vis the consumer side, presumably the ERISA class would have taken some percentage of the class that they were purporting to represent?

THE WITNESS: Yes. And that's for sure. Or maybe the consumer people would have amended,

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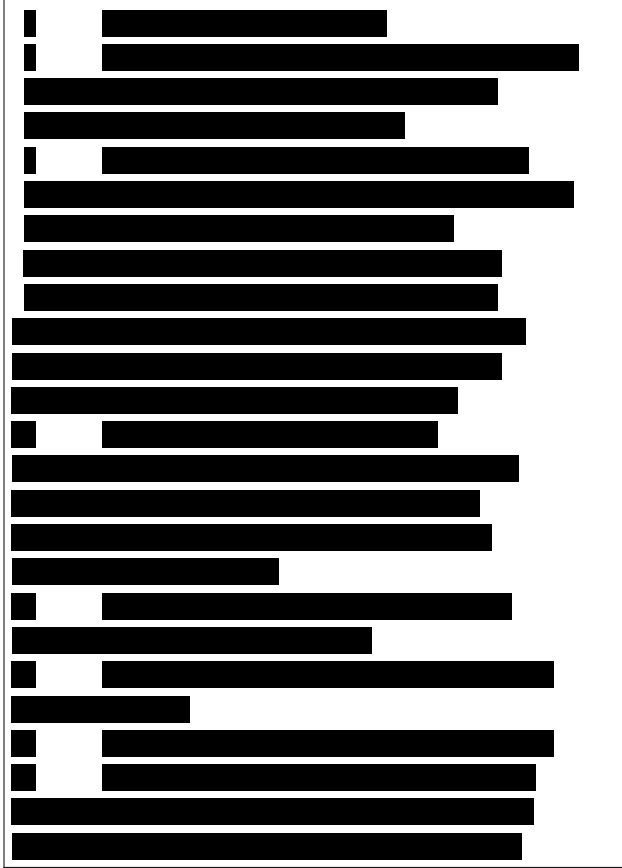
add ERISA claims, and then they would have said they don't need us. When we're looking at the risk of the case for the firm, you know, these were all unknowns at the beginning and were ways in which we could get in the case, expend fairly significant amount of time, and not end up with anything at the end.

SPECIAL MASTER ROSEN: So I want to go back to the Rule 23 standards for class certification and get your thoughts on what barriers to entry there may have been posed by Rule 23 and the more recent decisions of the Supreme Court, if any.

THE WITNESS: Well, I guess I'm trying to think a little bit about Comcast. I haven't really thought that through because Comcast came along afterwards. But you do have to be able to show that there is a damage theory based on a common course of conduct that can be approved class wide.

SPECIAL MASTER ROSEN: I don't want you to speculate in terms of later-acquired knowledge. But when you were looking at the case and doing your risk analysis, which was the time frame 2012, 2013?



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another issue, too. Sorry. I think that there was probably enough for commonality because you just need, you know, one common issue, factual or legal. Whether or not all the class reps would have been sufficient for a typicality, you know, I think probably.

But the biggest issue in a case like this, in my opinion, is the predominance and that the common issues predominate and that you can calculate class-wide damages. And that's where you really get into trouble, particularly in any kind of contract action, which is what the consumers had alleged, plus fraud. Because you're going to be looking at the differences in the actual written contracts. And there were some differences. And Wilmer had found every possible, you know, thing that was possibly different. And obviously there were individual issues when it comes to fraud. And we didn't have a guarantee that we were going to be out of that area.

So that's where I think the biggest thing was. And I want to tell you about another issue that we were facing, which had to do with standing. I'm sorry, I forgot about that. But -- and here's the way I understood the standing

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issue, which is that if you had an adequately funded plan and the class rep or the plaintiff was a beneficiary, so that even if the bank was ripping off the plan, would that impact what the beneficiary got because the plan was adequately funded. And there was --

SPECIAL MASTER ROSEN: So individual and concrete injury versus injury to the plan in general as a collective injury?

THE WITNESS: Yes.

SPECIAL MASTER ROSEN: Is that accurate?

THE WITNESS: Yes. So then there was the question, did we have the right kind of client. And, you know -- so that was another risk in the case. And we might have to have amended. But that was an issue in the case. I have a memory that there was an Eighth Circuit case that was good for the defense on that, but that's just a memory. And it could be the wrong circuit. But that was another issue in the case, that was another risk in the case that we definitely had to consider.

And I would say procedurally also that when we got into the case, the consumers had survived a motion to dismiss, but the ERISA motion

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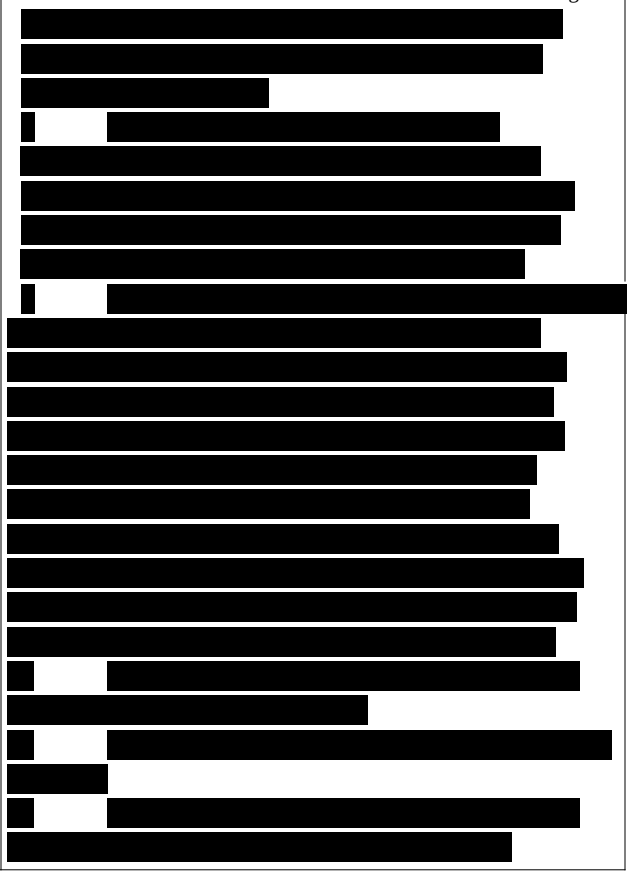

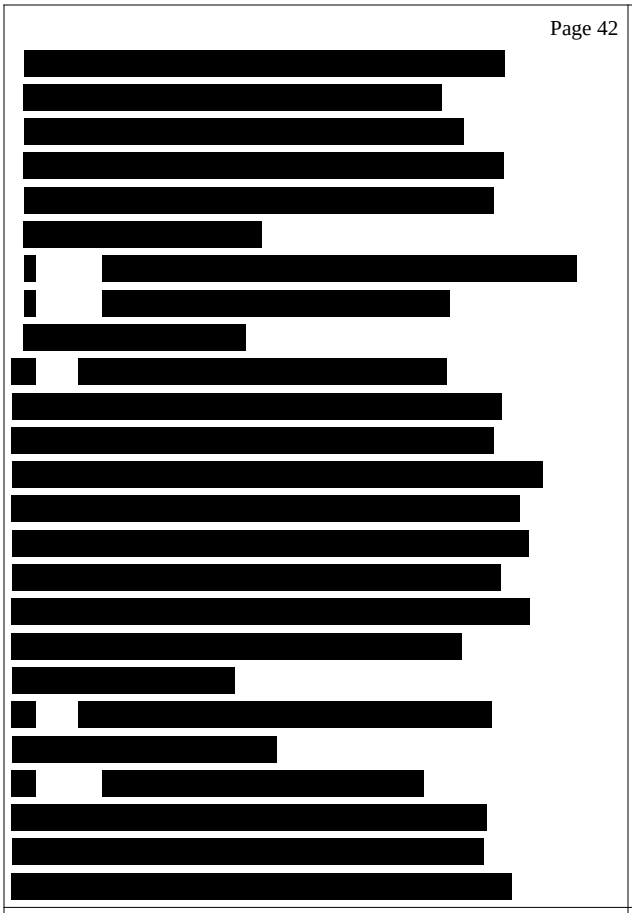

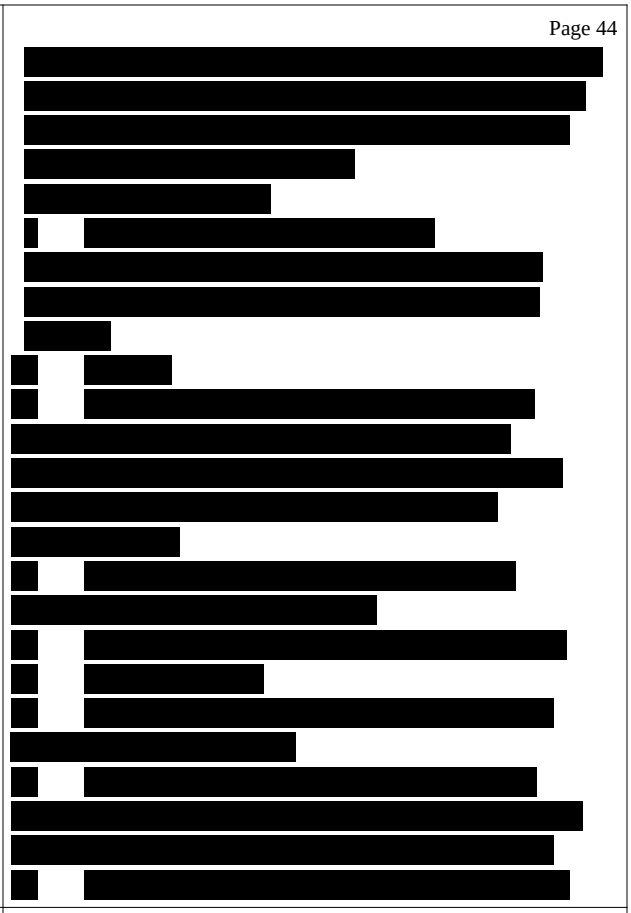

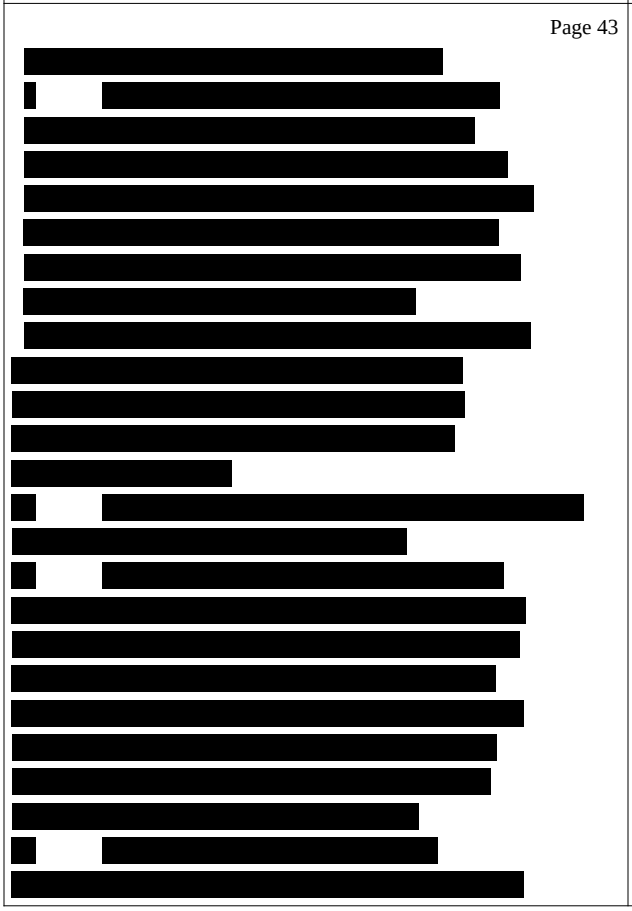

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when you and your firm were involved, and ask you to describe your relationship with the big three over the life of the case. Could you just describe for us in general terms what that relationship was?

A. Sure. I've mentioned one aspect of it, that there was a tension. And I don't use this really so much in a personal sense. But there was the tension that the class definition of the consumer lawyers included our clients. And that, you know, perhaps we could be intruding in their case. So there was that tension.

Q. Conflicting theories of the case?

A. Well, there were conflicting theories. But, you know, if we come in and we're commanding a chunk of the case, that could have economic repercussions down the road.

So that was there. And it was just a reality of what the claims were and how the litigation unfolded.

I do believe that there were some possibly and some of the exchanges before we got in -- some of the -- well, let me scratch that.

I think there may have been some tension expressed between the consumer lawyers and the

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ERISA lawyers. Brian -- and I'm not pointing the finger at Brian. But I think there was a little tension between Brian and the Labaton firm. And maybe others. I don't know what prompted it.

SPECIAL MASTER ROSEN: So did the tensions inherent in the conflicting theories and the potentially conflicting results play out in the broader strategies of the case and prosecution of the case?

THE WITNESS: I would say yes. I was going to say yes and no. But I would say yes overall. And let me explain to you why I say yes.

At the beginning, there was this issue. And then there was an issue about the mediation at the very beginning. And I recall that -- fairly quickly that counsel for the Henriquez plaintiffs and the Andover plaintiffs were added to the mediation agreement with Jonathan Marks.

But there was a time period where there was some suggestion that the ERISA side might be negotiated on a separate track from the consumer side. There was initially -- we didn't think that was a good idea, by the way, and we didn't think it was in the interest of the bank. But that was going on, and the mediator, you know, may have

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A. Okay. And I didn't get to finish the tension thing as it went through.
Q. Please do.
A. But it relates to that.
Q. Yes.
A. First of all, I felt that the ERISA claims, which are not alleged in the consumer case, were important for the class. And so I didn't think that it was adequate representation, simply alleged state law claims on behalf of these private plans, that may be preempted. And, therefore, but the private plans into the fraud breach of contract bucket.
So for that reason, I thought that there should be separate representation.
I also thought that as things played out down the road and when you got to class cert and maybe even Rule 9b, because I don't know whether 9b applied to the ERISA claims. Probably not. But certainly when you got to class cert, that you were going to have a much stronger argument on predominance than you would have just on the fraud breach of contract state law claims.
Okay. So that was a difference. And I thought that the ERISA plans deserved separate

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representation for that reason.
The last thing, the main point that comes to mind, is that the way this all played out was that we had to negotiate the overall settlement with the bank for the private plaintiffs, which included the consumer people, the mutual funds, and us, ERISA. And that turned out to be the $300 million.
But the other issue was how is that going to be allocated. What portion of that money was going to go to the ERISA folks? There were also issues with the mutual funds and the SEC. And so that -- and this is just my opinion. And this is another, by the way, issue that could have gone to class certification. But that since we had a defined sum, which was $300 million, if 60 million went to the ERISA plans, then $240 million would go to the consumer side. If those numbers had -- and so every extra dollar that went to ERISA came out of the consumer side.
Whether or not that was a conflict that could have prevented class certification, I definitely think that had there not been separate experienced, competent representation for ERISA, that an objector who had come in and said that

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settlement something that really could stick and would be much less objection-proof down the road.
Q. Carl, that $60 million of the 300 million is 20 percent.
A. Yes.
Q. Did that -- was that based on the relative trading volume of ERISA relative to the consumer class?
A. Certainly in part. But the answer is in part, no. Because we initially were told that the ERISA volume -- and, again, I hope I'm being as accurate as I can. Well, I am being as accurate as I can. I hope it is accurate. Was slightly south of 9 percent of the trading volume. I think they gave us numbers that were in the 8s, put pushing 9.
[redacted] As it turns out, that was bad information. I'm not saying that it was intentionally provided, it just turned out to be inaccurate.
As things played out, the number was between slightly above 9 and 15, or maybe slightly above 15. Why it went to from slightly below 9 to

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slightly above 9, I don't know.
But there was another group of entities called group trusts. Group trusts have both ERISA and non-ERISA assets. And I believe that they were not included in the original data we were given under the heading ERISA assets.
And so somewhere between 9-plus and 15-plus would be the actual ERISA volume, depending on what part of the group trusts turned out to be ERISA and what part turned out not to be ERISA.
The settlement, if you look at it, has a process for determining exactly what that percentage is because, at the end of the day, you need to know whether the group trust assets that are ERISA are going to take from the ERISA pile or the non-ERISA pile. And if you ask me do I know what that process has revealed in terms of what the actual percentage is, the answer is I don't know. So I wish I could answer that question.
But definitely at the end of the day, if you even assumed that it was half ERISA and -- half ERISA, you'd be up at 12 percent. Could have been a little higher, could have been a little lower. We ended up getting 20 percent of the

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terms of the allocation, we got a little push from the DOL.
SPECIAL MASTER ROSEN: So pursuing that -- and, bill, you may be headed in this direction a little later on. But pursuing that, State Street -- is it accurate to say that State Street wanted a global settlement with all the potential players, including DOL, including SEC, any other government players, as well as the ERISA class, as well as the consumers ultimately?
THE WITNESS: That's my best understanding.
SPECIAL MASTER ROSEN: And if that was the case, what role did the ERISA lawyers play in assisting to bring about that kind of a global settlement?
THE WITNESS: I would say two broad categories. One is as the mediation unfolded, we were active participants in the negotiation with the bank and producing 300 million. I don't want to pat myself on the back or Lynn on the back too much, but I -- and Brian. But I do think that we contributed quite a bit to moving the ball forward. That's one way.
[redacted]

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BY MR. SINNOTT:
Q. What was your relationship with DOL, you or other ERISA counsel?
A. I thought that it was very good. I personally worked a ton with the DOL people in the Boston regional office. Lynn and his firm did as well. They were on a good number of the calls that I was on. I think that Brian -- and I'll let him speak for himself tomorrow -- was on some of the calls I was on. But I think they were talking to all of us. I would pick up the phone and the DOL would be there. And I'm sure Brian got calls from the DOL, too. And we couldn't always add everybody on.
But I spent a lot of time with the DOL. I think they felt like the ERISA counsel were on

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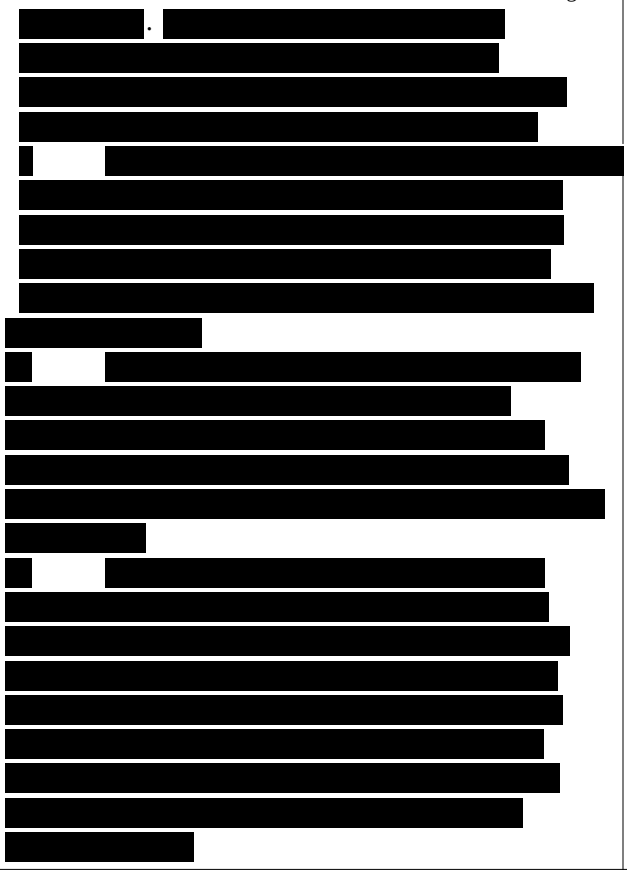

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THE WITNESS: That is my opinion.
BY MR. SINNOTT:
Q. Was that --
SPECIAL MASTER ROSEN: Well --
THE WITNESS: Was that unclear?
SPECIAL MASTER ROSEN: No.
THE WITNESS: I didn't mean it to be if it was.
SPECIAL MASTER ROSEN: That begs this question -- there's no genteel way to put this: The ERISA class ended up with 20 percent of the $300 million, correct?
THE WITNESS: Correct.
SPECIAL MASTER ROSEN: The ERISA --
THE WITNESS: On a gross basis.
SPECIAL MASTER ROSEN: The ERISA lawyers ended up with 10 percent.
THE WITNESS: That's correct.
SPECIAL MASTER ROSEN: How did that happen, given the backdrop we've just been discussing? And understanding that from everything we've learned, the consumers' law firms, the big three as we call it, made a tremendous investment in the case through the document review process. But the ERISA lawyers

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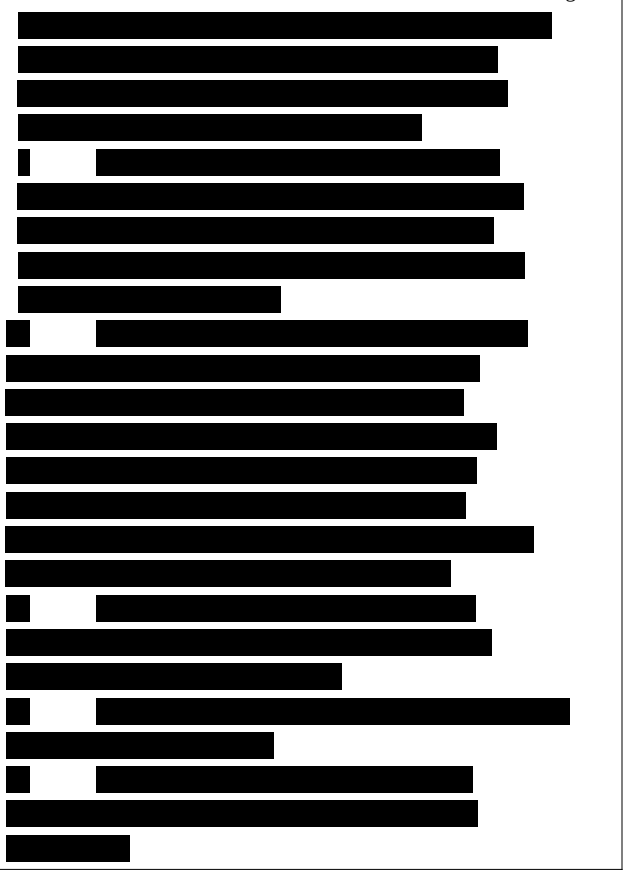

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I would say that there were a few factors that went into that -- oh, I was going to add one thing, and then I'll tell you what those factors are. In that ERISA counsel agreed that we split that 9 percent a third, a third, a third. Lynn's firm, Brian's firm, my firm. And then we had to take care of local counsel and things like that. So that was basically -- why did we do this? And I will try to give you my best answer.
The first is that we had what turned out to be bad information from the bank, which was showing us that the ERISA volume was slightly south of 9 percent, and Bill Paine was telling us that if we did actually do a deeper dive into the data it might go down.
So it looked like it was roughly in the vicinity of the volume.
Second reason was that we were not yet, by that time frame, what I would say full participants in the mediation. We were sitting in the same room, but I didn't feel like we were considered an entire -- you know, completely on the team, because I've described the factors that went into the tension. You know, they represented the same people, we might be taking part of the

this subject and this subject or a group of hot documents other than I've already described, nothing like that.

Q. Do you know who put together the PowerPoint presentation that you received or were shown?

A. I'm pretty sure that Michael Lesser would have.

Q. Of the Thornton Law Firm?

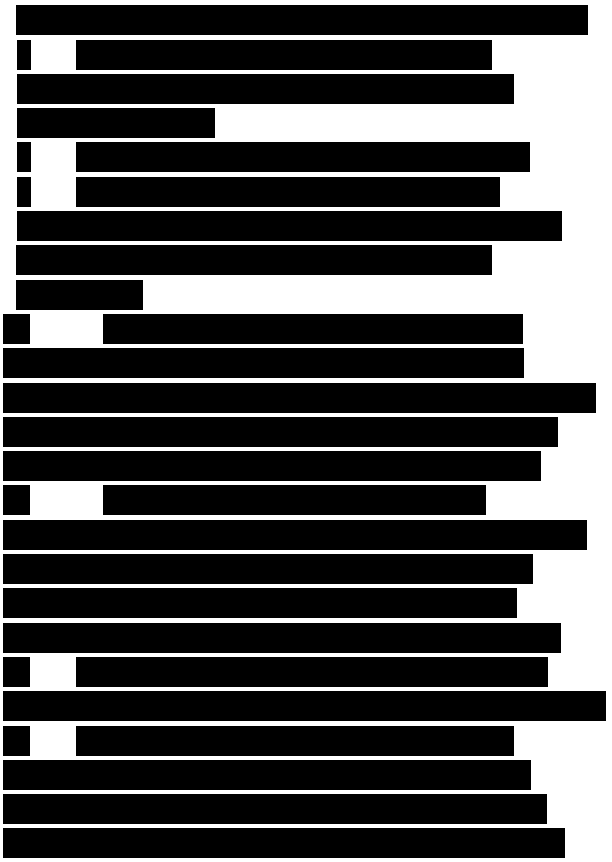
A. Yes. Yes. He was an extremely helpful lawyer on this case.

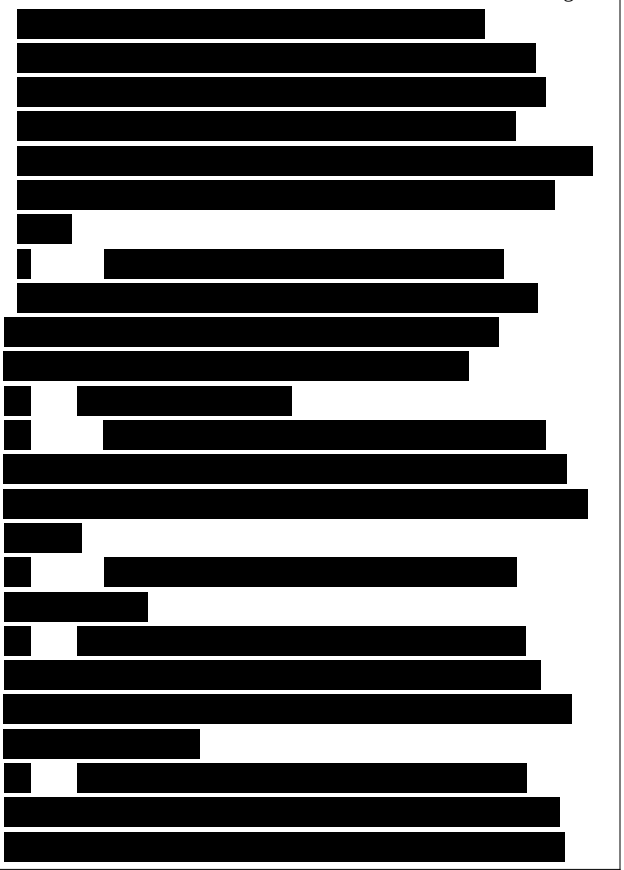
Q. Very knowledgeable about the foreign transactions?

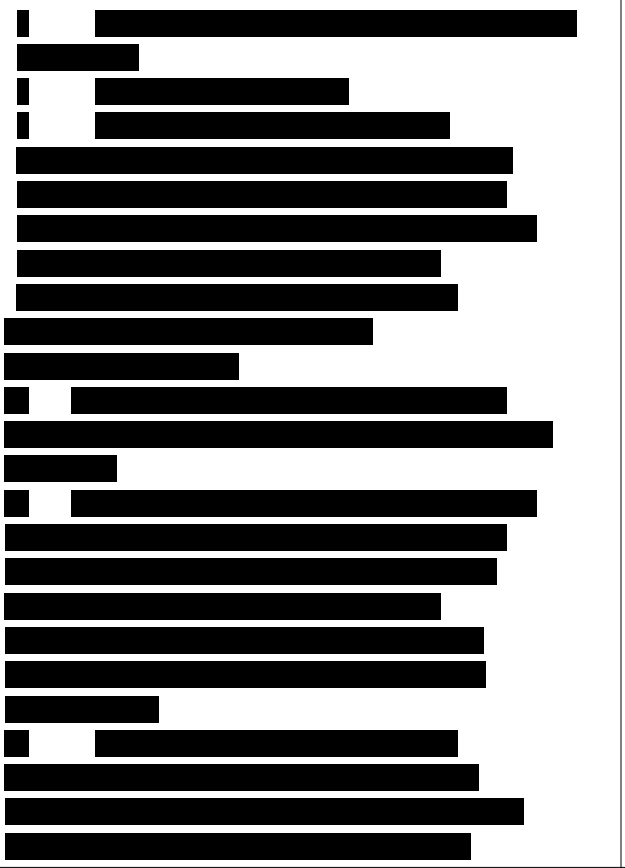
A. He was. He was -- he was good with the numbers. I mean, not all lawyers like numbers so much. I happen to like numbers. So I did talk to him about -- you know, we had the volume data, which I told you we had gotten earlier. And I do recall talking to him about, you know, the volume data.

I also recall that he was helpful in terms of being a participant in that slide show. That's my best memory.

Q. Do you remember, Carl, if the ERISA attorneys ever requested of the consumer class







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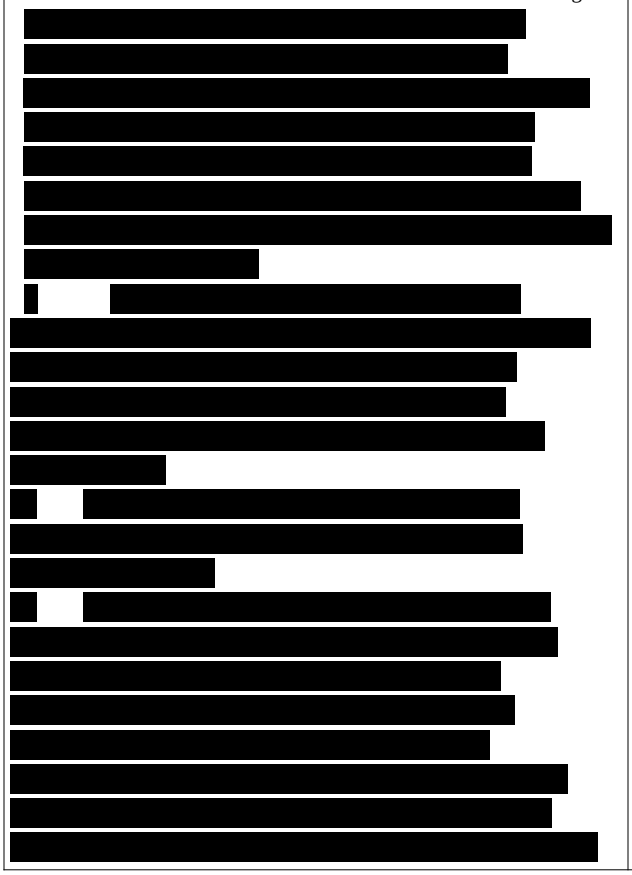
and more skill.
But yes, our goal is to do what I described but within the confines of what is sometimes just practicality of the real world and e-mail and electronically stored information. There are times when you just have to face reality.
Q. And in those mega cases with the extensive document review, Carl, has the firm used staff attorneys or contract attorneys for the purposes of document review?
A. Yes.
Q. And on how many occasions have you done that?
A. That, I can't give you a reliable number. But on several.
Q. Are staff attorneys employees of the firm?
SPECIAL MASTER ROSEN: In the sense that they're non-partnership track but still attorneys employed by the firm as employees.
THE WITNESS: Yes.
BY MR. SINNOTT:
Q. Receive a W-2, for example.
A. Yes. We have -- most of the lawyers --



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and I can only tell you generally. I can't tell you where there are some exceptions, but as a general matter, my understanding is that most, if not almost all, of the what you would call a staff attorney. They're our employees. They're lawyers. They get benefits. We set an hourly rate for them, and they are salaried. And that's most of them.
SPECIAL MASTER ROSEN: So they're not paid by the hour; they're paid by salary?
THE WITNESS: That's my best understanding.
Now, I'm not saying that there aren't some exceptions to that. Okay? And I'm also not saying that we might get what you might call a contract attorney from an agency and they might be in that role for some period of time so that we can evaluate them and if they're good, we might convert them to the staff attorney thing. I'm not saying that there aren't people like that. But I'm giving you our general practice, as I understand it.
SPECIAL MASTER ROSEN: So if you were -- as I understand it, you did not use any contract attorneys in this case --

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went to the Sixth Circuit and ultimately got reversed. But in the meantime, the SEC case went forward and the document review was all done in connection with that case. And so I wasn't really the one who was supervising that.

And so yes to your question, yes, I've been involved in a case where we've used contractor staff attorneys. And it's recent because the class action is still going on and we definitely are enjoying the fruits of that work. But no, I can't tell you exactly what the financial arrangement was because I just didn't supervise it. I wasn't the one responsible for the bill. And I'm really sorry I can't give you better information on that. I wish I could.

SPECIAL MASTER ROSEN: Well, let me put you on the hot seat.

THE WITNESS: Okay.

SPECIAL MASTER ROSEN: Your firm is one of the relatively few among all of the firms that has paying clients here.

THE WITNESS: Right.

SPECIAL MASTER ROSEN: As well as contingency fee work.

THE WITNESS: Right.

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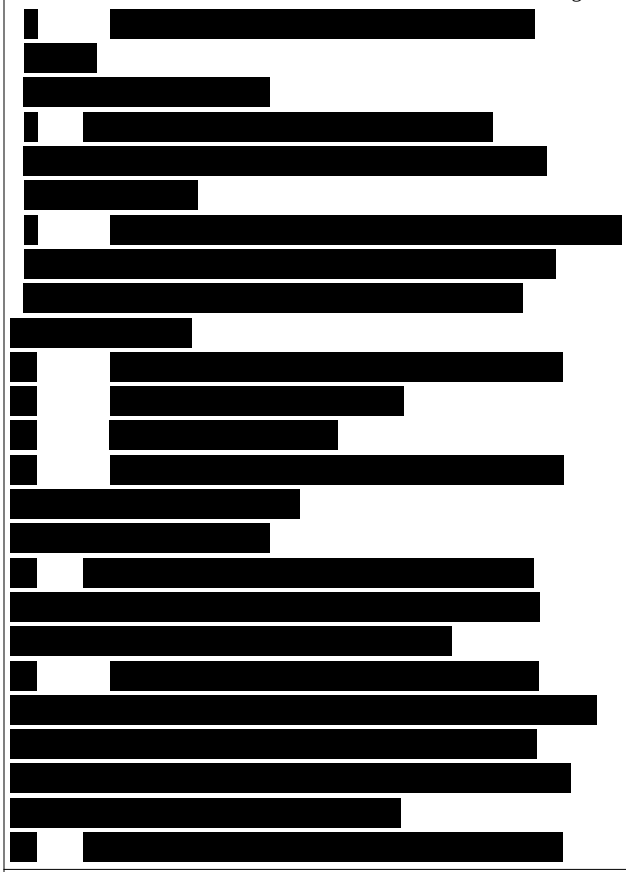

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documents that may have been in that PowerPoint, I don't recall seeing hot documents from the consumer firms.

Q. Okay.

A. I don't recall that. Whether there was an excerpt of something else, there could have been. But I don't remember that.

In terms of sharing with the ERISA firms, I don't know if we called them hot documents, but we definitely coordinated our efforts. And I think that that is reflected in the billing records.

SPECIAL MASTER ROSEN: Carl, I want to go back to the PowerPoint presentation.

THE WITNESS: Yes.

SPECIAL MASTER ROSEN: I just want to clarify. I think you addressed it. But you got the PowerPoints. But did you participate in sort of a brainstorming session with the consumer class lawyers on the PowerPoint in which the presentation was made? Were you part of that presentation with the PowerPoint?

THE WITNESS: I was definitely in the room and there was definitely discussion. I don't remember specifically what it was because it

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was -- we're talking at the end of 2013.

But I do remember the PowerPoint and I do remember that there was discussion. So if it was brainstorming, I'm sure we were talking about the substance of the case.

SPECIAL MASTER ROSEN: So the point is, the ERISA lawyers were included in the actual presentation?

THE WITNESS: Yes. They made the -- yes. We were in the room with the other -- with the consumer lawyers when whoever went through the PowerPoint. My guess it was --

SPECIAL MASTER ROSEN: Lesser?

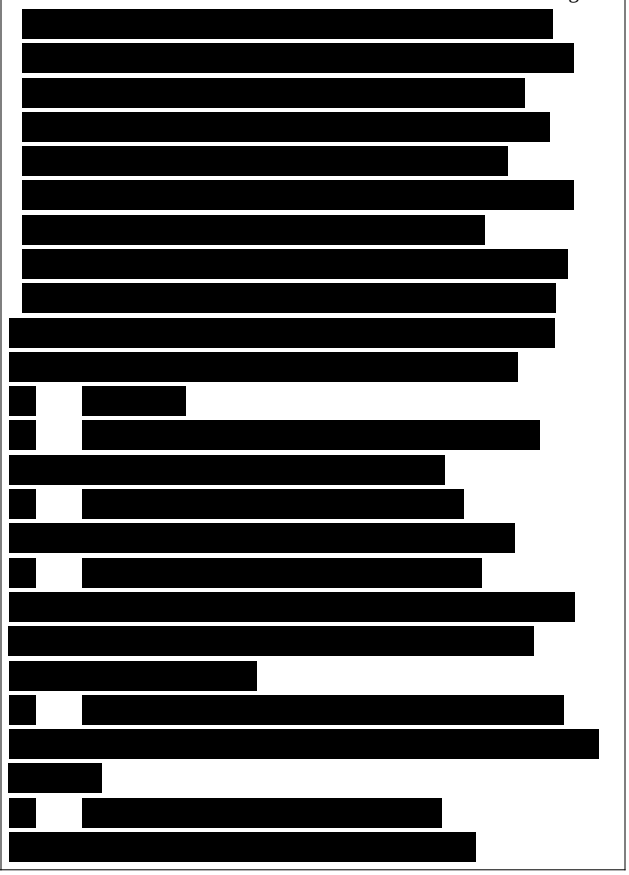
THE WITNESS: Michael Lesser. So yes. Absolutely, we were in the room, and there was discussion and we were included in that sense. And that, to some degree, was a bit of a breakthrough because that was more inclusion than there had been up to that point because we had made the fee deal.

SPECIAL MASTER ROSEN: Thank you.

BY MR. SINNOTT:

Q. Did that PowerPoint presentation in 2013 shape or alter the strategy of the case?

A. I would say no in any significant way. I



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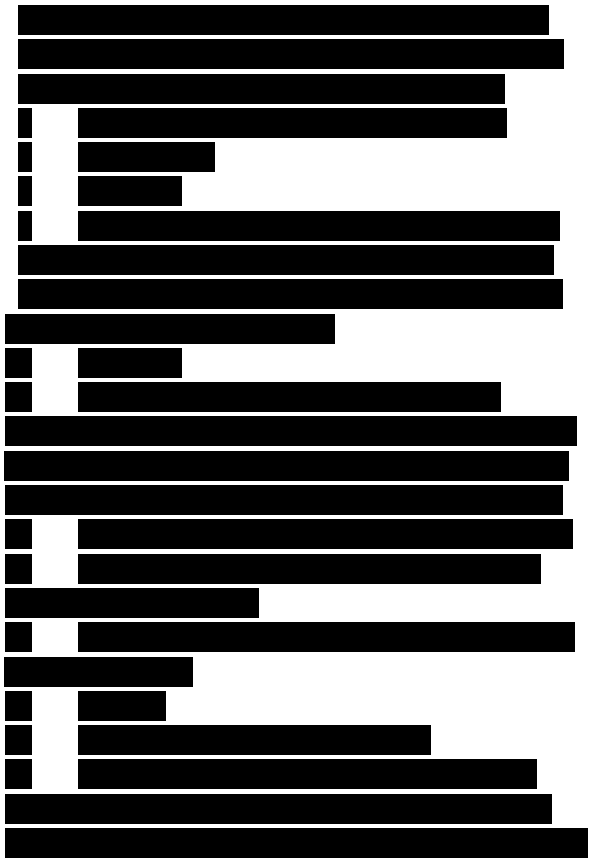

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reasonable settlement?
A. I did.
Q. And why?
A. Well, for a few reasons. One is that we had been working with the volume data for some period of time. And we had done some, you know, calculations. And as I said, there was an issue as to what the baseline would be. Would be entitled to the entire markup or, you know, only the markup above a certain level.

And I felt like we were getting a pretty good percentage return on the dollar. I wish I could tell you exactly what it was, but it was I think -- I think the max damages were somewhere in the 1.2, $1.4 million -- billion dollar range. Maybe 1. -- somewhere in there. And we were getting, you know, well over 20 percent on the dollar.

And that -- and when I say over 20 cents on the dollar, I'm talking about of the entire markup. So, you know, if it wasn't on the entire markup, it was higher than that. And I regarded that in a case with a lot of risks. And the certainty that a settlement brought to be a good result.

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It also produced a fairly significant amount of money for a class member. Because this was a class with between two and three thousand class members. So we're not talking about coupons or movie tickets or a few dollars here and there. I mean, these were real dollars. So I considered it a good deal. That's the 300 million.

In terms of the $60 million allocation to ERISA, I thought that it was a fair representation of the volume plus what I thought were strengths of the ERISA claims over the other claims.

Q. Okay. But it was a good outcome?

A. It was. And I also thought it was -- this is the last point I'll make. I thought it was the best we could get.

Q. Carl, did you have any role in the discussion of service awards and how much they should be?

A. No. Except that I do recall thinking -- did they turn out to be -- were they $10,000?

Q. I believe so.

A. I thought that they shouldn't -- for our clients, we shouldn't ask for more than that. But I thought that that was within the range of reason. And I thought that was the consensus

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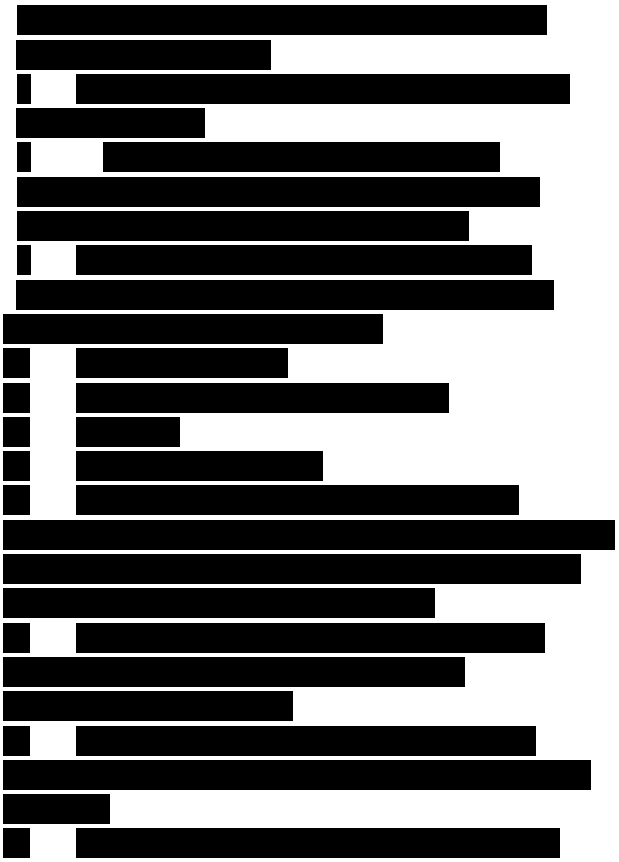

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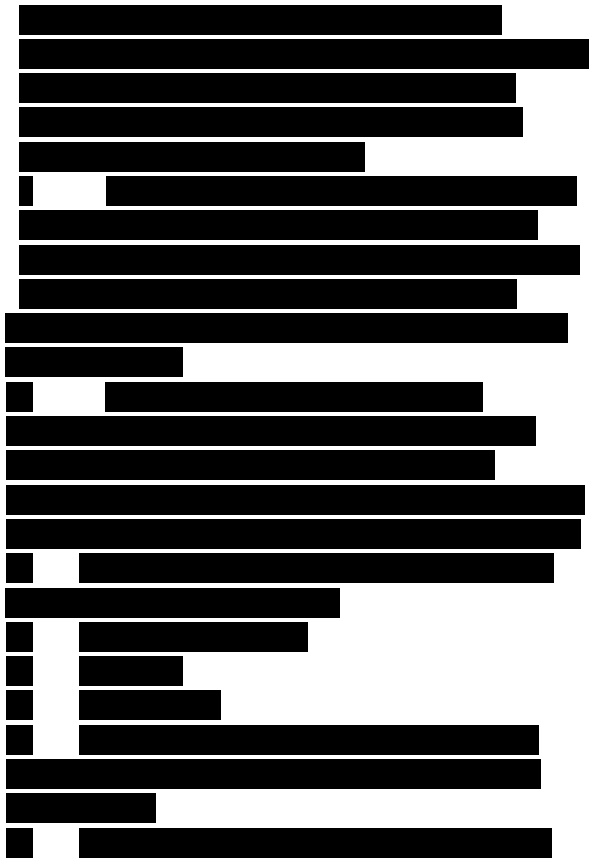

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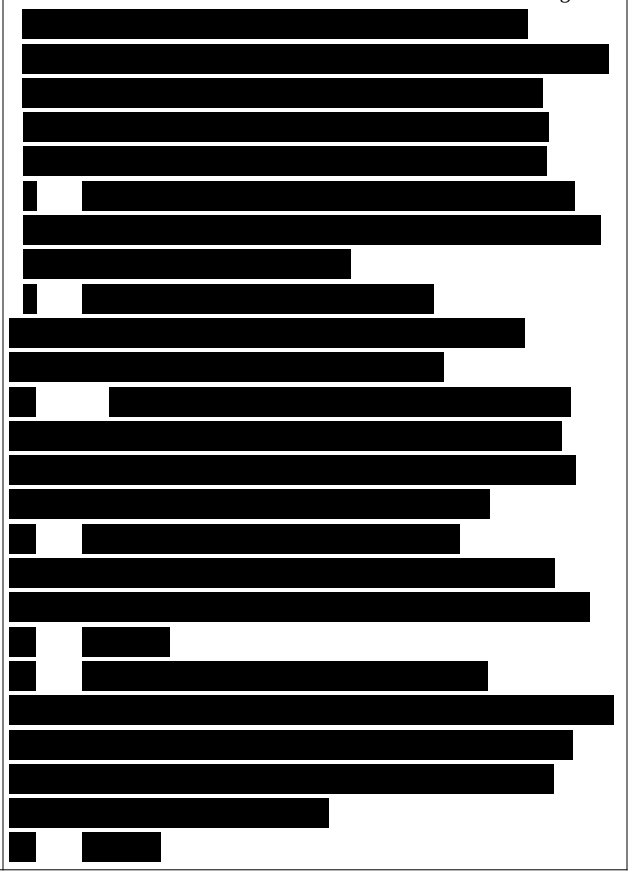

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staff attorneys that are employed by one firm are allocated to other firms and billed for them, and then the other firm would claim those attorneys on their lodestar petitions?

THE WITNESS: I have no idea if that's a common practice. I've never heard of it before, but that does not mean it's not a common practice. I've personally never heard of it or seen it, but that, I think, is largely meaningless.

BY MR. SINNOTT:

Q. And your firm has never done it in any of the class actions or the cases that it's been involved in?

A. That I know of, no.

Q. Let's talk about the fee petition and Zuckerman's declaration.

A. Sure.

Q. You talked about Nicole Zeiss at Labaton providing a model to you. Who filled it in on behalf of Zuckerman?

A. I did.

Q. And where did you get the --

A. Well, I mean, our accounting department gave me the numbers, and I -- well, either I did it or I wrote it down and my assistant typed it in. But the answer is I did it.

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Q. Okay. And you anticipated my next question. You got information from your accounting department --

A. Yes.

Q. -- that you needed for that.

During the course of this case, did your firm conduct any periodic review of attorneys' hours?

A. In our firm? In our firm? Yes. In the following sense that, as the one who was leading this case, we try to keep track of what our investment is because we try to identify situation where we may be investing a lot more than we want, and we try to exercise some discipline. I can't say that we are successful all the time in that.

But, sure, I would keep an eye on how much time we were putting into the case.

Q. And when you, in that declaration, were determining hourly rates, were these the rates that were in effect at the time of the fee declaration or at the time that they were entered, that the hours were entered?

A. At the time of the fee declaration.

Q. And is that standard, as far as you know?

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[redacted]

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anything else specific about it beyond that.
Q. Okay. And you weren't in a position to assess whether there was double-counting of hours or anything like that?
A. No, no. I didn't know anything about their contract attorneys, about their document review, about their cost sharing. All of that came up after the fact. And we weren't given, to my best memory, the fee declarations of the various firms until after it was filed.
Q. Okay. And with respect to your declaration and the rates for Zuckerman, how do you determine the rates that you use? Do you use an executive committee? Does the managing partner determine them? What's the process at Zuckerman?
A. There is a process. I believe it's directed by the managing partner and maybe the managing partner and the executive committee. The managing partner in our firm is sort of the chairman of the executive committee, which has had three or four members at various times. So it's hard for me to distinguish really the two.
But it's definitely the management of the firm. And the rates are reviewed yearly. And they are distributed to partners to see whether

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anybody disagrees or comments, and then they are approved by the executive committee and I believe by our partnership board.
Q. And do you know, Carl, if, in doing that, the committee relies on outside resources, Wells Fargo, Valeo, anything of that nature?
A. I know in the past we have gotten some market data. I thought it was Citibank or something --
SPECIAL MASTER ROSEN: Have you served in the past for the firm on the executive committee?
THE WITNESS: Yes.
SPECIAL MASTER ROSEN: And you've been involved in setting rates for the firm?
THE WITNESS: Involved? Yes, in the sense that I knew what was going on. I really didn't do the spade work for it. But I am aware that we got market data. I thought there was a study by Citigroup, but maybe it's Wells Fargo. I don't know.
And I think we have some other market data. You know, we have some idea what our competitors are charging, and we try to make our best assessment of what rates we can charge and keep our business.

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SPECIAL MASTER ROSEN: And that's for paying clients and contingency fee lodestar petitions?
THE WITNESS: Yes. We have one standard rate card set for us.
BY MR. SINNOTT:
Q. Do realization rates figure into your determination?
A. They may, but I don't know. I haven't really been involved in this in a good number of years. So I would imagine that they do because that would make logical sense. But I don't know that for sure.
SPECIAL MASTER ROSEN: Do you know what your overall, in a given year, relatively -- you can give us a range, realization rates are?
THE WITNESS: Let me answer this way because I don't personally know what they have been. I may have had access for that information. So I don't want to leave the misimpression I couldn't find out. But I believe during my interview, Graham Bush, who had been the managing partner through this period, and I believe he said our realization rate was some number over 90 percent for the average of the past three

EX. 22

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

No. 1:11-cv-10230-MLW
ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated,
Plaintiffs
vs.
STATE STREET BANK AND TRUST COMPANY,
Defendant

No. 1:11-cv-12049-MLW
ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated,
Plaintiffs
vs.
STATE STREET BANK AND TRUST COMPANY, and STATE STREET GLOBAL MARKETS, LLC, and DOES 1-20,
Defendants

No. 1:12-cv-11698-MLW
THE ANDOVER COMPANIES EMPLOYEES SAVINGS AND PROFIT SHARING PLAN, on behalf of itself, and JAMES PEHOUSHEK STANGELAND, and all others similarly situated,
Plaintiffs
vs.
STATE STREET BANK AND TRUST COMPANY,
Defendant,

****

Lobby Conference Before:
Chief Judge Mark L. Wolf

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
Thursday, November 15, 2012

****

REPORTER: RICHARD H. ROMANOW, RPR
Official Court Reporter
United States District Court
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P R O C E E D I N G S

(In lobby, 2:00 p.m.)

THE COURT: Would counsel identify themselves and with regard to the plaintiffs let me know with which case they've appeared, please.

MR. SARKO: Lynn Sarko on behalf of the Andover plaintiffs, the ERISA plaintiffs.

MR. THORNTON: Michael Thornton on behalf of the Arkansas plaintiffs.

MR. LIEFF: Robert Lieff, the Arkansas plaintiffs.

THE COURT: I'm sorry. Could you tell me that, again?

MR. LIEFF: Robert Lieff, the Arkansas plaintiffs.

MR. GOLDSMITH: And then David Goldsmith for the Arkansas Teacher Retirement System.

MR. KRAVITZ: Carl Kravitz for the Henriquez, the ERISA plaintiffs.

THE COURT: Okay.

MR. LESSER: One more on the plaintiffs' side, Judge. Michael Lesser for Arkansas.

THE COURT: All right.

And, Mr. Rudman, you represent the defendant in all of the cases?

MR. RUDMAN: Yes, sir.

MR. HALSTON: And Dan Halston, the same.

MR. HORNSTINE: Adam Hornstine, also the same.

THE COURT: Okay.

All right. As I understand it, you would like these three cases to proceed together for reasons you'll explain. There was an effort to mediate the case that was not successful, although I was told in communications I received that you had a proposal for how the cases ought to proceed and you wanted to see me, so I scheduled this pretty quickly, and Mr. Rudman made the request that we do this in the lobby. But there are two members of the public, maybe not the general public, but interested third parties, in the courtroom and judicial proceedings are presumptively open, um, so there would have to be some good reason for me to exclude them from any or all of this, I think. But I wanted to give you a chance to be heard.

MR. RUDMAN: I don't think, in good faith, I have a compelling basis for seeking to exclude them. Is it my preference for them not to be here? Yes. But, no, I do understand.

THE COURT: Well, why don't we bring them in.

(Clerk leaves to get public.)

THE COURT: And there are some documents under

seal, I think, at the moment. If we get to some point where somebody thinks there's something of a properly confidential nature that should be discussed in the absence of people who are not parties to this case, um, you can let me know and perhaps I'll ask them to step out.

MR. RUDMAN: Well, you sort of anticipated the point I wished to raise with you, sir. We did have a mediation that is subject to a confidentiality arrangement.

THE COURT: All right, then just tell Dan to keep them out there until I tell them to come in. But that's about where I was going to start.

Dan can come in, but --

MR. RUDMAN: Yes, we have no secrets from you, sir.

THE COURT: I wonder about that, but if you don't, you should.

(Laughter.)

(The Clerk enters.)

THE COURT: Um, it's not that funny.

All right. Here, um -- here, why don't you bring me up to date including the reference to the mediation and we'll go from there.

MR. RUDMAN: Okay. May I give that a stab?

THE COURT: Yes.

MR. RUDMAN: We met with you after argument on the motion to dismiss here in May. We spoke at that time exclusively with counsel in the Arkansas case. There was an existing ERISA case, but nobody was here from that group at the time. Since that time there have been additional ERISA cases filed. And so over time first we engaged a mediator to deal with --

THE COURT: Who's the mediator?

MR. RUDMAN: Jonathan Marks.

THE COURT: Okay. Go ahead.

MR. RUDMAN: And we engaged Mr. Marks by agreement. We thought the right thing to do would be to take it in the path your Honor had suggested, which is that we would first see if we could mediate a resolution to Arkansas as an individual matter and we tried that and I think what emerged very quickly from that interchange is that there's a very big informational gap between the parties. Nobody knows except we know what's in our files, but -- and the amount of paper that's involved is kind of stupefying.

Just to give you one example. We have one case that is proceeding with two customers and we have thus far produced 6 million pages in that solitary case, and if you assume that these folks represent, perhaps in the

aggregate, 1500 institutions, and that's the scale of the class they're seeking to involve -- and that's a very, very rough number, sir, but it's a lot of people. So the information gap was prohibitive on that front.

We then talked with our friends, just again the Arkansas folks for starters, to see if we could engage in a process of informal document exchange relating to every potential member of their class in the United States of America, and then of course we reached out to --

THE COURT: So Arkansas is an individual case, but I haven't focused on Henriquez and Andover, are they putative class actions?

MR. RUDMAN: Yes.

THE COURT: Okay.

MR. RUDMAN: So we now have --

MR. KRAVITZ: Arkansas is a class action.

THE COURT: Oh, Arkansas is -- oh, I see.

MR. GOLDSMITH: And your Honor directed the settlement from that perspective.

THE COURT: Right. No, I need to be reminded of this.

MR. RUDMAN: I apologize, your Honor, for --

THE COURT: No, that's good. That's good.

MR. RUDMAN: So there are three different

class plaintiffs representing two different constituencies and they may embrace, I don't know, 1500 institutions. It's a lot of work.

We then tried to think through, with the mediator's assistance -- and Mr. Marks is incredibly constructive and helpful, well, how do we go at this? And we thought as follows. And I'm speaking for everybody now, and everybody has pulled together in a very, I think, a good way. And I didn't threaten to punch anybody out. I know you're mindful of my, um --

THE COURT: The other guy threatened to punch you out and you said you could take him.

MR. RUDMAN: Yeah, that's right.

(Laughter.)

MR. HALSTON: It was a defensive matter.

THE COURT: Go ahead.

MR. RUDMAN: Anyway. So we focused on first putting off responsive pleadings, counterclaims, answers, we'd rather not do that, we think it reflects from the main show, and instead we have a fairly ambitious program to complete, quote, "document" -- I'll call it "informal document discovery."

THE COURT: All right. But, I mean, is this something that the public can't hear?

MR. RUDMAN: No, it's only if you're going to

ask particular questions about the mediation.

THE COURT: Oh, okay. Then go ahead. Go ahead. If I do, I think I'd do that at the end.

Did you -- I'm sorry. You said you reached some kind of agreement on matters generally? Um -- well, I'll ask it right now.

MR. RUDMAN: Yeah.

THE COURT: I mean, you tried to settle the case with Arkansas on an individual basis, right?

MR. RUDMAN: Right.

THE COURT: And obviously that didn't succeed. But, you know, were there any principles, did you make any progress?

MR. RUDMAN: No, I would say, except we quickly recognized that the informational asymmetries --

THE COURT: Well, I think -- I think we ought to bring the people in for this.

MR. RUDMAN: Fine. Fine.

THE COURT: And, as I said, if I ask a question that you don't feel comfortable answering with the people here, um, then I'll deal with that.

(Clerk gets the public.)

THE COURT: All right. There are two members of the public, perhaps not the general public, who have come in. This is an open session of the court.

And just to put this in context. In May, I had a motion to dismiss in the Arkansas Teachers case, um, which I denied --

-- except by agreement one party was dismissed, SSGM, is that correct?

MR. RUDMAN: Yes.

THE COURT: Um, and I think SSGM has been dismissed in the Andover case as well.

One of the questions I'll discuss at the appropriate point is whether SSGM should be, at this point, a party in Henriquez? The dismissal was without prejudice, but if discovery showed representations that indicated that SSGM is not a proper party, um, or were not reliable, it could be brought back in.

But there was an effort to mediate Arkansas Teachers, which was unsuccessful, but as I understand it there was an agreement that these three cases should proceed in tandem. It probably makes sense. Although I'm going to have the cases explained more to me, um, and I'll have to issue an order consolidating the three cases for pretrial purposes.

Is that one of the things you would like me to do?

MR. RUDMAN: Yes, sir.

THE COURT: All right.

Then I think it would be helpful to me -- because at one time I was emersed in Arkansas, but I've never focused on Henriquez or Andover, but why don't I hear from counsel for the plaintiffs in those cases to tell me a little about them. I know that they're ERISA cases. I think Arkansas Teachers is not.

MR. RUDMAN: Correct.

THE COURT: So what are the implications? But anyway, I want you to explain this to me.

MR. SARKO: Your Honor, I'm Lynn Sarko on behalf of Andover. Let me sort of give you a gloss.

The claimants or the plaintiffs that would be in these cases, some of the plans are actually governed by ERISA, they're ERISA plans, and some of the customers were not ERISA plans.

THE COURT: I see.

MR. SARKO: And therefore one of the things that -- and I guess to put a gloss on it, there might be a group that arguably as to whether ERISA law applies or there might be other claims in it, and I think one of the things that at least where we got to, um, was to realize you could analyze it as sort of the silos or pure ERISA and what those claims are, but the conduct is the same, it's just, you know, what laws governs it.

THE COURT: Which could make a material

difference in the outcome.

MR. SARKO: And I will say I will sort of jump to the end and one of the pitches I made which -- we have to kind of look at these things together because in some ways this reminds me of the ***Madoff*** case -- it was totally different conduct that was, you know, criminal and all kinds of stuff going on, but one of the things that was similar is you actually had plans that were ERISA plans and some plans that weren't ERISA plans and some plans that actually were governed by multiple statutes, and I think that one of the thoughts that we had was if we could -- that rather than having that fight now on some of those issues, if we could move it along -- because one of the issues, it's in all of our power to try to resolve the case, if we can, but the issue is, if you don't have enough information from either side to come to agreement, we kind of thought, "You know what? Let's do that first and sort of listen to the Court to see if we can set some of these issues aside." So I would say --

THE COURT: For the moment. The -- I mean, I suppose -- you're all very experienced and so I -- there's a certain presumption that if you work something out, um, it will make sense, but I need to understand it. And when you say there's sort of information you

need up front, information about what?

MR. SARKO: I think it's discovery which would be -- if you look at the end, if we were going to resolve the case or if we were to try the case, you would start at the end, you would have to say, "What are the damages you can get as to whether the conduct," liability or not, "but assuming there would be liability, what would those hard numbers be, the volume, what would be covered, what would the time periods be," those things? And one of the things that we've discussed was, you know, whether it's formal or informal discovery -- and let them call it "informal discovery" at this point, but if we actually can not fight and exchange that information and get onto the same page, we actually looked at this as a business transaction that if we could clear away all of the disagreements and just argue about the facts, then maybe we could resolve it.

THE COURT: In principle that's very appealing to me because, one, you know -- you know, if this were just a sort of two-party case, I would sit down with you to talk about settlement, I would say, you know, "First, assume somehow the plaintiff has won, how much do you think the jury will award?" Then, you know, "What are the chances of winning?" But I don't know how you could settle a case like this without trying to eliminate

misunderstandings regarding the possible damages. You might disagree and I'm sure you can find experts to support different theories if there was something wrong, but, you know, you shouldn't be operating from different pieces of information.

But this does -- and I probably said it in May, although actually I don't remember what I said, that, you know, this is a dispute, um, between formidable business interests, people -- you know, I mean, it's business. And, you know, it's Fidelity's position they didn't do anything unlawful, but on the other hand, you know, it can't be good for business to have this many substantial investors unhappy enough to sue you and hire lawyers from all over the country to do it. And from the investor's perspective, you know, as I recall your argument as well, "They gave us this discretion. They weren't paying any attention. They didn't ask us before the fact to do things differently." So, you know, if you could finish -- if you could resolve this or approach this in a business-like basis, um, that makes a lot of sense to me.

And I may not have been successfully attentive to something -- or understanding something Mr. Rudman says, I know there's one motion to dismiss and there was, at one time anyway, a dispute about the scope of

jurisdictional discovery. There's another response due, I think, on December 7th. I don't know if that's going to be another motion to dismiss.

I don't know whether you want to just put all of that stuff off for the time being?

MR. RUDMAN: We would like to back-burner all motion practice.

THE COURT: Yeah, I think I share your interests. The issues in this case are intriguing, but I've got lots of things to do. I'd rather focus on things that are really necessary. But why don't you keep going.

MR. SARKO: So I think our thought was that a lot of the motions practice would go to trimming the number of defendants, to reshaping the classes, and if we would be successful at the end reaching resolution, that would all be wasted effort because there would be a global release, etc.

So I think our proposal was to sort of move -- well, not eliminate discovery, but move -- I want to call it a "nicely informational exchange," it's to sort of get the information back and forth that if we could never settle would be discovery we would have done anyway, um, and if we are successful, we would be able to reach a resolution.

The plaintiffs here have thought -- and in every case you have ERISA, quasi-ERISA, you know, all these different claims, people squabble, and I think we've realized that we want to join hands, jump off the cliff, and see if we can get this resolved, and not bother you with, you know, upfront fighting that happens sometimes.

THE COURT: Yeah, I think if you weren't taking such a cooperative approach, I would wonder whether there should be three cases or at most two and whether there should be a single consolidated complaint or two complaints, an ERISA, a nonERISA class, but the approach -- and those are questions for -- well, it seems to me that, you know, you want to leap over some of those questions and get to things that are of more practical importance and so far I'm with you.

(Interruption by Court Reporter.)

THE COURT: What? Why don't you just say for the record who you are.

MR. THORNTON: Yeah, Michael Thornton, for the record.

I just want to clarify one thing of Mr. Rudman's excellent summary that we might differ on. There are two clear ERISA cases, Henriquez and Andover, and in the third case, Arkansas, um, the ERISA claims are included in the class definition. So we also have a claim.

MR. RUDMAN: I accept that clarification.

THE COURT: All right.

MR. RUDMAN: The Arkansas claim per se, as an individual claim, was not an ERISA claim --

MR. THORNTON: That's correct.

MR. RUDMAN: -- and that's why, I guess, they said --

MR. LIEFF: Your Honor, Robert Lieff. There is an overlap, that's all we're trying to say. We represent the same people.

THE COURT: You do represent the same people?

MR. LIEFF: Yes.

THE COURT: And then, as I said, ordinarily, um, you know, why should there be three cases and not one case or maybe one case with two classes seeking certification or whatever? But we can clean this up later. Just keep it in mind if your constructive efforts are not successful.

MR. RUDMAN: One thing we do have in mind, if you please, sir, is that -- and I agree 100 percent with Lynn Sarko's comments about stripping away the underbrush, but we also hope to build a record that will allow you to make a judgment on class certification at some point and whether there is or is not predominance and everything else. So we're trying to go down two

paths, one, a class path, and, two, enough information about the merits so you can satisfy whatever testing into the merits has to go on to certify a class.

THE COURT: Okay.

MR. SARKO: And I would say lastly, your Honor, that if the cases were ever to resolve, since -- for the ones that are ERISA plans, the fiduciaries would have to pass on it and we would have to build the record to be able to get an independent fiduciary to approve it in any case. So I think --

THE COURT: The proposed settlement?

MR. SARKO: To any proposed settlements.

THE COURT: Yeah, and I -- and you do class actions all the time. I do them some of the time. I think there's another issue. That even if you all agree, which is the ***Wal-Mart*** -- the issues emerging from ***Wal-Mart***, and I haven't given any thought to how it applies here, but, you know, my general understanding is -- and then I just suppose it's the same decision-maker, that if you all treat it the same way, um, it would be an issue, but it has been in some of these foreclosure cases, where, one, as I understand it, the requirements for my certifying the settlement class are the same as they would be if you were disputing class certification, and, two, there has to be sufficient commonality, you

know, in the decisions made. Here, as I say it, it doesn't sound too likely to be a problem here because you've got a certain way that Fidelity presumably did business with everybody and, um --

MR. RUDMAN: We're State Street, sir.

THE COURT: Oh, State Street. Excuse me.

(Pause.)

MR. GOLDSMITH: There is one distinction, your Honor. David Goldsmith. Your Honor has to consider all the Rule 23 prerequisites to be sure, but under ***Amcam***, your Honor has to consider trial manageability issues, if there are some.

THE COURT: Okay. Well, all right.

What else should I know to have a general feel for this and then you'll tell me what you've got in mind specifically?

MR. RUDMAN: Well, we do have a fairly detailed motion, I think, of the time period we'd like. We'd like to spend one year exchanging relevant documents. I think Mr. Sarko's correct to call it an "informational exchange," okay? And we're happy to come in and report to the Court on whatever basis you would like.

THE COURT: And do you intend to use the mediator to help you with any discovery or informational

exchange disputes?

MR. RUDMAN: Yes. Exactly.

THE COURT: Remind me who Mr. Marks is?

MR. RUDMAN: I think you know Mr. Marks.

THE COURT: Okay. Go ahead.

MR. RUDMAN: He was, for many years, Eric Green's partner.

THE COURT: That's what I thought.

MR. HALSTON: He started in this dispute, your Honor, then he broke off.

THE COURT: Okay.

So basically, if I hear this right, what you would like me to do is enter a protective order, and I glanced at it and I think there are a few, I think, not material refinements that I would want you to put in that -- but to essentially stay the case while you engage in this informal process, get reports, and see where we are in here?

MR. RUDMAN: Correct.

MR. SARKO: And I think we would do it in a way so that if it wasn't resolved, all that informal work will still be there for discovery purposes.

THE COURT: Yeah. I mean, I would assume you can agree that you wouldn't have to repeat the requests for documents for something, you can stipulate --

MR. HALSTON: We've agreed that it would count.

THE COURT: It would count, right. Whatever you produce can be used in the --

MR. RUDMAN: In the case that we go back to litigating.

THE COURT: Okay. Well, it sounds good to me.

(Interruption by Court Reporter.)

THE COURT: Would you just say your name and keep your voice up, please.

MR. KRAVITZ: Carl Kravitz. I'm for the other ERISA group, which is --

THE COURT: Henriquez.

MR. KRAVITZ: Yes.

We had been talking about -- I think, Jeff, that you had third-party subpoenas, so to stay -- I think that's something that you were particularly interested in, so there would have to be a way of doing that.

MR. RUDMAN: We do want to accomplish third-party discovery as well, so if the case could be alive for purposes of people having subpoena power, and it's possible that somebody could come in and impose upon this court for a protective order. But leaving that aside, I think that's the only wrinkle.

MR. HALSTON: Yeah, I think that's right.

MR. RUDMAN: Thank you.

THE COURT: All right. The -- I mean, I could see issuing an order based on what you've told me that says "These three cases are consolidated for pretrial purposes." Two, um, "As agreed, the parties will, until at least December 1, 2013, engage in informal discovery, exchange of information, and may issue subpoenas to third parties." And, three, "Unless otherwise ordered, the case is otherwise stayed." So, you know, you can come back if you want something else.

MR. RUDMAN: Terrific.

THE COURT: Is that essentially what you're proposing?

MR. RUDMAN: Perfect.

MR. SARKO: Yes.

MR. HALSTON: And then your Honor would also rule on the protective order?

THE COURT: Yeah, I can probably do that right now.

And I really only just glanced at this, but I think it's generally fine. But there are three points that I didn't see covered. It's possible there's some more.

It is -- if you want to file something under seal, you would have to file redacted copies for the public

record. In other words, to the maximum extent, everything should be on the record. So if there's some confidential information that doesn't permit everything from, you know, a 30-page document from being part of the record, that you would just redact the confidential part.

Second, the protective order governs pretrial only. Once we get to trial, again, it's as I said, I want to bring these people in, the members of the public in, that there's a presumption of public access to judicial proceedings, and that the confidentiality that may attach to the documents exchanged in discovery on which judicial decisions don't rely, um, doesn't apply -- you know, if you've got a motion for summary judgment, a motion for class certification, perhaps, but certainly not at trial. So, um, you know, we would have to talk about striking the appropriate balance at trial between, you know, the interests of the public in judicial proceedings and claims of confidentiality.

The third would be that I retain the right to modify the protective order after giving you notice and an opportunity to be heard, which the last time I looked was in the jurisprudence of the First Circuit anyway.

But do you have any problem with any or all of those provisions?

MR. HALSTON: We can make those provisions, your Honor. It all makes sense to me.

MR. GOLDSMITH: The second piece --

MR. HALSTON: We handled the trial piece -- yeah, we took out the reference so that it would not govern at trial.

THE COURT: Yeah, but you should just be, you know, clear.

MR. RUDMAN: We will make those changes, your Honor.

THE COURT: So you should submit that. If you want, you can try your hand at that order I just gave you, but it's, one, the three cases are consolidated for pretrial purposes --

Well, there are some pending motions, and I guess I don't know what to do with them, but I have to -- this is ministerial and it may be not important, but I have to report on pending motions, and unless I ignore it, I mean --

MR. HALSTON: Well, we could withdraw all of them.

THE COURT: Yeah, they could be denied without prejudice, they could be withdrawn without prejudice. Well, why don't you just withdraw the motions without prejudice.

MR. KRAVITZ: We've got one, also. We can withdraw that as well.

THE COURT: Yeah, just write it out, say, you know, "This motion," Docket Number X, "that motion," Docket Number Y, "are withdrawn without prejudice."

But I commend you on this approach. You know, with all these good lawyers around the table, I know you could raise an infinite number of -- an almost infinite number of fascinating threshold issues. We dealt with some of them in May. However, you know, what you're focusing on is what has practical importance and the day -- and the day may come when I can't say this anymore, but in more than 27 years I haven't tried a class action case, some of them perhaps have been dismissed and most have been settled. So this is the time to focus on -- this is a good time to focus on it.

All right. Anything else?

(Silence.)

THE COURT: How long do you want to submit the order?

MR. RUDMAN: By Monday morning?

THE COURT: Yeah, why don't you submit it, say, by Monday at noon, if you need more time doing it.

MR. RUDMAN: Then Monday at noon.

THE COURT: I would like to deal with this

while it's fresh in my mind.

MR. SARKO: Before you get bad weather here.

THE COURT: That could be in an hour or so. But, anyway.

Let me see if I have anything else on my list.

(Pause.)

THE COURT: All right. So it's not going to be -- well, the motions will be withdrawn.

As I said, I commend you. It's a very sensible approach.

Okay. Thank you very much.

(Ends, 2:30 p.m.)

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the foregoing record is a true and accurate transcription of my stenographic notes, before Chief Judge Mark L. Wolf, on Thursday, November 15, 2012, to the best of my skill and ability.

/s/ Richard H. Romanow 11-29-12

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RICHARD H. ROMANOW Date

EX. 23

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

The Andover Companies Employee Savings and Profit Sharing Plan on behalf of itself, and James Pehoushek-Stangeland, and all others similarly situated, Plaintiffs, vs. State Street Bank and Trust Company, and State Street Global Markets, LLC, Defendants.	)	No. **DEMAND FOR JURY TRIAL**

PLAINTIFFS' CLASS ACTION COMPLAINT

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Plaintiff Alan Kober, as Trustee and fiduciary of The Andover Companies Employees Savings and Profit Sharing Plan (the "Andover Plan"), on behalf of the Andover Plan, and Plaintiff James Pehoushek-Stangeland as a participant and beneficiary of The Boeing Company Voluntary Investment Plan ("Boeing Plan") and all other ERISA Plans (together, the "Plans") that suffered losses as a result of State Street's foreign currency exchange trading practices as alleged herein, by and through its undersigned attorneys, allege the following based upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters.

I. PRELIMINARY STATEMENT

1. This complaint arises from Defendants State Street Bank and Trust Company ("State Street Bank"), and State Street Global Markets, LLC's ("SSGM") (collectively, "State Street" or "Defendants") self-dealing and imprudent management of the Plans' commingled funds managed by State Street in violation of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). This is a civil enforcement action brought pursuant to 29 U.S.C. §§ 1001, *et seq.*, and under ERISA §§ 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), to recover losses and obtain equitable relief on behalf of the Plans and all other similarly situated Plans. State Street Bank and SSGM were required to act prudently and solely in the interest of the Plans' participants and beneficiaries in their capacity as ERISA fiduciaries. In particular, State Street breached its fiduciary duties under ERISA by purchasing and selling foreign securities through the use of foreign currency exchange transactions at rates favorable to Defendants. These transactions were prohibited transactions under ERISA § 406, 29 U.S.C. § 1106.

2. Plaintiffs also allege that Defendants failed to act solely in the interest of the participants and beneficiaries of the Plans and breached their fiduciary duties of prudence and loyalty with respect to the Plans. Specifically, Plaintiffs allege that Defendants, as fiduciaries of the Plans, violated their fiduciary duties under ERISA § 404, 29 U.S.C. § 1104, by causing the

Plans to engage in transactions that were not for the exclusive benefit of the Plans or their participants and beneficiaries.

3. State Street was the trustee for the Defined Contribution Plans Master Trust Agreement between Merrimack Mutual Fire Insurance Company and State Street Bank and Trust Company dated September 1, 2002, and investment manager for the Andover Plan's assets invested in State Street's proprietary commingled funds ("the Funds").

4. State Street was the trustee for The Boeing Company Employee Savings Plans Master Trust ("Boeing Master Trust") and managed certain funds in the Boeing Master Trust. As of December 31, 2011, the assets of The Boeing Company Voluntary Investment Plan (the "Boeing Plan") comprised 100 percent of the Boeing Master Trust. The Boeing Master Trust holds the Boeing Plan's assets that are invested in State Street's Funds.

5. As investment manager for the commingled Funds, State Street Bank contracted on behalf of the Funds for which it served as investment manager for custodial services from its affiliated State Street entities such as SSGM. State Street additionally served as custodial bank for certain of the Plans in the Class including the Boeing Plan, and this also served as a custodian bank for all the foreign currency transactions at issue for certain of the ERISA-covered plans.

6. A custodian bank is an institution that holds securities on behalf of investors. The role of a custodial bank is to safeguard and record movement of assets, including holding assets and securities in safekeeping with appropriate valuations, arranging settlement of all purchases and sales and deliveries in and out of the account, administering corporate actions for securities, and maintaining and managing all cash transactions, including foreign currency transactions. Custodians are typically used by investors who do not wish to leave securities on deposit with their broker-dealers or investment managers. By separating these duties, the use of custodians—at least in theory—reduces the risk of fraud or other misconduct. An independent custodian ensures that the investor has unencumbered ownership of the securities other agents represent to have purchased on its behalf.

7. As of 2011, State Street held approximately $22.8 trillion in assets under custody and administration, making it one of the largest providers of custodial services in the world.[1] State Street charged the Plans, in combination with its other clients hundreds of millions of dollars a year in fees for custodial services.

8. As part of its array of ancillary custodial services. State Street executed foreign currency exchange ("FX") transactions on behalf of its clients in order to facilitate clients' purchases or sales of foreign securities or the repatriation of foreign currency into U.S. dollars. During the past decade, pension funds and other institutional investors have increasingly looked to overseas companies and securities markets in order to diversify their holdings and maximize investment returns. Because foreign investments are bought and sold in the foreign currencies of the nations in which they are issued, U.S.-based investors necessarily must purchase and sell those foreign currencies in order to complete the transactions.

9. Mr. Kober and Mr. Pehoushek-Stangeland ("the Plaintiffs") and the members of the Class reposed a high degree of trust in State Street. As trustee and investment manager for their Funds, and a fiduciary, State Street Bank authorized its affiliated entities, such as SSGM, to execute FX transactions under conditions in which the State Street Defendants controlled all aspects of FX trades, including the cost borne by Plaintiffs. Plaintiffs and the Class members depended upon State Street not only to execute FX trades honestly, but also to carry them out on terms no less favorable than the terms generally available in comparable arm's length FX transactions between unaffiliated and unrelated parties.

10. Despite these legal obligations, State Street has undertaken an unfair and deceptive practice since at least 1998, whereby FX transactions were conducted behind a veil of secrecy so as to maximize exorbitant and undisclosed profits to State Street at the direct expense of the Plaintiffs' Plans and other Class Members. Upon information and belief, State Street charged its custodial clients and the Funds inflated FX rates when buying foreign currency on

[1] *See* http://www.statestreetglobalmarkets.com/ (follow link to "Foreign Exchange Global Strategy") (last visited September 12, 2012).

their behalf, and deflated FX rates when selling foreign currency for them, and in both cases pocketed the difference. In this regard, State Street charged the Plans and the Class incorrect and often fictitious FX rates unrelated to the market-based rates State Street was actually paying or received when SSGM executed the FX trades.

11. The Plans and other Class members could not reasonably have detected State Street's deception. For the Funds and their fiduciaries and participants, the transaction was essentially conducted and reported between two affiliated State Street entities (State Street Bank and SSGM) and not reported on the fund fact sheets or otherwise reported to Plan sponsors, such as Mr. Kober, or to Plan beneficiaries, such as Mr. Pehoushek-Stangeland. For its clients, nothing in the FX rates State Street actually reported indicated that the rates being charged included hidden and unauthorized mark-ups (or mark-downs).

12. State Street's unfair and deceptive FX trading practices, perpetrated on the Plans and the Class, generated hundreds of millions of dollars in profits annually for State Street. This money was taken directly from the pockets of the Plans and Class members' retirement accounts.

13. Mr. Kober and Mr. Pehoushek-Stangeland bring this action as a class action on behalf of all similarly affected ERISA clients of State Street during the Class Period defined below, in order to recover the proceeds State Street reaped from Class members through its unfair and deceptive FX trading practices.

II. JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). The claims asserted herein are brought as a class action under Rule 23 of the Federal Rules of Civil Procedure.

15. Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

III. PARTIES

A. Plaintiff Alan Kober

16. Plaintiff Alan Kober is an Individual Trustee of The Andover Companies Employees' Savings and Profit Sharing Plan (the "Andover Plan") pursuant to § 10.03 of The Andover Companies Employees' Savings and Profit Sharing Plan and Trust Agreement, Amended and Restated Effective as of January 1, 1989. In this capacity, Mr. Kober is a Plan fiduciary with standing to bring claims for breach of fiduciary duty on behalf of the Plan pursuant to ERISA §§ 409 and § 502(a)(2).

17. Plaintiff Merrimack Mutual Fire Insurance Company ("Merrimack Mutual") is the designated Plan Administrator for the Andover Plan. The Andover Plan is an ERISA-qualified defined contribution plan established for the benefit of the employees of Merrimack Mutual and its sister companies, Cambridge Mutual Fire Insurance Company, and Bay State Insurance Company, which, together with Merrimack Mutual, comprise the Andover Companies ("Andover Companies"). Andover Companies is a New England mutual insurance institution which offers insurance programs and is managed from its headquarters in Andover, Massachusetts.

18. As trustee for the Andover Plan, pursuant to Section 4.1 of the Master Trust Agreement, State Street Bank was required to exercise power and authority over the investment accounts for which it has express investment management discretion, or upon the direction of the Investment Manager. The investment power of the trustee includes the power to "purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with State Street Bank and Trust Company, its agents or its subcustodians." The Master Trust Agreement further provides that nothing in the plans requires any investment manager to make any investments which constitute a prohibited transaction.

19. Pursuant to the Investment Manager Agreement between State Street Bank and Merrimack Mutual entered on April 1, 2001, State Street Bank was appointed investment

manager pursuant to Section 3(38) of ERISA with respect to all cash, securities, or other property designated by client.

20. During the relevant time period, the Andover Plan offered participants investments in several State Street Bank-sponsored commingled Funds as part of the Plan's core investments. International Equity Funds were one category of core investments for the Andover Plan, which also included Stable Value Funds, Fixed Income Funds, Balanced Funds and Domestic Equity Funds. During the class period, the Andover Plan included the following proprietary commingled International Equity Funds to participants for investment: International Growth Opportunities Securities Lending Class A Fund, and SSgA Daily International Alpha Select. State Street Bank served as the Trustee for Andover Plan, and served as the Investment Manager for Andover Companies Plan's investment in the International Equity Funds. The Andover Companies Plan suffered losses as a result of State Street's unfair and deceptive FX trading practices on behalf of the International Equity Funds.

B. Plaintiff James Pehoushek-Stangeland

21. Plaintiff James Pehoushek-Stangeland is a resident of Seattle, Washington. He works for the Boeing Company and is a participant in the Boeing Plan, an ERISA-qualified retirement plan. Accordingly, Plaintiff Pehoushek-Stangeland has standing to bring suit on behalf of the Boeing Plan for losses to the Plan due to breaches of fiduciary duty pursuant to ERISA §§ 409, and § 502(a)(2).

22. During the relevant time period, the Boeing Plan offered participants investments in several State Street Bank-sponsored commingled Funds as part of the Plan's core investments. The International Index Fund was one category of core investments for the Boeing Plan, which also included Lifecycle Funds, Stable Value Funds, Bond Funds, Balanced Funds, and Domestic Equity Funds. During the Class Period, the Boeing Plan included the following proprietary State Street Funds: the State Street Bank Global All Cap Equity ex-US Index Securities Lending Series Fund Class I ("State Street Bank Global Lending Fund"); and the State Street Bank Global All Cap Equity ex-US Index Non-Lending Series Fund Class A ("State Street Bank Global Non-

Lending Fund"), for participants to invest in. As of December 31, 2010, the Boeing Plan held approximately $1.98 billion in Plan assets in the State Street Bank Global Lending Fund. As of December 31, 2011, the Boeing Plan held approximately $1.863 billion in the State Street Bank Global Non-Lending Fund. As of December 31, 2010, and December 31, 2011, these investments constituted approximately 6% of the Boeing Master, respectively.

23. State Street served as the Trustee for the Boeing Master Trust, which holds the assets of the Boeing Plan, and as the investment manager for certain funds in the Boeing Master Trust. The Boeing Plan suffered losses as a result of State Street's unfair and deceptive FX trading practices on behalf of the International Index Fund (together with Plaintiff Kober's international funds, "The International Equity Funds").

24. The Plaintiffs have standing to bring this action, and pursuant to Federal Rules of Civil Procedure 23, to bring a representative action on behalf of the Andover Plan and the Boeing Plan, and the class of Plans which incurred losses as a result of State Street's breach of its fiduciary duties as the Investment Manager and custodian of FX trades for the Plans' investments in the International Equity Fund(s) and/or the International Index Fund(s).

C. Defendants

25. Defendant State Street Bank is the trustee of the Plans. All money that employees contribute to the Plans is held in a trust fund, and State Street Bank is responsible for safekeeping of the funds. State Street Bank is also the investment manager for the Andover Plan, and provides investment management and custodial services to the Boeing Plan.

26. Defendant State Street Bank is a registered financial holding company with its principal place of business in Boston, Massachusetts. During the Class Period, State Street Bank directly, or indirectly through one or more subsidiaries provided custodial banking and FX trading services to ERISA-covered benefit plans and for the Funds offered by ERISA-covered Plans, such as the Plans. One of the services provided by State Street Bank to its custodial clients was the execution of FX transactions, which allowed clients to purchase and sell foreign securities or to engage in foreign currency trades for other purposes.

27. Defendant SSGM, formerly known as State Street Capital Markets, is similarly headquartered in Boston. SSGM is the "investment research and trading arm of State Street Corporation" and it provides trading in foreign exchange for its clients. SSGM provides specialized investment research and trading in foreign exchange, equities, fixed income, and derivatives to ERISA-covered benefit plans. During the Class Period, SSGM provided custodial banking and FX services to the Plans and members of the Class.

IV. CLASS ACTION ALLEGATIONS

28. **Class Definition.** Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of the Andover Plan and the Boeing Plan, and the following class of persons similarly situated (the "Class"):

> All qualified ERISA plans, and the participants, beneficiaries, and named fiduciaries of those plans, that invested directly or indirectly in the State Street Bank commingled Funds, which includes the "International Equity Funds" identified in this complaint; or for which State Street Bank provided investment management or custodial services, that utilized SSGM's FX trading services, and suffered damages as a result of the deceptive acts and practices and other misconduct alleged herein, at any time between January 2, 1998 and the present. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest, and the officer, directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or assigns of any such entity.

29. **Numerosity.** The members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that hundreds of ERISA-covered benefit plans throughout the country offered the International Equity Funds and/or utilized State Street's trust or custodial services and that these plans collectively have tens of thousands of participants and beneficiaries.

30. **Commonality.** The claims of Plaintiffs and the members of the Class have a common origin and share a common basis. The claims of all Class members originate from the same misconduct, breaches of duties, and violations of ERISA, perpetrated by Defendants.

Proceeding as a class is particularly appropriate here because the International Equity Funds are proprietary commingled funds that are held in collective trusts managed by State Street Bank, in which assets of every plan that invests in the International Equity Funds are pooled, and therefore, State Street's deceptive acts and practices and misconduct regarding its FX trading practices affected all plans that invested in the International Equity Funds in the same manner. Similarly, for the custodial clients, State Street's deceptive acts and practices concerning FX trading were perpetrated on a class-wide basis.

31. There are questions of law and fact common to the Class, including:

(a) Whether Defendants breached their fiduciary duties under ERISA by overcharging the Plans or Funds at issue in which the Plans invested, for their FX trading practices;

(b) Whether Defendants engaged in unfair and deceptive acts and practices in connection with FX transactions, so as to maximize their own profits at the expense of the Plans;

(c) Whether Defendants' self-interested FX transactions constituted prohibited transactions under ERISA;

(d) Whether Defendants pocketed the difference between the actual, market-based FX rates and the false FX rates reported and charged to the Plans and the International Equity Funds;

(e) Whether Defendant SSGM failed to provide complete and accurate information to plan sponsors, fiduciaries, and participants when they entered into the FX trading transactions on behalf of the Plans and the International Equity Funds;

(f) Whether Defendants' acts proximately caused losses to the Plans, and if so, the appropriate relief to which Plaintiffs, on behalf of the Plans and the Class are entitled;

32. **Typicality.** Plaintiffs are willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiffs will fairly and adequately protect the interests of the Class and have no interests adverse to or which directly and irrevocably conflict with the interests of other members of the class.

33. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs are members of the Class described herein.

34. The questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class.

35. A class action is superior to other available methods for the adjudication of this controversy. Individual litigation by all Class members would increase the delay and expense to the parties and the Court given the complex legal and factual issues of the case, and judicial determination of the common legal and factual issues essential to this case would be more fair, efficient and economical as a class action maintained in this forum than in piecemeal individual determinations.

36. **Adequacy.** The interests of the Plaintiffs are co-extensive with, and not antagonistic to, those of the absent Class members. Plaintiffs will undertake to represent and protect the interests of absent Class members. The undersigned counsel for Plaintiffs and the Class are experienced in class action, complex, and ERISA litigation, will adequately prosecute this action, and will assert and protect the rights of and otherwise represent Plaintiffs and absent Class members.

37. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. Compared to individual actions by each Class member, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

38. **Rule 23(b)(1)(A) & (B) Requirements.** Class action status in this ERISA action is warranted under Federal Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status also is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the

interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

39. **Rule 23(b)(2) Requirements.** Certification under 23(b)(2) is warranted because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

40. **Rule 23(b)(3) Requirements.** In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

V. SUBSTANTIVE ALLEGATIONS

A. The Nature of FX Trading Generally

1. The Increasing Necessity of FX Trading in a Global Investment Portfolio

41. During the past decade, in order to meet their investment and funding objectives, U.S.-based institutional investors have found it increasingly necessary to enter the overseas securities markets and expand the global scope of their investment portfolios. The International Equity Funds offered by State Street to institutional investors, for example, generally invest the bulk of their assets in securities or stocks of companies whose headquarters and/or primary business is outside of the United States.

42. Institutional investors that buy and sell foreign securities, such as State Street on behalf of the Plans and the other Class members, must engage in FX trading because the purchases, sales, dividends, and interest payments are all transacted in the currency of the nation in which the relevant securities exchange sits.

43. If, for example, a U.S. investor wishes to buy shares of stock in a German company that trades on a German securities exchange, the investor must sell U.S. dollars and purchase euros in order buy those shares. Further, any cash dividends paid on that German stock will be denominated in euros. To “repatriate” those dividends, the investor must sell the euros

received and purchase dollars. Accordingly, FX transactions are the means for converting U.S. dollars into foreign currency and vice versa.

2. How FX Trading Works

44. FX trading takes place around the world on a nearly 24-hour cycle, five-and-a half days a week. The official FX trading week begins at 7:00 a.m. New Zealand time on Monday, with each subsequent trading day ending at 5:00 p.m. New York City time.

45. For each currency bought and sold during the course of the FX trading day, there will necessarily be a high trade and a low trade, with all other trades falling somewhere in between. This information is determined through trade data monitored and tracked by proprietary services such as, but not limited to, Electronic Brokerage System ("EBS") and Reuters.

46. The difference between the low trade and the high trade is called the "range of the day." More precisely, the "spot range of the day" refers to FX rates as of a specific and prompt settlement date, usually two business days after the trade date. To more accurately measure the trade cost for FX transactions that settle prior to or later than the date for spot trades, participants in the FX market also look to the "forward-adjusted range of the day." Because FX trades do not always settle two days after the trade, the forward-adjusted range of the day is a more conservative and accurate measurement such that it takes into account the interest rate differential that exists at the time of trade between the trade date and settlement date for the underlying currencies.

47. By way of example, assume 100 FX trades in euros-for-dollars (EUR-USD) during the course of one trading day. If the lowest rate trade occurred at $1.25 to buy €1.00, and the highest rate trade occurred at $1.35 to buy €1.00, the range of the day would be $1.25-$1.35.

48. Another useful measure is the daily "mid-rate," which is simply the sum of the forward-adjusted daily high and forward-adjusted daily low, divided by two. This rate reflects the "average" FX rate in a given currency on a given day.

49. The daily mid-rate is significant because of the absence of publicly accessible data showing the precise time of day at which FX trades occur (as exists with stock trading, for

example) and because State Street did not disclose such information to its clients. By looking at the mid-rate over a significant period of time, however, one can reasonably estimate the average FX trade cost on any given day. Over the course of a month or years, it is reasonable to expect FX trades to regress to the mid-rate. On any given day, some trades might settle above or below the daily mid-rate, but over increasingly lengthy periods of time, a significant number of FX trades can be expected to occur at or extremely close to the mid-rate.

B. Negotiated vs. Non-Negotiated FX Trades: Trades for Custodial Clients

50. As set forth in the *Arkansas State Teacher Retirement System v. State Street Corp.*, No. 11-cv-10230 (MLW) (Apr. 15, 2011) complaint, State Street gave its custodial clients a choice with respect to the manner in which FX trades would be conducted. In a "negotiated," or "active," FX trade, a custodial client or its outside investment manager would personally communicate the trade information to a State Street FX trader. The State Street FX trader would then quote a rate, which would be accepted or rejected. If accepted, State Street would execute the FX trade at the agreed-upon price, which could include a modest mark-up.

51. A "non-negotiated" or "standing-instruction" FX trade is essentially the opposite of a negotiated trade. There is no arm's-length negotiation of the price between the parties to the transaction. With non-negotiated or standing-instruction trades, custodial clients and their outside investment managers do not negotiate rates with State Street, and State Street does not quote rates. Instead, as the name "standing-instruction" suggests, custodial clients simply report the desired currency transaction to State Street, and trust and rely upon State Street, using "best execution" practices, to execute the trade on the client's behalf. According to its Investment Manager Guides, State Street referred to standing-instruction FX transactions as "Indirect Deals" between 2000 and May 2008, and "Institutional Investors FX Trading" between May 2008 and November 2009. Since November 2009, State Street has referred to such trading as "Custody FX."

52. State Street's custodial clients reasonably expected that standing-instruction FX trades would have no mark-ups or fees. This was in view of, among other things, (a) the hefty

annual fees custodial clients paid State Street to serve as custodian over their assets, (b) the Custodian Contracts and associated fee schedules that gave no indication that standing-instruction FX trading would incur extra fees or mark ups, and did not authorize any such fees or mark-ups, and (c) State Street's Investment Manager Guides that assured custodial clients and outside investment managers that the price of FX trades was *"based on the market rates at the time the trade is executed."*

53. Institutional investors typically requested that State Street and other custodians handle the smaller FX transactions, mostly the repatriation of dividend and interest payments, through standing instructions because the amount of each trade rarely justified the time and effort required for a negotiated trade.

1. Custodial Clients Relied Upon State Street's Expertise and Loyalty

54. Since at least 1998, State Street executed the majority of custodial client FX transactions for its accounts, including purchases and sales of U.S. and foreign currency as well as repatriations of dividends and interest payments into U.S. dollars.

55. Custodial clients reposed a high degree of trust in State Street to execute standing-instruction FX transactions. In conducting these transactions, State Street occupied a superior position to its custodial clients due to its control over all aspects of the FX trade, including the timing of the trades, and most importantly, the price at which the trades were executed.

56. Custodial clients depended upon State Street not only to execute the FX trades, but also to accurately and honestly report the FX rate and to carry out the trades in accordance with their custodial contracts, associated fee schedules, and guidelines as set forth in the Investment Manager Guides.

57. Additionally, separate and apart from the custodial contracts and Investment Manager Guides, State Street's custodial clients had a reasonable expectation that the FX rates that State Street charged (or credited) on standing-instruction FX trades would accurately reflect the true rates of those FX trades. There is no reason a custodial client would expect its custodian bank—to which it was paying substantial annual fees for custodial services—to charge (or

credit) it in connection with standing-instruction FX trades at any rate other than the actual rate for the FX trade.

2. State Street's Custodial Contracts and Investment Manager Guidelines Were Predicated on No-Cost FX Trading

58. State Street's form custodial contracts provided that State Street "shall be entitled to compensation for its services and expenses as Custodian" pursuant to "a written Fee Schedule between the parties."

59. Custodial clients and State Street agreed to and executed a series of Fee Schedules covering the time period from 1998 to the present.

60. The Fee Schedules either provided estimated annual fees or annual flat fees for State Street's services as a custodian.

61. The Fee Schedules also set forth certain categories of ancillary services for which State Street was permitted to charge additional fees, including Wire Fees, Reporting Fees, Delivery Fees and Subcustody Fees.

62. None of these particular ancillary service categories relate in any way to FX trading. The Custodian Contracts did not state that those ancillary fees relate to FX trading or that State Street would impose any fees in connection with FX trading.

63. For one non-ERISA client, the Arkansas Teacher Retirement System ("ARTRS"), for more than a decade, its custodial contracts with State Street (a) expressly provided that standing-instruction FX trades would be executed free of charge; or (b) did not list FX transactions among the services for which it was permitted to charge an additional fee or any other cost above the annual flat fee.

64. Upon information and belief, substantially similar terms were employed in the Custodial Contracts for other members of the ERISA Class during the Class Period.

65. Additionally, during the Class Period, State Street provided Investment Manager Guides to custodial clients and outside investment managers that contained comprehensive information about State Street's custody practices and services, including procedural

requirements, costs, and features. The many services described therein included "State Street Foreign Exchange Transactions."

66. During the Class Period, State Street issued no fewer than 15 distinct Investment Manager Guides, including those dated July 9, 2003; August 9, 2005; September 26, 2006; October 17, 2006; November 20, 2006; December 15, 2006; January 25, 2007; October 30, 2007; November 21, 2007; December 19, 2007; January 28, 2008; May 1, 2008; October 31, 2008; December 30, 2008; and January 23, 2009, to custodial clients and outside investment managers.

67. State Street represented in each of these Investment Manager Guides that "State Street Foreign Exchange Transactions . . . are ***priced based on the market rates at the time the trade is executed."*** (Emphasis added.)

3. State Street's Deceptive Scheme Overcharged Custodial Clients for Standing-Instruction FX Trades

68. State Street's FX practices diverged from what the Custodial Contracts authorized and what the Investment Manager Guides represented. Despite assurances that FX transactions would be based on market rates, State Street reported and charged its custodial clients FX rates on standing-instruction trades far above what State Street actually paid for foreign currency (or far below what State Street actually received for sales of foreign currency)— oftentimes, at rates that actually fell ***outside of the range of the day.***

69. As such, unbeknownst to its custodial clients, State Street reported FX rates on standing-instruction trades to its clients that did not reflect the actual cost or proceeds of the FX transaction to State Street, and instead included a hidden and unauthorized mark-up. Put simply, State Street invented the FX rates it reported and charged (or credited) to its custodial clients. State Street paid or received one rate for FX, reported to its custodial clients another rate that was either higher (in the case of a purchase) or a lower (in the case of a sale), and pocketed the difference.

70. When custodial clients or their agents requested that State Street execute an FX transaction, the request was routed electronically via State Street's Market Order Management System (MOMS) to a group of "risk traders" working at State Street's FX trading desk who then executed the FX trades by entering trade information that did not reflect the actual rate State Street paid or received.

71. To illustrate the deception, assume again the example set forth above—100 euro-for-dollar trades on a given day that ranged from $1.25 to $1.35 (the "range of the day") to purchase €1.00, with a day's mid-rate of $1.30. On any, and all, standing-instruction euro-for-dollar trades on behalf of its custodian clients, State Street would have paid a rate between $1.25 and $1.35 for those euros, but reported to its clients that it paid more. State Street then would have charged its clients the false higher amount and kept the difference.

72. This conclusion is supported by the analysis from non-ERISA custodial client ARTRS of ten years of FX transactions executed by State Street on behalf of and reported to ARTRS. Between January 3, 2000 and December 31, 2010, ARTRS had a total 10,784 FX transactions with reliable data. Among these 10,784 transactions, 4,216, or 39%, were non-negotiated, standing-instruction trades. These 4,216 FX trades had an aggregate trading volume exceeding $1.2 billion.

73. In conducting the analysis, ARTRS found that its FX trades were logged and compared to other FX trades logged and tracked in a comprehensive database of more than 2 million buy-side currency trades. By comparing ARTRS's trades in certain currencies with the same currency pair trades in the database, one can estimate the trading cost of ARTRS's standing-instruction FX trades by State Street in relation to trades made worldwide. For purposes of this analysis, the trading cost is the difference between the day's mid-rate and the rate that State Street charged (or credited) to ARTRS for standing-instruction FX trades.

74. State Street did not report to ARTRS (or any other ERISA-covered custodial client) the actual time of execution of any FX trade. Therefore, comparing the day's mid-rate to the standing instruction FX rates State Street charged (or credited) to ARTRS was the best

method of determining whether State Street charged (or credited) ARTRS a rate based on the actual market rate at the time of execution, as State Street represented it would do in its Investment Manager Guides.

75. The analysis by ARTRS made clear that State Street derived its false FX rates by adding (on purchases) or subtracting (on sales) "basis points" or "pips" from the actual FX rate. A basis point, or pip, is a unit equal to 1/100th of a percentage point. For example, the smallest move the euro/dollar currency pair generally makes is 1/100th of a penny, or one basis point.

76. For the period of January 3, 2000 through December 31, 2010, the FX rates that State Street reported and charged (or credited) to ARTRS on its 4,216 non-negotiated FX trades were, on average, ***17.8 basis points*** above or below the day's mid-rate. In other words, the FX rates that State Street reported and charged (or credited) to ARTRS for standing-instruction FX trades, on average and during this 10-year period, created a trading cost 17.8 basis points higher than the average FX rate (the day's mid-rate).

77. By way of example, assume that the rate State Street actually paid to purchase €1.00 on a given day was $1.31551. If State Street charged ARTRS 17.8 basis points more than it paid, the rate would be $1.31729 ($1.31729 - $1.31551 = 0.00178). For a purchase of €10 million, the undisclosed profit to State Street on that single trade—and the concomitant unknown loss by ARTRS—would be $17,800. Accordingly, the difference in total trading costs between the actual and false rates can be very large.

78. Tellingly, for the same 10-year period, the FX rates that State Street reported and charged (or credited) to ARTRS on its more than 6,500 ***negotiated*** FX trades added, on average, only ***3.6 basis points*** in trading costs as compared to the day's mid-rate. As such, while the FX trades executed by State Street pursuant to so-called "best execution" practices incurred trading costs of 17.8 basis points on average, the FX trades actively negotiated between State Street and ARTRS or its outside investment managers incurred trading costs of only 3.6 basis points on average.

79. The false or fictitious nature of the FX rates State Street reported and charged (or credited) to ARTRS was further demonstrated when reviewing ARTRS's standing-instruction FX trades in the context of the forward-adjusted range of the day. Among ARTRS's 4,216 standing instruction FX trades, ***2,217, or 53%, fell entirely outside the forward-adjusted range of the day.*** These 2,217 FX trades, with a total volume exceeding $200 million, added trading costs on average of ***64.4 basis points*** over the day's mid-rate—an enormous hidden and unauthorized mark-up. For example, on a purchase of €10 million, an undisclosed fee of 64.4 basis points would result in a $64,400 profit to State Street on that single transaction alone.

80. Rates consistently above (or below) the daily mid-rate alone demonstrate that State Street was not fulfilling its duties as a custodian by charging a hidden mark-up, and they demonstrate a violation of the terms of the custodial Contracts and the representations in the Investment Manager Guides. But when more than half of all standing-instruction FX trades for a particular custodial client fall ***outside*** the forward-adjusted range of the day, it becomes clear that those reported FX rates were not actual, market-based FX rates, but were instead fictitious and designed solely to gouge the custodial client and, in turn, its beneficiaries.

81. There is no rational, honest basis for a professional FX market participant like State Street, or indeed any FX market participant, to charge an FX rate outside the forward adjusted range of the day without disclosing it. The day's range defines the range at which primary dealing banks and custodian banks transacted in FX during that trading day. The fictitious nature of rates assigned outside the forward-adjusted range of the day illustrates, perhaps most starkly, the unfair and deceptive nature of State Street's standing-instruction FX trading practices. In short, these practices were designed to enrich State Street while deceiving and unfairly depriving institutional clients such as ARTRS and State Street's other custodial clients of much-needed funds.

4. For its Custodial Clients, State Street's Deceptive Acts and Practices Could Not Reasonably Be Detected.

82. No custodial client could have reasonably discovered State Street's deceptive acts and practices concerning FX trading during the Class Period. State Street executed hundreds if not thousands of FX trades on behalf of its custodial clients every month. The periodic reports State Street sent to clients showed only the rate that State Street charged for its FX trades. The reports did not include the range of the day, the daily midrate, or any indication of the time of the day that the trade was executed (known as "timestamps"). Accordingly, there was no way for custodial clients to reasonably determine, or even suspect, that State Street was secretly charging more than it actually paid for FX or was paying clients less than it actually received for FX.

83. It was reasonable for custodial clients to presume that the prices reflected in the reports State Street provided to them were an accurate representation of the true cost of the FX trades. Custodial contracts provided that monthly reports of monies received or paid on behalf of the client would be given to the client. Accordingly, State Street had an affirmative obligation to report accurately the amount of money it was paying or receiving for FX.

84. Furthermore, based on the Investment Manager Guides' assurance that FX rates would be "priced based on the market rates at the time the trade is executed," no custodial client had any reason to suspect that they were being charged (or credited) anything other the rate that State Street itself had paid or received on those standing-instruction FX transactions.

85. Moreover, as alleged above, State Street occupied a position of trust and confidence with respect to its custodial clients. Those clients would not, and did not, suspect that the custodian in which that trust resided, would profit to a gross and undisclosed degree on the services for which they paid a handsome annual fee. Indeed, those custodial clients would, and did, presume that the custodian bank would act in and not against their best interests.

C. Events After October 2009 Begin to Shed Light on State Street's Deceptive FX Trading Practices

86. On October 20, 2009, the Attorney General of California filed a Complaint in Intervention for violation of the California False Claims Act, Cal. Gov. Code § 12651, charging

State Street with misappropriating more than $56 million from the accounts of California's two largest pension plans—CalPERS and CalSTRS—over a multi-year period in connection with the same unfair and deceptive FX practices alleged herein. *People of the State of Cal. ex rel. Brown v. State Street Corp.*, No. 34-2008-00008457-CU-MC-GDS (Cal. Super. Ct. Sacramento County Oct. 20, 2009).

87. The California Attorney General alleged that State Street reported inflated FX rates when buying foreign securities for CalPERS and CalSTRS, reported deflated FX rates when selling foreign securities for them, and pocketed the difference between the reported and actual rates. The Attorney General further alleged that State Street hid its wrongful conduct by entering incorrect FX exchange rates into State Street's electronic FX trading systems and providing false records to CalPERS and CalSTRS.

88. The California Attorney General's allegations of undisclosed "mark-ups" were based in part on the sworn testimony of a former State Street Bank employee who worked on the same trading floor as the State Street Bank and SSGM foreign exchange traders and who overheard how State Street Bank or SSGM foreign exchange traders were marking up FX trade prices. This trader, in sworn testimony, described the practices of State Street Bank's FX traders as a "totally unethical thing to do" and said that the FX Traders' practices were not within the "industry standard." *People of the State of Cal. ex rel Brown v. State Street,* No. 34-2008-00008457-CU-MC-GDS (Cal. Super. Ct. Sacramento County Jan. 31, 2012) (Declaration of Kenny V. Nguyen).

89. In the months that followed, State Street dramatically changed its FX trading policies and disclosures and so informed its custodial clients. Under these new policies, State Street admitted for the first time that it had systematically imposed additional charges for FX trading. For example, in an excerpt from an updated Investment Manager Guide dated November 20, 2009, State Street advised custodial clients that it would post on its website, my.statestreet.com, "current mark-ups and mark-downs used by State Street Global Markets for [standing-instruction] foreign exchange transaction requests."

90. In a similar message sent to custodial clients such as ARTRS, State Street admitted that ***"[s]ince December 2009***, State Street has provided to all of its custody clients and their investment managers via our dedicated client portal, my.statestreet.com, comprehensive disclosure of the pricing and execution methodology (including the maximum mark-up or mark-down that may be applied) for each of its Indirect [standing-instruction] FX Services." (Emphasis added.) State Street added that "on the day after a trade is executed, State Street provides for each currency pair the reference interbank rates and the times at which they are obtained, the actual rates, the daily high/low range at the time of pricing (where applicable) and the actual mark-up or markdown that was applied."

91. State Street thus altered its practices to allow custodial clients more complete access to FX trading data only after its deceptive acts and practices began to be revealed. State Street's late disclosure that it charged mark-ups and mark-downs on standing-instruction FX trades contradicts its previous repeated assurances that FX rates would be based on market rates at the time the trade is executed.

92. According to a study conducted by an independent FX analyst after the California *qui tam* complaint was unsealed and State Street altered its FX policies, the cost of standing instruction FX trades dropped by a remarkable ***63%.*** The study analyzed 498,940 FX spot and forward trades (196,280 standing-instruction trades and 302,660 negotiated trades) executed during 2000-2010, and found that investors who had their custodian banks, including State Street, execute FX trades on a standing-instruction basis during 2010 saw an overall 63% drop in trading costs from their average trading costs for the years 2000-2009.

D. FX Trading and State Street's Commingled ERISA Fund Clients

1. The Plaintiffs' Plans

93. The Andover Plan and the Boeing Plan are "employee pension benefit plans" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

94. Defendants provide FX trading services similar to those provided to the Andover Plan and the Boeing Plan to other similarly situated Plans, either directly as a plan custodian, or trustee, or indirectly as investment manager for the commingled Funds in which the Plans invest.

95. There are two types of ERISA-covered pension plans: defined benefit plans and defined contribution plans. Both types of plans have found it necessary and prudent to expand their investments to include exposure to foreign markets. Accordingly, defined benefit plans have expanded international holdings, and defined contribution plans frequently include at least one, if not several, international investment options.

96. ERISA-covered plans regularly purchase and sell foreign securities in order to increase diversification and take advantage of opportunities for higher returns. Retirement plans that invest in foreign securities receive principal, dividends, and interest that are paid in foreign currencies, or participate in other investments that require the exchange of foreign currency into and from US Dollars ("USD"), either directly or through participation in the commingled Funds. As a result, the purchase and sale of currencies incidental to a foreign securities transaction is vital to a plan's participation in international securities markets and to the acquisition, holding, and disposition of foreign securities.

97. State Street served as trustee and investment manager for the Andover Plan. Beginning in 2001, the Andover Plan offered participants the option to invest in certain International Equity Funds, including the International Growth Opportunities Securities Lending Class A Fund, and the SSgA Daily International Alpha Select Fund. These International Equity Funds held foreign securities and would have been, directly, or indirectly, party to FX transactions executed by SSGM pursuant to instructions from State Street Bank. Neither of these Funds could have been operated without FX transactions, whether or not these transactions were executed at the fund level or at the brokerage level. State Street Bank, as the investment manager and fiduciary for these commingled funds, was ultimately responsible for the funds' FX transactions undertaken by SSGM.

98. State Street served as trustee and investment manager for the Boeing Plan. The Boeing Plan offered participants the option to invest in certain International Equity Funds, including the International Index Fund. This International Equity Fund sought to provide long-term total return, and attempted to match the Morgan Stanley Capital International All Country World Investable Market Index. This is an index composed of global developed and emerging countries outside the U.S. The fund seeks to achieve its goal by investing in a wide variety of international equity securities issued throughout the world, excluding the U.S. The foreign-held securities in this fund would have been, directly, or indirectly, party to FX transactions executed by SSGM pursuant to instructions from State Street. This commingled investment fund could not have been operated without FX transactions, whether or not these transactions were executed at the fund level or at the brokerage level. State Street Bank, as the investment manager and fiduciary for this commingled fund, was ultimately responsible for the fund's FX transactions.

2. Defendants' Fiduciary Status

99. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus, a person is a fiduciary to the extent "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary responsibility in the administration of such plan." ERISA § 3(21)(A)(i), 29 U.S. C. § 1002(21)(A)(i).

100. Under ERISA, an investment manager is a fiduciary. ERISA defines investment manager as:

> (38) any fiduciary (other than a trustee or named fiduciary, as defined in section 1102 (a)(2) of this title)—
>
> (A) who has the power to manage, acquire, or dispose of any asset of a plan;
>
> (B) who

> (i) is registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.];
>
> (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act [15 U.S.C. 80b–3a (a)], is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary;
>
> (iii) is a bank, as defined in that Act; or
>
> (iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and
>
> (C) has acknowledged in writing that he is a fiduciary with respect to the plan.

Section 3(38), 29 U.S.C. § 1002(38).

101. Here, State Street served as the Investment Manager for the International Equity Funds in Plaintiffs' Plans and, upon information and belief, hundreds of other plans as well. In this capacity, State Street was responsible for prudently and loyally managing the assets that were invested in the International Equity Funds, and authorizing, reviewing and controlling the coduct of any State Street Affiliate or representative engaging in activities affecting the value or performance of the Funds for which State Street served as Investment Manager.

102. State Street expressly acknowledges its status as Investment Manager in the Plan documents for the Andover Plan, including the Plan's December 31, 2006 and June 30, 2007 Fact Sheets.

103. Upon information and belief, State Street has similarly acknowledged its fiduciary status as Investment Manager for the commingled Funds for all other ERISA-covered Plans that offer the International Equity Funds as an investment option for participants' retirement savings.

104. Upon information and belied, all of the commingled Funds which invested in foreign securities suffered from the same inaccurate FX pricing described in the California qui

tam complaint, the California Attorney General complaint-in-intervention, and the ARTRS complaint for standing-instruction FX trades.

105. Under ERISA, investments in commingled Funds are subject to a "look-through" rule, pursuant to which, the "plan assets" of an ERISA-covered plan include both its undivided "equity interest [in the entity] and an undivided interest in each of the underlying assets of the entity …". 29 C.F.R. § 2510.3-101(a)(2); *see also* ERISA § 3(42), 29 C.F.R. § 1002(42) (authority of Secretary of Labor to define term "plan assets" by regulation). Specifically, when a Plan acquires or holds an interest in a commingled Fund, "its assets include its investment and an undivided interest in each of the underlying assets of the entity." *Id.* § 2510.3-101(h)(1).

106. "[A]ny person who exercises authority or control respecting the management or disposition of such underlying assets, and any person who provides investment advice with respect to such assets for a fee (direct or indirect) is a fiduciary of the investing plan." *Id*. § 2510.3-101(a).

107. As the sponsor and investment manager for the commingled Funds, State Street Bank exercised authority and control with respect to the management or disposition of the Plans' assets. Accordingly, State Street Bank was a fiduciary of each and every ERISA Plan which invested in the commingled Funds, including the Plaintiffs' Plans and the Plans of the putative class members with respect to the underlying assets of each and every State Street Bank-sponsored commingled Fund.

108. As trustee for certain of the commingled Funds, State Street Bank was authorized to convert any monies into currency through foreign exchange transactions and was responsible for ensuring that these transactions were within the bounds of State Street Bank's fiduciary responsibilities and the limitations of ERISA.

109. State Street Bank and SSGM also functioned as fiduciaries to the Plans and the Class by acting as trustee and investment manager for the Andover Plan and the Boeing Plan, and for the commingled Funds, and by exercising authority and control over the Plans' assets.

110. Upon information and belief, SSGM provided brokerage services to the Funds, that is, the purchase and sale of foreign securities to the commingled investment funds. To the extent that the Funds settled such purchases and sales in U.S. Dollars, the commingled Funds did not engage directly in FX trading in connection with the purchase or sale of foreign securities, but they did engage in FX trading indirectly when SSGM executed a purchase or sale of a foreign security in foreign currency and then converted the transaction to a U.S. Dollar-denominated transaction for purposes of settlement with the commingled Funds.

111. SSGM also served as a conduit for the repatriation of dividend, principal, and interest payments by issuers of foreign securities and for receipt of proceeds of sales of foreign securities, and engaged in FX transactions in order to remit such payments to the commingled Funds in U.S. Dollars.

112. SSGM, in serving as a broker for the Plans' accounts also was bound to act in the customer's interest when transacting such business for the account, and therefore, had the duty not to misrepresent any fact material to the transaction, and to disclose adequate information to the fiduciaries of the Plans, and in the course of that transaction did not have a general fiduciary duty, but did have a limited transactional fiduciary duty to the Plans as a broker. In its role as State Street Bank's affiliate, SSGM was responsible for setting the exchange rates on FX transactions and executing those transactions. This process created the excessive spread between the marked-up FX exchange rates charged to custodial ERISA plan clients and the marked-down FX exchange rates used to process repatriation of principal, dividends, and interest paid in foreign currencies, and other FX transactions.

113. SSGM's conversion of foreign currency to U.S. dollars constituted the exercise of authority or control respecting the management or disposition of the underlying assets of the commingled investment funds and, therefore, of assets of the ERISA Plans, within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(1), and 29 C.F.R. § 2510.3-101(a). Accordingly, State Street Bank and SSGM were functional fiduciaries of the ERISA Plans.

E. State Street's FX trades were prohibited transactions under ERISA and corresponding federal regulations.

114. ERISA § 406(a), 29 U.S.C. §1106(a), prohibits transactions between a plan and a party in interest; this broad prohibition is subject to numerous exemptions to allow the normal course of business with regard to investment management. Foreign currency exchanges between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to such plans are exempted from the prohibition provided they meet certain conditions. First, the terms of the transaction must not be less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange transactions between parties; second, neither the bank, the broker-dealer, nor any affiliate thereof may have any discretionary authority or control with respect to the investment of the plan assets involved in the transaction. Prohibited Transaction Exemption 94-20, 59 Fed. Reg. 8022-02 (February 17, 1994). Prohibited Transaction Exemption ("PTE") 94-20 also required that any such transaction be directed by a fiduciary independent of the bank, broker-dealer, or any affiliate. PTE 98-54 modified this requirement to allow such transactions to occur pursuant to "standing instructions," authorized in writing by the independent fiduciary. Prohibited Transaction Exemption 98-54, 63 Fed. Reg. 63503-63510 (November 13, 1998). The requirements that the transactions be at arm's-length and that the bank, broker-dealer, or affiliate thereof not have any investment discretion with respect to the transaction are codified at 29 U.S.C. § 1108(b)(18) (effective August 17, 2006).

115. State Street Bank and SSGM are "affiliates" within the meaning of the Prohibited Transaction Exemption and they directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with each other.

116. Notwithstanding any standing instructions or written authorization by the Plans, State Street did not meet the requirements for the foreign exchange exemption, because the transactions were in fact consistently less favorable to the Plans than the terms generally available in comparable arm's-length foreign exchange transactions between parties, and because State Street exercised discretionary authority and control over the investments and plan assets

involved in the transactions. Thus, State Street's FX trades do not fall under PTE 94-20 or under PTE 98-54.

117. Furthermore, ERISA § 406(b), 29 U.S.C. § 1106(b), prohibits transactions between a plan and a fiduciary that amount to self-dealing.[2] Plaintiffs allege that State Street's FX trading practices amounted to self-dealing because State Street consistently negotiated rates, or charged rates for the FX transactions that were favorable to State Street, and unfavorable to its fiduciary clients, and State Street thus had a conflict of interest with regard to its FX trading practices for Plaintiffs and other class members.

COUNT I

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by State Street Bank)

118. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

119. Defendant State Street Bank is an "investment manager" within the meaning of ERISA section 3(38), 29 U.S.C. § 1002(38), because it (i) has the power to manage, acquire, or dispose of plan assets placed in its custody; (ii) is a bank within the meaning of the Investment Advisers Act of 1940; and (iii) has acknowledged in writing that it is a fiduciary with respect to the Plans.

120. As an investment manager, State Street Bank is a fiduciary under ERISA and bound by the duties of prudence and loyalty laid out in ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1). These duties mean that as a broker for the Plaintiffs' Plans, State Street Bank is bound to act in the customer's interest when transacting business for the account, and thus

[2] 29 U.S.C. §1106 (b) Transactions between plan and fiduciary
A fiduciary with respect to a plan shall not—
(1) deal with the assets of the plan in his own interest or for his own account,
(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or
(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

bound, for example, to disclose fully to the Plans all the details of the relevant FX trading transactions it was undertaking for the account.

121. State Street Bank has breached its ERISA fiduciary duties of prudence and loyalty because it knew or should have known that SSGM has been charging the Plans (or the commingled Funds in which the Plans invested) rates for FX trading that were unfavorable or unreasonable, above the market rates, and/or in excess of what SSGM had agreed to charge, but did not ensure, by negotiation or otherwise, that SSGM's rates were reasonable, at or above the market rate, and/or not in excess of what SSGM had agreed to charge.

122. These breaches of fiduciary duty involved assets of the Plans on which fees were levied by State Street Bank or SSGM.

123. Section 409(a) of ERISA, 29 U.S.C. § 1109(a), imposes liability on State Street Bank for these breaches and requires State Street Bank to make good to the Plans the losses resulting from its breaches.

124. To enforce the relief available under section 409(a), 29 U.S.C. § 1109(a), Plaintiffs assert this claim against State Street Bank under ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2).

125. Further, pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), State Street Bank must provide other appropriate equitable relief to redress its breaches of duty and enforce its fiduciary duties.

COUNT II

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by SSGM)

126. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

127. SSGM is a fiduciary under ERISA section 3(21)(A), 29 U.S.C. § 1002, with respect to the Plans because it exercises authority or control respecting management or disposition of the Plans' assets.

128. As a fiduciary, SSGM is bound by the duties of prudence and loyalty laid out in ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1).

129. SSGM has breached these duties or prudence and loyalty by charging the Plans (or the commingled Funds in which the Plans invested) fees for FX trading that were unfavorable or unreasonable, above the market rates, and/or in excess of what it had agreed to charge.

130. These breaches of fiduciary duty involved assets of the Plans over which SSGM had authority or control.

131. Section 409(a) of ERISA, 29 U.S.C. § 1109(a), imposes liability on SSGM for these breaches and requires SSGM to make good to the Plans the losses resulting from its breaches.

132. To enforce the relief available under section 409(a), 29 U.S.C. § 1109(a), Plaintiffs assert this claim against SSGM under ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2).

133. Further, pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), SSGM must provide other appropriate equitable relief to redress its breaches of duty and enforce its fiduciary duties.

COUNT III

Prohibited Transactions

(Violations of § 406(a)(1)(C)-(D) of ERISA, 29 U.S.C. § 1106(a)(1)(C)-(D) by State Street Bank and SSGM)

134. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

135. ERISA section 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C), provides that a fiduciary shall not cause a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect furnishing of goods, services, or facilities between the plan and a party in interest.

136. ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), provides that a fiduciary shall not cause a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of a party in interest, of any assets of the plan.

137. As noted above, State Street Bank is a fiduciary with respect to the Plans.

138. SSGM is a "party in interest" within the meaning of ERISA section 3(14), 29 U.S.C. § 1002(14), for at least two independently sufficient reasons: it is a fiduciary with respect to the Plans, and it is a person providing services to the Plans.

139. By allowing SSGM to charge the Plans (or the commingled Funds in which the Plans invested) fees for FX trading that were unfavorable or unreasonable, above the market rates, and/or in excess of what it had agreed to charge—and by doing so when it knew or should have known that SSGM was charging the Plans such fees—State Street Bank violated ERISA section 406(a)(1)(C)-(D), 29 U.S.C. § 1106(a)(1)(C)-(D). Further, by charging such fees, SSGM violated ERISA section 406(a)(1)(C)-(D), 29 U.S.C. § 1106(a)(1)(C)-(D).

140. While ERISA section 408(b)(2), 29 U.S.C. § 1108(b)(2), provides an exemption from the prohibitions of ERISA section 406(a), 29 U.S.C. § 1106(a), for contracting or making reasonable arrangements with a party in interest for, *inter alia*, services necessary for the establishment or operation of the plan, that exemption is only met if no more than reasonable compensation is paid. Here, that exemption does not apply because the fees charged by SSGM were unfavorable or unreasonable and/or above market rates.

141. While there is another exemption from the prohibitions of ERISA section 406(a), 29 U.S.C. § 1106(a), for foreign currency exchanges between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to a plan, that exemption does not apply here for two independently sufficient reasons: because (1) the terms of the transactions were less favorable to the Plans than the terms generally available in comparable arm's-length foreign exchange transactions; and (2) SSGM had discretionary authority or control with respect to the investment of plan assets.

142. Pursuant to ERISA section 502(a)(2) and (a)(3), 29 U.S.C. § 1132(a)(2) & (a)(3), State Street Bank and SSGM are liable to restore the losses to the Plan and provide other appropriate equitable relief.

COUNT IV

(Co-Fiduciary Liability, against SSGM and State Street Bank)

143. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

144. As alleged above, SSGM and State Street Bank are fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1) and ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Thus, they are bound by the duties of loyalty and prudence.

145. ERISA § 405(a), 29 U.S.C. § 1105(a), imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if (1) he or she knows of such a breach and fails to remedy it, (2) knowingly participates in a breach, or (3) enables a breach. The Co-Fiduciary Defendants breached all three of these provisions.

146. State Street Bank and SSGM knew of the breaches of the other party because upon information and belief, the two entities work closely together, and State Street Bank knew that SSGM was not providing full disclosure in its role as a broker for the FX transactions.

147. Neither State Street Bank nor SSGM undertook any efforts to halt or alter the fees being charged by SSGM by the commingled Funds, or more fully negotiate those fees.

148. State Street Bank and SSGM knowingly participated in the breaches of the other party because they continued to engage in the transactions over a course of years, were fully aware that full disclosure had not been made to the Plan sponsors, fiduciaries or participants regarding the FX trading rates their Funds were being charged and the fact that those rates were unfavorable or unreasonable, above the market rates, and/or in excess of what it had agreed to charge.

149. State Street Bank and SSGM enabled the other party's breach because they were fully aware that full disclosure had not been made to the Plan sponsors, fiduciaries or participants regarding the rates their funds were being charged for FX trading and the fact that those rates were unfavorable or unreasonable, above the market rates, and/or in excess of what it had agreed to charge.

150. Pursuant to ERISA § 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) & (a)(3), Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

COUNT V

(Violations of § 406(a)(1)(C)-(D) of ERISA, 29 U.S.C. § 1106(a)(1)(C)-(D) by SSGM, alleged in the alternative)

151. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

152. As alleged above, SSGM was a party in interest under ERISA.

153. As alleged above, SSGM violated ERISA section 406(a)(1)(C)-(D), 29 U.S.C. § 1106(a)(1)(C)-(D).

154. Even if SSGM were not a fiduciary, SSGM would still be liable under ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), to provide appropriate equitable relief due to its violations of ERISA section 406(a)(1)(C)-(D), 29 U.S.C. § 1106(a)(1)(C)-(D).

COUNT VI

(Knowing participation in a breach of fiduciary duty by SSGM, alleged in the alternative)

155. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

156. Even if SSGM were not a fiduciary, SSGM knowingly participated in State Street Bank's breach of its fiduciary duties to the Plans, as alleged in Count I.

157. As a sophisticated financial institution, SSGM fully understood the duties that fiduciaries such as State Street Bank have under ERISA.

158. Despite this understanding, SSGM participated in—indeed, was the *cause* of—State Street Bank's violation of its fiduciary duties as alleged in Count I.

159. Under ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), the Plans are entitled to equitable restitution from SSGM with respect to the excess amounts paid to it by the Plans, as well as other appropriate equitable relief.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. Declare that the Defendants have violated ERISA's prohibited transactions provisions;

2. Declare that the Defendants breached their fiduciary duties under ERISA;

3. Issue an order compelling a proper accounting of the foreign exchange transactions in which the Plans and the Funds have engaged;

4. Issue an order compelling Defendants to restore all losses caused to the Plans (or that will be caused to the Plans after the filing of this Complaint);

5. Issue an order compelling the Defendants to disgorge all fees paid and incurred to Defendants (or that will be paid or incurred by the Plans after the filing of this Complaint), including any profits thereon;

6. Order equitable restitution and other appropriate equitable monetary relief against the Defendants;

7. Award such other equitable or remedial relief as may be appropriate, including the permanent removal of the Defendants from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to serve as custodians to the Plans;

8. That this action be certified as a class action and that each Class be designated to receive the amounts restored to the Plans by Defendants and a constructive trust be established for distribution to the extent required by law;

9. Enjoin Defendants collectively, and each of them individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

10. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g) and/or the Common Fund doctrine; and

11. Award such other and further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiffs hereby demand a jury on all issues so triable.

Dated: September 12, 2012

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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

The Andover Companies Employee Savings and Profit Sharing Plan on behalf of itself, and James Pehoushek-Stangeland, and all others similarly situated, Plaintiffs,	)	No. 1: 12-cv-11698 MLW
	)	**DEMAND FOR JURY TRIAL**
vs.	)	
State Street Bank and Trust Company, Defendant.	)	

PLAINTIFFS' AMENDED CLASS ACTION COMPLAINT

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This is a classic case of self-dealing. The ERISA-qualified retirement plans of Plaintiffs suffered losses because Defendant State Street Bank and Trust Company did not prudently safeguard their assets, instead permitting its currency traders to pilfer plan assets by improperly marking up and marking down foreign currency trades. This self-dealing occurred whenever State Street needed to exchange currency on behalf of the plans. Rather than seek the best price for the plans' foreign currency exchange transactions—or even the actual market rate—State Street used one of its divisions, State Street Global Markets, to execute the foreign currency exchange trades to benefit its own accounts. In executing these trades, Global Markets did not charge the plans what the transaction cost. Nor did Global Markets charge a rate based on the cost of the transaction. Instead, Global Markets systematically priced the trades based on the worst price of the trading day, and pocketed profits at the plans' expense. State Street manipulated the currency transactions to the plans' detriment despite its duty as a fiduciary under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("ERISA") to protect the plans' assets. Because this practice was widespread and uniform, it forms the basis for claims on behalf of a class of ERISA Plans ("the Plans"). This lawsuit seeks to recover the losses the Plans suffered as a result of State Street's self-dealing.

I. INTRODUCTION

1. Plaintiffs' allegations are based on personal knowledge as to themselves and their own acts, and on information and belief and the investigation of counsel as to all other matters.[1]

2. Plaintiffs are Alan Kober, a trustee and fiduciary for The Andover Companies Employees' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, a participant in The Boeing Company Voluntary Investment Plan. Plaintiffs trusted State Street Bank with their

[1] Counsel's investigation included review of: (i) plan documents, (ii) publicly available data and news articles, and (iii) review of the pleadings and documents on file in *Hill v. State St. Corp*., No. 09-12146 (D. Mass.); *Demory v. State St. Corp.*, No. 10-10064 (D. Mass.); *Richard v. State St. Corp.*, No. 10-10184 (D. Mass.); *Ark. Teacher Ret. Sys. v. State St. Corp.*, No. 11-10230 (D. Mass.);; *Henriquez v. State St. Bank & Trust Co.*, No. 11-12049 (D. Mass.); *State of Cal. v. State St. Corp.*, No. 08-08457 (Cal. Sup. Ct. Sacramento Cnty.); and *People of Cal. v. State St. Corp.*, No. 08-8457 (Cal. Sup. Ct. Sacramento Cnty.).

retirement savings and suffered losses as a result of State Street's self-dealing FX trading scheme.

3. Defendant State Street Bank and Trust Company's ("State Street Bank" or "State Street") undertook self-dealing and imprudent management of Plaintiffs' ERISA-covered funds in two ways. Some of the Plans offered their participants investment options that included State Street Bank-sponsored commingled funds—that is, pools of assets created and aggregated by State Street Bank for a number of different investors and plans—that required foreign currency ("FX") trades, while other defined benefit Plans hired State Street to serve as custodian to undertake FX trades of plan assets. In either circumstance, the self-dealing and imprudent management by State Street violates ERISA.

4. For both defined contribution and defined benefit Plans, State Street was an ERISA fiduciary. State Street was an ERISA fiduciary because it served as the trustee and investment manager to the Plans and commingled funds through its State Street Global Advisors ("SSgA") division, and as the investment manager it exercised discretionary control over Plan assets. One example of State Street's discretionary control is that as investment manager for the commingled funds SSgA negotiated or contracted with State Street Global Markets ("Global Markets") to execute FX transactions to facilitate purchases or sales of foreign securities for the funds, or to repatriate profits made abroad.

5. State Street was also an ERISA fiduciary in its provision of trustee and custodian services. In serving as trustee and custodian to the defined benefit and defined contribution Plans, State Street acted as more than a "plain vanilla" custodian of assets—that is, it did more than perform administrative and ministerial duties. Instead, Global Markets took control of Plan assets and exercised discretion when it entered into FX transactions on behalf of the Plans. Rather than simply executing FX transactions according to market rates at the time requests were received, Global Markets utilized its control over Plan assets and the FX process to impose unauthorized, undisclosed mark-ups or mark-downs on the rates for the FX transactions and pocketed the difference. In so doing, it was a functional ERISA fiduciary.

6. As a custodial bank, State Street Bank holds securities on behalf of investors. Clients hire custodians to do several things, including: safeguard and record movement of assets; arrange settlement of all purchases and sales; and maintain and manage all cash transactions, including FX transactions. Custodians are typically used by investors who do not wish to leave securities on deposit with their broker-dealers or investment managers. By separating the duties of investment manager and custodian, an investor—at least in theory—reduces the risk of fraud or other misconduct.

7. As of September 2012, State Street held approximately $23.44 trillion in assets under custody and administration, making it one of the largest providers of custodial services in the world. In fact, as of December 31, 2011, State Street's SSgA division was the largest manager of institutional assets worldwide, the largest manager of assets for tax-exempt organizations (primarily pension and retirement plans) in the U.S., and the third largest investment manager in the world. State Street charged Plaintiffs and the Plans in the putative class hundreds of millions of dollars a year in fees for custodial and investment management services. A significant amount of State Street's revenue, however, was comprised of ill-gotten gains from self-dealing FX transactions.

8. Under ERISA, Plaintiffs may recover losses and obtain equitable relief on behalf of the Plans and all others similarly situated. ERISA demands that State Street act prudently and solely in the interest of those who, like Plaintiffs, have invested money in accounts covered by ERISA. This duty to act prudently and solely in the interest of Plaintiffs and others is a fiduciary duty, and fiduciary duties are among the strongest in the law.

9. ERISA also creates strict liability for certain types of prohibited transactions, such as State Street's self-dealing in charging unauthorized mark-ups and mark-downs to the Plans on the FX trades through its Global Market division, and then pocketing the difference. The undisclosed mark-ups and mark-downs were not for the exclusive benefit of the Plans or their participants and beneficiaries, but rather benefitted State Street Bank.

10. Despite its legal obligations to Plaintiffs, State Street has undertaken an unfair and deceptive practice from at least 1998-2009 (hereinafter, "Class Period"). Namely, State Street Bank has overseen and been responsible for the FX transaction practices described herein. These transactions were undertaken behind a veil of secrecy that allowed State Street to make exorbitant and undisclosed profits at the direct expense of the Plans. State Street charged the Plans marked-up FX rates when buying foreign currency on their behalf, and marked-down FX rates when selling foreign currency for the Plans, and in both cases pocketed the difference. State Street charged the Plans and the Proposed Class fictitious FX rates unrelated to the market-based rates State Street was actually paying.

11. The Plaintiffs, the Plans, and other Class members could not have detected State Street's deception. For the commingled funds, the transaction was conducted between two internal State Street divisions (SSgA and Global Markets) and was not reported on the fund fact sheets or otherwise reported to Plan sponsors. While State Street's custodial clients may have received a report of the rates that they were charged, without receiving a corollary report showing the range of actual trades for the currency pairs at issue, they could not detect that they were being charged hidden and unauthorized mark-ups (or mark-downs) on their FX trades.

12. State Street's unfair and deceptive FX trading practices generated hundreds of millions of dollars in profits annually for State Street—money that should have gone to Plaintiffs and the Proposed Class.

13. Plaintiffs bring this class action on behalf of all similarly affected ERISA clients of State Street during the Class Period, to recover the proceeds State Street reaped from Class members through its unfair and deceptive FX trading practices.

II. JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. section 1331 and 29 U.S.C. section 1132(e)(1). Plaintiffs' claims are brought as a class action under Rule 23 of the Federal Rules of Civil Procedure.

15. Venue is proper in this district pursuant to 29 U.S.C. section 1132(e)(2).

III. PARTIES

A. Plaintiff Alan Kober

16. Plaintiff Alan Kober is an Individual Trustee of The Andover Companies Employees' Savings and Profit Sharing Plan (the "Andover Plan"). In this capacity, Mr. Kober is a Plan fiduciary with standing to bring claims for breach of fiduciary duty on behalf of the Plan pursuant to ERISA sections 409 and 502(a)(2).

17. Merrimack Mutual Fire Insurance Company ("Merrimack Mutual") is the designated Plan Administrator for the Andover Plan. The Andover Plan is an ERISA-qualified defined contribution plan established for the benefit of the employees of Merrimack Mutual and its sister companies, Cambridge Mutual Fire Insurance Company, and Bay State Insurance Company, which, together with Merrimack Mutual, comprise the Andover Companies ("Andover Companies").

18. During the Class Period, the Andover Plan offered participants investments in several SSgA-sponsored commingled funds, including international equity funds such as State Street's International Growth Opportunities Securities Lending Class A Fund, and the SSgA Daily International Alpha Select fund.

19. By contract, State Street Bank served as both the Trustee for the Andover Plan and as an ERISA fiduciary and Investment Manager for the Andover Companies Plan investments from 2001 through approximately 2009.

20. As trustee for the Andover Plan, State Street Bank was required to exercise power and authority over the investment accounts for which it had express investment management discretion, or upon the direction of the Investment Manager. Pursuant to section 4.1(o) of the Master Trust Agreement, the investment power of the trustee included the power to "purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with State Street Bank and Trust Company, its agents or its subcustodians."

21. By separate contract, State Street Bank served as investment manager for the Andover Plan's assets invested in State Street's proprietary commingled funds. Pursuant to

section 1 of the Investment Manager Agreement, State Street was both a discretionary investment manager and a designated ERISA fiduciary pursuant to section 3(38) of ERISA with respect to all cash, securities, or other property designated by the Andover Plan.

B. Plaintiff James Pehoushek-Stangeland

22. Plaintiff James Pehoushek-Stangeland is a resident of Seattle, Washington. He is an employee of the Boeing Company and is a participant in The Boeing Company Voluntary Investment Plan ("the Boeing Plan"). Accordingly, Plaintiff Pehoushek-Stangeland has standing to bring suit on behalf of the Boeing Plan for losses to the Plan due to breaches of fiduciary duty pursuant to ERISA sections 409 and 502(a)(2).

23. The Boeing Plan is an ERISA-qualified defined contribution plan established for the benefit of the employees of the Boeing Company, a multinational aerospace and defense corporation headquartered in Chicago, Illinois.

24. By contract, State Street Bank served as Trustee for The Boeing Company Employee Savings Plans Master Trust ("Boeing Master Trust").

25. During the Class Period, the Boeing Plan offered its participants investment options in several SSgA-sponsored commingled funds. Among the international equity funds offered were the SSgA Global All Cap Equity ex-US Index Non-Lending Series Fund Class A ("SSgA Global Non-Lending Fund"), which Boeing designated as the "International Index Fund."

26. As of December 31, 2010, the Boeing Plan held approximately $1.98 billion in Plan assets in the International Index Fund. As of December 31, 2011, the Boeing Plan held approximately $1.863 billion in the fund. These investments constituted approximately 6% of the Boeing Plan investments.

27. The International Index Fund invests in an index comprised of global developed and emerging country stocks from outside the U.S. Its international investments require exchange of participants' U.S. dollars into various foreign currencies, and SSgA utilizes Global Markets for the FX transactions.

28. Due to the "fund of funds" structure of many offerings in the Boeing Plan, the International Index Fund appears in multiple placed in the Boeing Plan portfolio: not only as a stand-alone investment option, but also as part of the Balanced Index Fund and each of the nine Lifecycle Funds, which are the target retirement options for Boeing Plan participants.

29. During the class period, Plaintiff Pehoushek-Stangeland invested in SSgA's International Index Fund, directly as well as indirectly through the Lifecycle 2040 Fund and the Balanced Index Fund.

30. Plaintiffs use the term "International Equity Funds" to collectively denote the SSgA-sponsored commingled international equity funds that required purchases and repatriation of foreign currency by Global Markets, and that were investment offerings in the Boeing and Andover Plans, as well as for other members of the Proposed Class.

C. Defendant State Street Bank and Trust Company

31. Defendant State Street Bank is a registered financial holding company with its principal place of business in Boston, Massachusetts.

32. State Street Bank's business activities are organized into three segments or divisions: investment management provided by SSgA, custodial services provided by Global Markets, and institutional services provided by State Street Investor Services.

33. SSgA is a division of Defendant State Street Bank responsible for investment management. The SSgA division of State Street Bank provides asset management, and is billed as the "Fiduciary Heritage of State Street Corporation."

34. Global Markets is also a division of Defendant State Street Bank. Global Markets provides custodial services to clients, including processing the FX transactions at issue herein. Global Markets processes these FX transactions at the direction of SSgA on behalf of the International Equity Funds and the Plans.

35. State Street Bank is also the Trustee for the State Street Bank and Trust Company Investment Funds for Tax Exempt Retirement Plans (also referred to as the "commingled funds"). This was the trust pursuant to which State Street created, offered, and maintained the

various commingled funds—the funds that were offered to the Andover Plan and the Boeing Plan for their retirement plans.

36. The terms of the relevant Amended and Restated Declaration of Trust establish that State Street Bank and Trust Company was the trustee for the commingled funds, and that the funds were under the exclusive management and control of State Street Bank. Pursuant to the Declaration of Trust, State Street Bank had the power to hold, manage, and control all property held in the trust, or power to delegate responsibility for management of the assets to ERISA-qualified investment managers. State Street Bank also had the power to convert any monies into any currency through foreign exchange transactions to the extent permitted under ERISA. Accordingly, investment management for the commingled ERISA funds was conducted through State Street Bank's SSgA division, and FX trading through the Global Markets division.

IV. SUBSTANTIVE ALLEGATIONS

A. Foreign Exchange Trading is Essential to Plaintiffs' Ability to Meet Their Retirement Plan Investment Needs

1. The Necessity of FX Trading in a Global Investment Portfolio

37. Investors such as the Plans have found it increasingly necessary to enter the overseas securities markets and expand the global scope of their investment portfolios. These investments may offer increased diversification and greater returns than domestic investments alone.

38. Institutional investors that buy and sell foreign securities, such as Global Markets on behalf of the Plans, must trade currency because purchases, sales, dividends, and interest payments are all transacted in the currency of the nation in which the relevant securities exchange sits. Just as you need euros, yuan, or yen to buy coffee in Berlin, Beijing, or Tokyo, you need those same currencies to buy securities in Germany, China or Japan.

39. A U.S. investor must use euros to buy shares that trade on a German securities exchange. To get those euros, you must sell U.S. dollars and purchase euros. Similarly, dividends

or interest earned in Germany will be paid in euros, and turning those gains into dollars requires exchanging euros for dollars.

40. For a U.S. investor to receive proceeds from the sale of foreign securities, the foreign currency received from the sale must be converted into the currency of one's own country. This process is called repatriation. The rate of exchange matters because it impacts the proceeds of any investment made in foreign currency.

2. How FX Trading Works

41. The values of different currencies "float" against each other. That is, they vary based on factors ranging from supply and demand to political and economic trends. While the price of coffee at a Berlin café might be € 2 all week long, it might cost $ 2.50 on Monday morning and $2.72 by Friday.

42. FX trading occurs on a nearly 24-hour cycle, five-and-a half days a week. The official FX trading day begins at 7:00 a.m. New Zealand time and ends at 5:00 p.m. New York City time.

43. For each currency bought and sold during the course of the FX trading day, there will necessarily be a high trade and a low trade. This information is tracked by proprietary services such as Electronic Brokerage System ("EBS") and Reuters.

44. The difference between the low trade and the high trade is called the "range of the day." The "spot range of the day" refers to FX rates as of a specific and prompt settlement date, usually two business days after the trade date. To more accurately measure the trade cost for FX transactions that settle prior to or later than the date for spot trades, traders in the FX market also look to the "forward-adjusted range of the day." Because FX trades do not always settle two days after the trade, the forward-adjusted range of the day is a more conservative and accurate measurement because it takes into account the interest rate differential between the trade date and settlement date for the underlying currencies.

45. If, during one trading day, the lowest trade was $1.25 to buy €1.00, and the highest rate trade was $1.35 to buy €1.00, the range of the day would be $1.25-$1.35.

46. Another useful measure for analyzing FX trades is the daily "mid-rate," which is simply the sum of the forward-adjusted daily high and forward-adjusted daily low, divided by two. This rate reflects the "average" FX rate in a given currency pair on a given day.

47. The daily mid-rate is significant to this case because Plaintiffs cannot discover the precise time of day when FX trades occurred (in contrast to stock trading, for example). By looking at the daily mid-rate over a significant period of time, one can reasonably estimate the average FX trade cost on any given day. Over time, FX trades will regress to the mid-rate.

3. Negotiated vs. Non-Negotiated FX Trades

48. In a "negotiated," or "active," FX trade, an investor communicates directly with a FX trader. The FX trader quotes a rate for a proposed transaction, which is accepted, rejected or countered—in other words, actively negotiated. If a deal is reached, the trader executes the FX trade at the agreed-upon price. Negotiated trades can potentially achieve better rates for an investor, but the process requires greater resources.

49. In a "non-negotiated," "standing-instruction," or "indirect" trade there is no arm's-length negotiation of the price between the investor and the trader. Instead, clients simply report the desired currency transaction to the bank, trusting and relying on the bank to execute the trade on the client's behalf using "best execution" practices. Plaintiffs' allegations herein complain solely of State Street Bank's practices with regard to non-negotiated trades.

B. State Street's Provision of FX Trades to its Custodial Clients

50. Institutional investors, such as pension plans like the Arkansas Teacher Retirement System ("Arkansas Teachers"), typically requested that State Street handle the smaller FX transactions, mostly the repatriation of dividend and interest payments, through non-negotiated trades because the amount of each trade rarely justified the time and effort required for a negotiated trade.

51. State Street's clients reasonably expected that non-negotiated FX trades would have no mark-ups or mark-downs, for at least three reasons: (1) custodial clients already paid State Street hefty annual fees to serve as custodian over their assets; (2) the Custodian Contracts

and associated fee schedules indicated no extra fees or mark ups, and did not authorize any such fees or mark-ups; and (c) State Street's Investment Manager Guides assured custodial clients and investment managers that the price of FX trades was *"based on the market rates at the time the trade is executed."* (Emphasis added).

1. State Street's Clients Relied Upon State Street's Expertise and Loyalty

52. Custodial clients placed a high degree of trust in State Street to execute non-negotiated FX transactions. In conducting these transactions, State Street occupied a superior position to its custodial clients due to its control over all aspects of the FX trade, including the information that its traders had about the FX market, the timing of the trades, and most importantly, the prices at which the trades were executed.

53. Custodial clients depended on Global Markets not only to execute the FX trades, but also to accurately and honestly report the FX rate to them, and to carry out the trades in accordance with their custodial contracts, associated fee schedules, and guidelines as set forth in the Investment Manager Guides.

54. Consistent with the custodial contracts and Investment Manager Guides, State Street's clients also had a reasonable expectation that the FX rates that State Street charged (or credited) on non-negotiated FX trades would accurately reflect the true market-rates of those FX trades. And there is no reason a custodial client would expect its custodian bank—to which it was paying substantial annual fees for custodial services—to charge non-negotiated FX trades at something other than the actual rate for the FX trade.

2. State Street's Custodial Contracts and Investment Manager Guidelines Were Predicated on No-Cost FX Trading

55. For State Street's custodial clients, such as the Arkansas Teachers, the contracts provided that State Street "shall be entitled to compensation for its services and expenses as Custodian" pursuant to "a written Fee Schedule between the parties." Custodial clients and State Street agreed to and executed a series of fee schedules covering the class period.

56. The fee schedules either provided estimated annual fees or annual flat fees for State Street's services as a custodian.

57. State Street's custodial contracts (a) expressly provided that non-negotiated FX trades would be executed free of charge; or (b) did not list FX transactions among the services for which it was permitted to charge an additional fee or any other cost above the annual flat fee.

58. The fee schedules did set forth certain categories of ancillary services for which State Street was permitted to charge additional fees, including Wire Fees, Reporting Fees, Delivery Fees and Subcustody Fees. None of these ancillary service categories relate to FX trading for non-negotiated trades.

59. The Custodian Contracts did not state that State Street would impose any fees in connection with FX trading.

60. State Street consistently stated that "Foreign Exchange Transactions . . . are ***priced based on the market rates at the time the trade is executed."*** (Emphasis added). This promise was made in Investment Manager Guides for custodial clients and investment managers. These Guides contained comprehensive information about State Street's custody practices and services, including procedural requirements, costs, and information on "State Street Foreign Exchange Transactions."

61. During the Class Period, State Street issued at least 15 Investment Manager Guides, including those dated July 9, 2003; August 9, 2005; September 26, 2006; October 17, 2006; November 20, 2006; December 15, 2006; January 25, 2007; October 30, 2007; November 21, 2007; December 19, 2007; January 28, 2008; May 1, 2008; October 31, 2008; December 30, 2008; January 23, 2009, November 20, 2009 and December 1, 2009.

62. State Street represented in each of these Investment Manager Guides that "State Street Foreign Exchange Transactions . . . are ***priced based on the market rates at the time the trade is executed."*** (Emphasis added.)

3. State Street's Deceptive Scheme Overcharged Clients for Non-Negotiated FX Trades

63. Despite State Street's representations that FX transactions were priced based on market rates at the time the trades were executed, State Street's FX practices diverged from what the Custodial Contracts authorized and what the Investment Manager Guides represented. Instead, State Street reported and charged its custodial clients FX rates on non-negotiated trades far above what State Street actually paid for foreign currency (or far below what State Street actually received for sales of foreign currency)—oftentimes, at rates that actually fell outside of the range of the day**.**

64. However, unbeknownst to its custodial clients, when State Street reported FX rates on non-negotiated trades to its clients, those statements did not reflect the actual cost or proceeds of the FX transactions, and instead reflected rates that Global Markets selected at its discretion. Put simply, State Street invented the FX rates it reported and charged (or credited) to its custodial clients. State Street paid or received one rate for FX during the trading day, yet reported to its custodial clients another rate that was either higher (in the case of a purchase) or a lower (in the case of a sale), and pocketed the difference.

65. For example, when custodial clients or their agents requested that State Street execute an FX transaction, the request was routed electronically via State Street's Market Order Management System (MOMS) to a group of "risk traders" working at Global Market's FX trading desk. A Global Markets FX trader would execute the transaction at whatever the current exchange rate was (the "actual rate") using the Wall Street System ("WSS"). The rate reported by Global Markets for the transaction, however, was not the rate State Street charged clients. The trader would instead charge the client a rate selected at his discretion at the end of the day, after seeing the day's range of FX transaction rates for the relevant currencies. This manipulation allowed Global Markets to mark up or mark down rates, charge rates that were most favorable to itself rather than in the best interest of the Plans, and pocket the difference between the actual

rate and the rate entered by its traders—which could amount to tens of thousands of dollars from a single FX transaction.[2]

66. To illustrate the breach of fiduciary duty and failure to disclose, assume again the example set forth above—trades on a given day that ranged from $1.25 to $1.35 (the "range of the day") to purchase €1.00, with a day's mid-rate of $1.30. On any, and all, non-negotiated euro-for-dollar trades on behalf of its custodian clients, State Street would have paid a rate between $1.25 and $1.35, but reported to its clients that it paid at least $1.35, and sometimes more than that. State Street also kept the difference.

67. This conclusion is supported by the analysis from non-ERISA custodial client Arkansas Teachers of ten years of FX transactions executed by State Street on behalf of and reported to Arkansas Teachers. The Teachers reviewed almost 11,000 foreign currency trades between 2000 and 2010. About 4,216, or 39%, were non-negotiated trades.

68. The Arkansas Teachers compared its FX trades to other FX trades for the same currency pairs in a comprehensive database of more than 2 million trades, which allowed it to estimate the trading cost of the Teachers' non-negotiated FX trades. The trading cost is the difference between the day's mid-rate and the rate that State Street charged (or credited) to the Arkansas Teachers for non-negotiated FX trades.

69. State Street did not report the actual time of execution of any FX trade, so using the day's mid-rate was the best method to see whether State Street charged (or credited) the actual market rate at the time of execution, as State Street had promised to do.

70. The Arkansas Teachers determined that State Street overcharged for FX trading. State Street charged fictitious FX rates by adding (on purchases) or subtracting (on sales) "basis

[2] For example, the *Wall Street Journal* examined one trade of 8.1 million euros for dollars made by Bank of New York Mellon on behalf of a large pension fund. There the trader reported to the pension fund that the trade was $1.3610. On that day, however, euro/dollar trades occurred between $1.3704 and $1.3604. Had the trade settled at the higher end of the range of the day, which was $1.3704, the pension fund would have gotten an extra $76,012. The *Wall Street Journal* analyzed over 9,400 trades processed over a decade and found that 58% of the currency trades were within the 10% of the day's range least favorable to the client. Carrick Mollenkamp & Tom McGinty, *Inside a Battle Over Forex*, Wall St. J., May 23, 2011.

points" or "pips" from the actual FX rate. (A basis point is 1/100th of a percentage point. For example, the smallest move the euro/dollar currency pair generally makes is 1/100th of a penny, or one basis point.) State Street would add or subtract as much as it could get away with, by selecting a rate close to either the high or low extreme of the range of the day. During periods of increased market volatility, when currency prices fluctuated more and the currency trading ranges of the day were wider, allowed State Street to skim more off the top of each non-negotiated FX trade.

71. From January 3, 2000, through December 31, 2010, the FX rates that State Street reported and charged (or credited) to the Arkansas Teachers on **non-negotiated FX trades** were, **on average, 17.8 basis points above or below the day's mid-rate**. In other words, every foreign exchange transaction cost the Arkansas Teachers 17.8 basis points higher than the average FX rate (or the day's mid-rate).

72. If State Street actually paid $1.31551 to purchase €1.00, it charged the Teachers $1.31729, or 17.8 basis points extra. For a purchase of €10 million, the undisclosed profit to State Street on that single trade—and the concomitant unknown loss to the Teachers—was $17,800. During the years the Arkansas Teachers examined, State Street executed over $1.2 billion in standing order FX trades, meaning that State Street kept about $2 million dollars of the Arkansas Teachers' money.

73. State Street routinely reported and charged (or credited) fictitious prices for its FX trades. For instance, 53% of the standing-order (non-negotiated) trades analyzed by the Arkansas Teachers actually fell entirely outside the forward-adjusted range of the day, *see supra* at ¶44. These trades alone, over $200 million worth, actually added trading costs of ***64.4 basis points*** over the day's mid-rate—an enormous hidden and unauthorized mark-up. For example, on a purchase of €10 million, an undisclosed fee of 64.4 basis points means a $64,400 profit to State Street.

74. Rates consistently above (or below) the daily mid-rate alone demonstrate that Global Markets was charging a hidden mark-up that diverted assets of its clients and the Plans to

State Street, thereby breaching its fiduciary duties.. These actions also violated the terms of the custodial contracts and the representations in the Investment Manager Guides. When more than half of non-negotiated trades fall outside the forward-adjusted range of the day, it is plausible that those reported FX rates were not actual, market-based FX rates, but were instead fictitious and designed solely to gouge State Street's clients and, in turn, their beneficiaries.

75. There is no rational, honest basis for a professional FX market participant like Global Markets to charge a rate outside the forward-adjusted range of the day without disclosing it. The basis for this practice was rather, self-interested profit for State Street, to the significant detriment of its clients. State Street Corporation's revenue from FX trading services grew dramatically during the Class Period, due in significant part to its manipulation of the FX rates charged to clients for non-negotiated FX trades.

State Street Corporation's FX Trading Revenue 2004-2008

Year-End	**FX Revenue**	**% increase from prior year**
2004	$420 million	N/A
2005	$468 million	11%
2006	$661 million	41%
2007	$802 million	21%
2008	$1.08 billion	34%

76. State Street Corporation publicly acknowledged how market conditions provided profit-making opportunities for its FX business when it stated the following during an earnings call[3] held on October 16, 2007:

> [W]hile market conditions in the third quarter presented challenges ... it also created more opportunities in foreign exchange and in securities finance than we usually expect in the third quarter.... Revenue from foreign exchange increased 98% from the year ago quarter, and 29% from the second quarter.

77. Tellingly, from 2000 to 2010, the FX rates that State Street reported and charged (or credited) to the Arkansas Teachers on more than 6,500 negotiated FX trades added, on

[3] Earnings calls are teleconferences in which public companies discusses the financial results of a reporting period.

average, only **3.6 basis points** to the day's mid-rate. In other words, State Street padded its profits, at Plaintiffs' expense, by about 14 basis points per trade for non-negotiated trades.

4. State Street's Deceptive Acts and Practices Could Not Reasonably Be Detected

78. Sophisticated custodial clients such as the Arkansas Teachers were not able to discover the manner in which State Street deceptively marked-up and marked-down FX transactions during the Class Period. The periodic reports State Street sent to clients showed only the rate that State Street charged for its FX trades. The reports did not include the range of the day, the daily mid-rate, or any indication of the time of the day that the trade was executed (known as "timestamps"). Accordingly, clients could not reasonably determine, or even suspect, that State Street was secretly charging more than it actually paid for FX or was paying clients less than it actually received for FX.

79. Custodial clients also reasonably presumed that State Street's reports accurately represented the true cost of the FX trades. Pursuant to the custodial contracts, State Street made monthly reports of monies received or paid on behalf of the client. Accordingly, State Street had an affirmative obligation to report accurately the amount it was paying or receiving for FX trades.

80. Furthermore, based on the Investment Manager Guides' assurance that FX rates would be "priced based on the market rates at the time the trade is executed," no custodial client had any reason to suspect that they were being charged (or credited) anything other the rate that State Street itself had paid or received on those standing-instruction FX transactions.

81. Because sophisticated custodial clients such as Arkansas Teachers could not uncover State Street's deceptive FX trading practices—even when they had directly negotiated FX trades as a reference—less sophisticated clients had no chance at all.

C. Events After October 2009 Begin to Shed Light on State Street's Deceptive FX Trading Practices

82. On October 20, 2009, the Attorney General of California intervened in a whistleblower lawsuit that was filed in California state court. The suit alleged State Street

misappropriated more than $56 million from California's two largest pension plans using the same unfair and deceptive FX practices alleged here. *People of the State of Cal. ex rel. Brown v. State St. Corp.*, No. 34-2008-00008457-CU-MC-GDS (Cal. Super. Ct. Sacramento Cnty. Oct. 20, 2009).

83. The California Attorney General alleged that State Street reported inflated FX rates when buying foreign securities, reported deflated FX rates when selling foreign securities, and pocketed the difference. The Attorney General further alleged that State Street hid its wrongful conduct by entering incorrect FX rates into State Street's electronic FX trading systems and providing false records to clients.

84. The California Attorney General has represented that its allegations of undisclosed "mark-ups" are supported in part by the sworn testimony of a former State Street Bank employee, William Strazzullo, who worked on the same trading floor as the State Street Bank and Global Markets FX traders. He overheard how State Street Bank or Global Markets FX traders were marking up FX trade prices. This trader described the practices of State Street Bank's FX traders as a "totally unethical thing to do" and said that the FX traders' practices were not within the "industry standard." Declaration of Kenny V. Nguyen in Support of Plaintiff's Memorandum and Points and Authorities in Response to Defendants' Motion for Protective Order, Exhibit U at 4 (Plaintiffs' Oct. 6, 2011 letter to Defendants), *People of Cal., v. State St. Corp.*, No. 08-8457 (Cal. Super. Ct. Sacramento Cnty. Jan. 24, 2012).

85. After the California Attorney General filed suit, State Street dramatically changed its FX trading policies and disclosures and so informed its clients. Under these new policies, State Street admitted for the first time that it had systematically imposed additional charges for FX trading. These policy differences are made clear by comparing State Street's Investment Manager Guides published in 2006 and 2009.

86. The 2006 Investment Manager Guide said little about FX transactions. What it did say would have misled clients into thinking that State Street was protecting, rather than pocketing, clients' assets. The 2006 Guide assures clients that State Street has taken steps "to

ensure compliance with certain ERISA requirements" by "effect[ing] foreign exchange transactions for its ERISA trust and custody clients under a special 'FX procedure.'" September 26, 2006 Investment Manager Guide at 37.

87. In contrast, in the 2009 Investment Manager Guide, State Street dramatically increased its disclosures, and admitted that it was adding undisclosed charges to every foreign exchange transaction. In contrast to earlier disclosures, the 2009 Investment Manager Guide clearly states that foreign exchange transactions are not included in custodial services: "all foreign exchange services . . . are separate and independent of any services provided to custody clients." November 20, 2009, Investment Manager Guide at 36. In divulging this practice for the first time, State Street told customers that the FX charges would be "adjusted from time to time" but posted each business day on a website. *Id*. 2009 Investment Manager Guide at 37.

88. These new revelations stood in sharp contrast to State Street's previous communications. The 2006 Investment Manager Guide stated that standing-order (non-negotiated) foreign exchange transactions were "provided as part of each account opening" for ERISA clients. September 26, 2006 Investment Manager Guide at 37. Rather than explaining the charges it was imposing, in 2006 State Street hid that information and posted only the "buy rate and sell rate for each currency." September 26, 2006 Investment Manager Guide at 37. Indeed, the 2006 Guide assured clients that foreign exchange transactions would be done at these posted rates "or rates more favorable if market conditions warrant." *Id.*

89. Contrary to its 2006 promise to improve on posted rates, State Street's 2009 Investment Manager Guide stated that the "pricing of any transaction . . . is not determined by reference to any actual cost." November 20, 2009 Investment Manager Guide at 35. That is, in 2009 State Street *admitted* that the prices it had disclosed to custodial clients and others were not market prices, or prices State Street paid, but "prices" that increased its profits by padding fees on FX transactions.

90. Also in 2009, State Street Bank disclosed that a non-negotiated FX request "*is unlikely, in most circumstances, to be completed at the same or as favorable an execution rate as*

it would be" if the trade were negotiated directly. 2009 Investment Manager Guide at 38. This simple disclosure, not made in previous Investment Manager Guides, finally discloses what State Street Bank had been hiding for years: FX trades contained hidden fees that disadvantaged Plaintiffs and the Proposed Class at State Street's benefit.

91. In a similar message sent to custodial clients such as the Arkansas Teachers, State Street admitted that ***"[s]ince December 2009***, State Street has provided to all of its custody clients and their investment managers via our dedicated client portal, my.statestreet.com, comprehensive disclosure of the pricing and execution methodology (including the maximum mark-up or mark-down that may be applied) for each of its Indirect [non-negotiated] FX Services." (Emphasis added.) State Street added that "on the day after a trade is executed, State Street provides for each currency pair the reference interbank rates and the times at which they are obtained, the actual rates, the daily high/low range at the time of pricing (where applicable) and the actual mark-up or markdown that was applied."

92. State Street thus altered its practices only after its deceptive acts and practices were publicly revealed. State Street's late disclosure that it charged mark-ups and mark-downs on non-negotiated FX trades contradicts its previous repeated assurances in contracts and the Investment Manager Guides that FX rates would be based on market rates at the time the trade is executed.

93. According to a study conducted by an independent FX analyst, after State Street altered its FX policies, the cost of non-negotiated FX trades dropped by a remarkable ***63%.*** The study analyzed 498,940 FX spot and forward trades (196,280 non-negotiated trades and 302,660 negotiated trades) executed during 2000-2010, and found that investors who had their custodial banks, including State Street, execute FX trades on a standing-instruction or non-negotiated basis during 2010 saw an overall 63% drop in trading costs from their average trading costs for the years 2000-2009.

94. Correspondingly, State Street's FX trading revenue decreased 56% from the fourth quarter of 2008 ($330 million) to the fourth quarter of 2009 ($144 million).

95. While State Street attributed this revenue decrease to lower "customer volumes" and a decrease in "currency volatility," State Street Corporation's 2009 Form 10-K filing stated that customer volumes declined by only 16% from 2008 to 2009, and currency volatility decreased by only 4%. State Street Corp. Annual Report (Form 10-K) (Feb. 22, 2012) ("2009 Form 10-K") at 41. A substantial portion of the 56% decline was the direct result of the California Attorney General's intervention, which forced State Street to stop its profitable self-dealing.

96. In fact, State Street Corporation conceded in its 2009 Form 10-K filing that disclosing its FX transaction profits on non-negotiated trades for its custodial clients would likely continue to affect its revenues and profits from these transactions:

> In light of the action commenced by the California Attorney General, we are providing customers with greater transparency into the pricing of this product and other alternatives offered by us for addressing their foreign exchange requirements. Although we believe such disclosures will address customer interests for increased transparency, over time such action may result in pressure on our pricing of this product or result in clients electing other foreign exchange execution options, which would have an adverse impact on the revenue from, and profitability of, this product for us.

2009 Form 10-K at 12-13.

97. The State Street whistleblower—whose allegations formed the basis of the California Attorney General lawsuit—alleged that State Street had generated $400 million in improperly obtained FX trading revenue annually, constituting one-third of Defendant's trading revenue.

98. Without discovery of State Street's internal documents it is impossible to determine how much State Street overcharged the Plans and other members of the Proposed Class. However, in *Hill v. State Street Corp.*, No. 09-12146, 2011 WL 3420439 at *32 n.25 (D. Mass. Aug. 3, 2011), Judge Gertner found that participants in State Street's own ERISA defined contribution plan offered a "logical rationale for calculating that about 30% of State Street's reported FX revenue in the years before October 2009" was attributable to the improper self-dealing on non-negotiated trades, based on the 56% FX revenue decline in the quarter

immediately following the Attorney General's suit. Assuming that 30% of State Street's revenue for FX trading during the relevant period was attributable to self-dealing, State Street's clients, including Plaintiffs' Plans, and the Plans of the Proposed Class, have overpaid State Street for its services by hundreds of millions of dollars.

D. Facts Bearing on Fiduciary Breach for State Street's ERISA Clients

99. ERISA-covered defined contribution plans like the Andover Plan and the Boeing Plan invested in foreign securities (and hence foreign currency) through their State Street Bank-sponsored commingled funds. The commingled funds received principal, dividends, and interest that were paid in foreign currencies, or participated in other investments that required the exchange of foreign currency into and from US Dollars. The Andover Plan offered participants the option to invest in certain State Street-sponsored commingled International Equity Funds, including the International Growth Opportunities Securities Lending Class A Fund, and the SSgA Daily International Alpha Select Fund. Likewise, the Boeing Plan offered participants the option to invest in certain State Street-sponsored commingled International Equity Funds, including the International Index Fund held by Plaintiff Pehoushek-Stangeland.

100. These International Equity Funds invest in a wide variety of international equity securities issued throughout the world. To purchase or sell the foreign securities in these funds, and then repatriate the funds to clients, FX transactions were required. As investment manager for the commingled funds, SSgA negotiated or contracted with its affiliate, Global Markets, for the FX transactions. State Street Bank, in its various roles as the trustee, investment manager, and custodian for the commingled funds, was a fiduciary with discretion and control over the funds' FX transactions ordered by SSgA and undertaken by Global Markets.

101. As investment manager for the commingled funds, SSgA had discretion as to the type and nature of instructions it gave Global Markets when undertaking FX trades. Upon information and belief, rather than negotiating each FX trade for the funds, SSgA placed non-negotiated trade orders with Global Markets. Provision of standing instructions by SSgA was insufficient from a fiduciary duty standpoint because in so doing, State Street failed to

appropriately limit the designated price range and time period for the requested FX transactions. This fiduciary breach was compounded by SSgA's apparent failure to monitor, detect, and rectify Global Markets' mark-ups and mark-downs of the trades for its ERISA clients. As a result, State Street Bank engaged in a multi-year, self-dealing FX trade scheme—that is, it allowed SSgA and Global Markets to breach their fiduciary duties and act against Plaintiffs' interests in FX transactions year after year, and knew that SSgA and Global Markets would in fact act against Plaintiffs' interests.

102. SSgA, as the internal investment manager, would initiate FX transactions required for the investment management of the commingled funds through the MOMS system. *See supra* at ¶65. To do so, SSgA would submit a request to the Securities Processing Unit of State Street through MOMS, which would then pass the order on to the Global Markets FX trading desk. Placing non-negotiated trades allowed Global Markets to mark-up or mark-down rates and charge rates that were most favorable to itself, rather than in the best interest of the Plans. SSgA and Global Markets thereby both exercised discretion over Plan assets.

103. Because Plan fiduciaries whose Plans invested in the commingled funds entrusted all aspects of the investment management to State Street, including the FX transactions required for international purchases and sales, State Street had control over all aspects of the FX transactions. Neither the time stamp nor the rate of the actual FX transaction was disclosed to the Plans, their fiduciaries, or participants, by SSgA.

104. Over time, and with SSgA requesting and Global Markets executing thousands of FX transactions annually as part of the management of the Funds, Global Market's discretionary pilfering of Plan assets added up to large losses to participants and beneficiaries. State Street thus took advantage of its already-profitable relationship as trustee, investment manager, and custodian for the funds (and Plans) to rake in additional unauthorized profits.

105. Defendant State Street Bank, through its investment management division, SSgA, and its trading arm, Global Markets, provided FX trading services similar to those provided to the Andover Plan and the Boeing Plan to other Plans in the class, in its roles as trustee,

custodian, and investment manager. With no direction from the Plans, State Street commingled assets of the Plans, controlled where the Plans' assets were deposited and how and when they were invested and disbursed, and controlled all aspects of the FX transactions for the Plans, including Global Market's unauthorized mark-ups and mark-downs for non-negotiated trades on behalf of the funds, which amounted to State Street's self-dealing and taking of Plan assets for its own use and benefit.

106. State Street Bank also served as an ERISA fiduciary to defined benefit plans in the putative class. On information and belief, State Street provided custodial services and commingled fund investment options to the defined benefit plans and utilized non-negotiated FX transactions in a like manner to the transactions executed on behalf of its public fund clients and the defined contribution commingled fund clients. *See supra* at ¶¶50-81.

E. Defendant's Fiduciary Status under ERISA

1. The Nature of Fiduciary Status

107. There are two types of fiduciaries under ERISA: "named fiduciaries" and "*de facto* fiduciaries."

108. **Named Fiduciaries**. Every ERISA plan must have one or more "named fiduciaries." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). The "administrator" in the plan instrument is automatically a named fiduciary, and in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

109. Investment managers are also ERISA fiduciaries. Under ERISA:

> (38) The term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 1102 (a)(2) of this title)—
>
> (A) who has the power to manage, acquire, or dispose of any asset of a plan;
>
> (B) who
>
> (i) is registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.];
>
> (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act [15 U.S.C. 80b–3a (a)], is

> registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary;
>
> (iii) is a bank, as defined in that Act; or
>
> (iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and
>
> (C) has acknowledged in writing that he is a fiduciary with respect to the plan.

ERISA § 3(38), 29 U.S.C. § 1002(38).

110. ***De Facto* Fiduciaries**. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under section 402(a)(1), 29 U.S.C. section 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus a person is a fiduciary to the extent

> (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
>
> (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
>
> (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

2. Defendant State Street's Fiduciary Status

111. In the relevant Amended and Restated Declaration of Trust, State Street acknowledged its fiduciary status as Trustee with exclusive management and control of the commingled funds for all the ERISA-covered plans that offered the International Equity Funds as an investment option for participants' retirement savings.

112. As a trustee for the commingled funds with exclusive management and control State Street Bank authorized its investment management division to manage the commingled funds, and authorized Global Markets to convert any monies needed for the funds' operation into

the required currency through FX transactions of Plan assets. State Street Bank also served as a trustee and investment manager to the Plans pursuant to separate contracts. At all times, State Street Bank had the duty to prudently and loyally manage Plan assets, discretion to select appropriate service providers and custodians, and the duty to monitor its various divisions to ensure that these transactions were within the bounds of its fiduciary responsibilities and the limitations of ERISA.

113. State Street Bank, through its SSgA division, served as the Investment Manager for the International Equity Funds in Plaintiffs' Plans and, upon information and belief, numerous other plans. In this capacity, SSgA was responsible for prudently and loyally managing Plan assets, and authorizing, reviewing and controlling the conduct of any other State Street division or representative engaged in activities affecting the value or performance of the Funds for which State Street served as Investment Manager.

114. Under ERISA, investments in commingled Funds are subject to a "look-through" rule, pursuant to which, the "plan assets" of an ERISA-covered plan include both its undivided "equity interest [in the entity] and an undivided interest in each of the underlying assets of the entity …". 29 C.F.R. § 2510.3-101(a)(2); *see also* ERISA § 3(42), 29 U.S.C. § 1002(42) (authority of Secretary of Labor to define term "plan assets" by regulation). Specifically, when a Plan acquires or holds an interest in a commingled Fund, "its assets include its investment and an undivided interest in each of the underlying assets of the entity." 29 C.F.R. § 2510.3-101(h)(1).

115. "[A]ny person who exercises authority or control respecting the management or disposition of such underlying assets, and any person who provides investment advice with respect to such assets for a fee (direct or indirect) is a fiduciary of the investing plan." *Id.* § 2510.3-101(a).

116. As investment manager for the commingled funds, State Street Bank, through its SSgA division, exercised authority and control with respect to the management or disposition of the Plans' assets. Accordingly, State Street Bank was a fiduciary of each and every ERISA Plan which invested in the International Equity Funds, including the Plaintiffs' Plans and the Plans of

the Proposed Class members with respect to the underlying assets of each and every State Street Bank-sponsored commingled fund.

117. State Street Bank, through its Global Markets division, also functioned as a fiduciary to the Plans and the Class by acting as trustee and custodian for the commingled funds, and by exercising authority and control over the Plans' assets when undertaking FX transactions for the International Equity Funds as to the price and timing for these transactions involving Plan assets.

118. Global Market's conversion of U.S. dollars to foreign currency, and foreign currency to U.S. dollars constituted the exercise of authority or control respecting the management or disposition of the underlying assets of the commingled investment funds and, therefore, of assets of the ERISA Plans, within the meaning of ERISA section 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(1), and 29 C.F.R. section 2510.3-101(a). This is particularly so because Global Markets exercised discretion in choosing when and how to execute the trades, and whether to mark up or mark down the FX transactions over the market rates that Global Markets had received for the transactions, and then profited and engaged in self-dealing by pocketing the difference for itself. Accordingly, Global Markets was also a functional fiduciary of the ERISA Plans.

F. The Relevant Law

1. Fiduciary Duties under ERISA

119. ERISA sections 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) & (B), provide, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

120. These fiduciary duties under ERISA sections 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence and are the "highest known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982). They entail, among other things:

> (a) The duty to conduct an independent and thorough investigation into, and to continually monitor, the merits of all the investment alternatives for a plan;
>
> (b) The duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor; and
>
> (c) The duty to disclose and inform, which encompasses: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

2. Prohibited Transactions under ERISA

121. In addition to ERISA's extensive fiduciary duty provisions, the statute categorically bars certain transactions deemed likely to injure a plan. *See Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 241 (2000).

a. ERISA § 406(b) is an absolute bar against self-dealing

122. ERISA section 406(b), 29 U.S.C. § 1106(b), prohibits certain transactions between fiduciaries and a plan. The statute sets forth an "absolute bar against self dealing" by a fiduciary. *See Brock v. Hendershott*, 840 F.2d 339, 341 (6th Cir. 1988). ERISA section 406(b) provides the following:

> A fiduciary with respect to a plan shall not—
>
> (1) deal with the assets of the plan in his own interest or for his own account,
>
> (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

> (3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

b. ERISA § 406(a) prohibits party-in-interest transactions

123. ERISA section 406(a), 29 U.S.C. §1106(a), prohibits transactions between a plan and a party in interest. A "party in interest" is defined broadly with respect to an ERISA-qualified plan and includes, among others, any fiduciary, counsel, or employee of such employee benefit plan, as well as any person providing services to such plan. ERISA § 3(14), 29 U.S.C. § 1002(14). Section 406(a)(1) provides the following:

> (1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—
>
> (A) sale or exchange, or leasing, of any property between the plan and a party in interest;
>
> (B) lending of money or other extension of credit between the plan and a party in interest;
>
> (C) furnishing of goods, services, or facilities between the plan and a party in interest;
>
> (D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; or
>
> (E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 1107 (a) of this title.

c. Foreign currency exchange exemptions

124. Section 406(a)'s prohibitions against transactions with a party in interest are subject to numerous exemptions to allow the normal course of business with regard to investment management. *See* ERISA § 408, 29 U.S.C. § 1108. Foreign currency exchanges between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to such plans are exempted from the prohibition provided they meet certain conditions.

> (18) Foreign exchange transactions.— Any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either), and a plan (as

> defined in section 1002(3) of this title) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other party in interest, if—
>
> (A) the transaction is in connection with the purchase, holding, or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets),
>
> (B) at the time the foreign exchange transaction is entered into, **the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated partie**s, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,
>
> (C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the interbank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and
>
> (D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction.

ERISA § 408(b)(18), 29 U.S.C. § 1108(b)(18) (emphasis added).

125. This section existed first as a Department of Labor ("DOL") regulation, Prohibited Transaction Exemption 94-20, 59 Fed. Reg. 8022-02 (Feb. 17, 1994), and was later codified as 29 U.S.C. § 1108(b)(18) (effective Aug.17, 2006). Prohibited Transaction Exemption (PTE) 94-20 required that foreign exchange transactions be "directed" by a plan fiduciary *independent of the bank, broker dealer, or affiliate*. Four years later the DOL promulgated another regulation, to allow non-negotiated trades within carefully circumscribed conditions. Prohibited Transaction Exemption 98-54, 63 Fed. Reg. 63503-63510 (Nov. 13, 1998). PTE 98-54 exempts FX transactions "performed under a written authorization [i.e., standing instructions]…by a fiduciary of the plan…independent of the bank or broker-dealer engaging in the covered transaction." Section III(e), 63 Fed. Reg. at 63508.

126. Although PTE 94-20 and PTE 98-54 carve out a limited space for execution of FX transactions within the ERISA regulatory scheme, these exemptions do not relieve State Street of fiduciary responsibility. As the DOL explained,

The Department wishes to point out that ERISA's general standards of fiduciary conduct would apply to the standing instruction arrangements permitted by this class exemption. Section 404 of ERISA requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion.63 Fed. Reg. at 63505.

3. Civil Remedies under ERISA

127. ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant or a fiduciary for relief under ERISA section 409, 29 U.S.C. § 1109.

128. ERISA section 409(a), 29 U.S.C. § 1109(a), "Liability for Breach of Fiduciary Duty," provides, in pertinent part:

> any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

129. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes individual participants and fiduciaries to seek equitable relief from Defendant, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

130. Plaintiffs therefore bring this action under the authority of ERISA section 502(a)(2) for relief under ERISA section 409(a) to recover losses sustained by the Plans arising out of the breaches of fiduciary duties by the Defendant for violations under ERISA sections 404(a)(1) and 406, as well as pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3) for

equitable relief from Defendant as fiduciary , including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

V. CLASS ACTION ALLEGATIONS

131. **Class Definition.** Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of the Andover Plan and the Boeing Plan, and the following class of persons similarly situated (the "Class"):

> All qualified ERISA plans, and the participants, beneficiaries, and named fiduciaries of those plans, that invested directly or indirectly in the State Street Bank commingled Funds, which includes the "International Equity Funds" identified in this complaint; or for which State Street Bank provided investment management or custodial services, that utilized State Street Global Market's indirect FX trading services, and suffered damages as a result of the deceptive acts and practices and other misconduct alleged herein, at any time between January 2, 1998 and December 31, 2009. Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest, and the officer, directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or assigns of any such entity.

132. Plaintiffs reserve the right to modify the class definition before moving for class certification, including a reservation of right to seek to certify subclasses of State Street's clients, or extension of the class period, if information gained during this litigation, through discovery or otherwise, reveals that modifying the class definition or seeking subclasses would be appropriate.

133. **Numerosity.** The members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that numerous ERISA-covered benefit plans throughout the country offered the commingled International Equity Funds and that these plans collectively have tens of thousands of participants and beneficiaries.

134. **Commonality.** The claims of Plaintiffs and the members of the Class have a common origin and share a common basis. The claims of all Class members originate from the same misconduct, breaches of duties, and violations of ERISA, perpetrated by Defendant.

Proceeding as a class is particularly appropriate here the claim goes to the same type of currency trade instruction, indirect trades, conducted by Global Markets on behalf of the funds, and also on behalf of custodial clients, and therefore, State Street's deceptive acts and practices and misconduct regarding its FX trading practices affected all Plans were uniform and widespread.

135. There are questions of law and fact common to the Class, including:

(a) Whether Defendant breached its fiduciary duties under ERISA by selecting its internal division to conduct the FX transactions for the Funds;

(b) Whether Defendant breached its fiduciary duties under ERISA by failing to prudently and loyally manage Plan assets when it permitted its affiliate to conduct FX transactions;

(c) Whether Defendant breached its fiduciary duties under ERISA by marking-up or marking-down the FX transactions for the Funds at issue and passing a lower NAV to the Plaintiffs' Plans or the funds;;

(d) Whether Defendant pocketed the difference between the actual, market-based FX rates it received when entering into the FX transactions, and the FX rates that were reported and charged to the commingled funds, and the Plans;

(e) Whether Defendant breached its fiduciary duties under ERISA by pocketing the difference between the actual, market-based FX rates and the mark-ups and mark-downs, and maximized profit to State Street at the expense of Plan assets;

(f) Whether Defendant's self-interested FX transactions constituted prohibited transactions under ERISA; and,

(g) Whether Defendant's acts proximately caused losses to the Plans, and if so, the appropriate relief to which Plaintiffs, on behalf of the Plans and the Class are entitled.

136. **Typicality.** Plaintiffs are willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiffs will fairly and adequately protect the interests of the Class and have no interests adverse to or which directly and irrevocably conflict with the interests of other members of the class.

137. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs are members of the Class described herein.

138. The questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class.

139. A class action is superior to other available methods for the adjudication of this controversy. Individual litigation by all Class members would increase the delay and expense to the parties and the Court given the complex legal and factual issues of the case, and judicial determination of the common legal and factual issues essential to this case would be more fair, efficient and economical as a class action maintained in this forum than in piecemeal individual determinations.

140. **Adequacy.** The interests of the Plaintiffs are co-extensive with, and not antagonistic to, those of the absent Class members. Plaintiffs will undertake to represent and protect the interests of absent Class members. The undersigned counsel for Plaintiffs and the Class are experienced in class action, complex, and ERISA litigation, will adequately prosecute this action, and will assert and protect the rights of and otherwise represent Plaintiffs and absent Class members.

141. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. Compared to individual actions by each Class member, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

142. **Rule 23(b)(1)(A) & (B) Requirements.** Class action status in this ERISA action is warranted under Federal Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendant. Class action status also is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

143. **Rule 23(b)(2) Requirements.** Certification under 23(b)(2) is warranted because Defendant have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

144. **Rule 23(b)(3) Requirements.** In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

VI. CAUSES OF ACTION

COUNT I

ERISA Prohibited Transactions

(Violations of § 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1))

145. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

146. Defendant State Street Bank is a fiduciary based on its discretionary control over Plan assets for the purposes of FX transactions.

147. ERISA section 406(b), 29 U.S.C. § 1106(b), prohibits transactions between a plan and a fiduciary that amount to self-dealing. Plaintiffs allege that State Street's FX trading practices amounted to self-dealing because State Street Bank, through its Global Markets division, consistently used its discretionary control over Plan assets to select for itself the most favorable FX rate based on the range of the day, regardless of the actual rate at the time the transaction occurred, and pocketed the difference between the two rates, causing its fiduciary clients, the Plaintiffs' Plans, and other members of the Proposed Class to suffer losses.

148. State Street's practice of FX transaction rate manipulation was nothing less than a fiduciary dealing with the assets of a plan for its own account. Fiduciary self-dealing is categorically prohibited by ERISA section 406(b), 29 U.S.C. § 1106(b).

149. Pursuant to ERISA section 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) & (3), State Street Bank is liable to restore the losses to the Plans and provide other appropriate equitable relief.

COUNT II

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104)

150. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

151. Defendant State Street Bank, through its SSgA division, is an "investment manager" within the meaning of ERISA section 3(38), 29 U.S.C. § 1002(38), because it (i) has the power to manage, acquire, or dispose of plan assets placed in its custody; (ii) is a bank within the meaning of the Investment Advisers Act of 1940; and (iii) has acknowledged in writing that it is a fiduciary with respect to the Plans.

152. As a fiduciary under ERISA, State Street Bank is bound by the duties of prudence and loyalty laid out in ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1). These duties mean that as an investment manager for the Plaintiffs' Plans, State Street Bank is bound to act in the customer's interest when transacting business for the account, and thus bound, for example, to disclose fully to the Plans all the details of the relevant FX trading transactions it was undertaking, or negotiating on behalf of the funds, including the mark-ups or mark-downs that the funds were receiving for the FX trades.

153. As a fiduciary, State Street also had a duty to monitor its internal Global Markets division. Through its Global Markets division, State Street Bank knew that it was charging unauthorized mark-ups and mark-downs for the non-negotiated trades rather than the actual transaction rates and pocketing the difference.

154. State Street Bank has breached its ERISA fiduciary duties of prudence and loyalty because it knew that its Global Markets division was charging the Plans (or the commingled funds in which the Plans invested) unauthorized mark-ups and mark-downs for FX trading that

were unfavorable or unreasonable, above the transactional rates, and/or in excess of what Global Markets had agreed to charge, but did not ensure, by negotiation or otherwise, that Global Market's rates were in the best interest of the Plans.

155. State Street, through its Global Markets division, has breached the duties of prudence and loyalty by charging the Plans (or the commingled Funds in which the Plans invested) unauthorized mark-ups or mark-downs over the actual FX trade rates that were unfavorable or unreasonable, above the market rates, and/or in excess of what it had agreed to charge.

156. These breaches of fiduciary duty involved assets of the Plans on which fees were levied by State Street Bank. .

157. Section 409(a) of ERISA, 29 U.S.C. § 1109(a), imposes liability on State Street Bank for these breaches and requires State Street Bank to make good to the Plans the losses resulting from its breaches.

158. To enforce the relief available under ERISA section 409(a), 29 U.S.C. § 1109(a), Plaintiffs assert this claim against State Street Bank under ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2).

159. Further, pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), State Street Bank must provide other appropriate equitable relief to redress its breaches of duty and enforce its fiduciary duties.

COUNT III

ERISA Prohibited Transactions

(Violations of § 406(a)(1)(C) & (D) of ERISA, 29 U.S.C. § 1106(a)(1)(C) & (D))

160. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

161. ERISA section 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C), provides that a fiduciary shall not cause a plan to engage in a transaction if the fiduciary knows or should know that the

transaction constitutes a direct or indirect furnishing of goods, services, or facilities between the plan and a party in interest.

162. ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), provides that a fiduciary shall not cause a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of a party in interest, of any assets of the plan.

163. As noted above, State Street Bank is a fiduciary with respect to the Plans.

164. State Street Bank, State Street Global Advisors, and State Street Global Markets are "affiliates" within the meaning of the Prohibited Transaction Exemption and they directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with each other.

165. Global Markets, as an affiliate of State Street Bank, is a "party in interest" within the meaning of ERISA section 3(14), 29 U.S.C. § 1002(14), for at least two independently sufficient reasons: it is a functional fiduciary with respect to the Plans, and it is a person providing services to the Plans.

166. By allowing Global Markets to manipulate FX transaction prices to the detriment of the plan and pocket the difference between the actual transaction rate and the rate selected by Global Markets, State Street Bank violated ERISA section 406(a)(1)(C) & (D), 29 U.S.C. § 1106(a)(1)(C) & (D). State Street Bank caused the Plans to engage in transactions while knowing that such transactions constituted a direct or indirect transfer of assets of the Plans to a party in interest, Global Markets.

167. While ERISA section 408(b)(18), 29 U.S.C. § 1108(b)(18), provides an exemption from the prohibitions of ERISA section 406(a), 29 U.S.C. § 1106(a), for foreign currency exchanges between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to a plan, the exemption only applies if, at the time the FX transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange

transactions, and if the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction. The exemption does not apply here for two independently sufficient reasons: (1) the terms of the FX transactions, by which Global Markets essentially ensured that its clients would always get the worst exchange rate of the day, were indeed less favorable to the Plans than comparable arm's-length transactions, and (2) State Street, SSgA, and Global Markets had investment discretion (and SSgA provided investment advice) with respect to the investment of plan assets when it entered into the transactions. Thus, State Street's FX trades do not fall under the narrow exemption of section 408(b)(18).

168. Pursuant to ERISA section 502(a)(2) & (3), 29 U.S.C. § 1132(a)(2) & (3), State Street Bank is liable to restore the losses to the Plans and provide other appropriate equitable relief.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. Declare that the Defendant has violated ERISA's prohibited transactions provisions;

2. Declare that the Defendant breached its fiduciary duties under ERISA;

3. Issue an order compelling a proper accounting of the FX transactions in which the Plans and other members of the Proposed Class have engaged;

4. Issue an order compelling Defendant to restore all losses caused to the Plans (or that will be caused to the Plans after the filing of this Complaint);

5. Issue an order compelling the Defendant to disgorge all fees paid and incurred to Defendant or its affiliates (or that will be paid or incurred by the Plans after the filing of this Complaint), including any profits thereon;

6. Order equitable restitution and other appropriate equitable monetary relief against the Defendant;

7. Award such other equitable, injunctive, or remedial relief as may be appropriate, including the permanent removal of the Defendant from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to serve as FX custodian to the Plans;

8. That this action be certified as a class action and that the Class be designated to receive the amounts restored to the Plans by Defendant and a constructive trust be established for distribution to the extent required by law;

9. Enjoin Defendant collectively, and each affiliate individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

10. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA section 502(g), 29 U.S.C. § 1132(g) and/or the Common Fund doctrine; and

11. Award such other and further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiffs hereby demand a jury on all issues so triable.

Dated: October 18, 2012

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EX. 24

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Arnold Henriquez, on behalf of the Waste Management Retirement Savings Plan, and all other similarly situated plans,	)	
Plaintiffs,	)	**C.A. No.:**
v.	)	
State Street Bank and Trust Company, State Street Global Markets, LLC and Does 1-20	)	
Defendants.	)	

CLASS ACTION COMPLAINT

Plaintiff Arnold Henriquez alleges the following on behalf of the Waste Management Retirement Savings Plan ("Plan") and its participants and beneficiaries and a class of similarly-situated ERISA retirement plans (collectively, "Plans") and their participants and beneficiaries against State Street Bank and Trust Company ("SSBT") and State Street Global Markets, LLC ("SSGM") based on the investigative efforts of private whistleblower firms, the State of California, the Securities and Exchange Commission ("SEC"), and an investigation by counsel, which included reviewing: Internal Revenue Service Forms 5500 ("Form 5500") filed with the United States Department of Labor ("DOL"); filings with the United States Securities and Exchange Commission, including Annual Reports on Form 10-K; and other publicly available documents related to this action.

I. NATURE OF THE ACTION

1. This is a civil enforcement action brought pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, et seq., and in particular under ERISA §§ 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), to recover losses and obtain equitable relief on behalf of the Plan, and all other similarly situated plans.

2. SSBT and SSGM (collectively, "Defendants") were required to act prudently and solely in the interest of the Plans' participants and beneficiaries in their capacity as ERISA fiduciaries. On information and belief, rather than fulfilling their fiduciary duties under ERISA (the "highest known to the law")[1], the Defendants charged improper, undisclosed markups on transactions in foreign currency ("FX transactions" or "FX trading").

3. The Plan and the similarly situated Plans are established and sponsored by private entities in accordance with ERISA.

4. Plaintiff alleges that Defendants violated ERISA by causing the Plans, or collective funds operated by Defendants in which the Plans were invested, to execute FX transactions at exchange rates favorable to Defendants and reporting those transactions at less favorable rates. These transactions were prohibited transactions under ERISA § 406, 29 U.S.C. § 1106.

5. Plaintiff also alleges that Defendants failed to act solely in the interest of the participants and beneficiaries of the Plans and breached their fiduciary duties of prudence and loyalty with respect to the Plans. Specifically, Plaintiff alleges that Defendants, as fiduciaries of the Plans, violated their fiduciary duties under ERISA § 404, 29 U.S.C. § 1104 by causing the Plans or the collective funds operated by Defendants in which the Plans were invested to engage in transactions that were not to the exclusive benefit of the Plans or their participants and beneficiaries.

II. JURISDICTION AND VENUE

6. ERISA provides for exclusive federal jurisdiction over these claims. The Plan is an "employee benefit plan" within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and Mr. Henriquez is a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), who is authorized pursuant to ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3), to

[1] *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982)

bring the present action on behalf of the Plan and its participants and beneficiaries to obtain appropriate relief.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

8. Venue is proper in this district pursuant to 28 U.S.C. ' 1391(b) and ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because some or all of the fiduciary breaches for which relief is sought occurred in this district and the Defendants reside and may be found in this district.

III. PARTIES

A. Plaintiffs

9. **Plaintiff Arnold Henriquez**. Plaintiff Arnold Henriquez is a participant in the Waste Management Retirement Savings Plan, an ERISA-covered defined contribution plan. At all material times from the second quarter of 2005 through the second quarter of 2009, Mr. Henriquez invested in the "International Equity Fund"[2] sponsored by SSBT and offered by the Plan. Mr. Henriquez also invested in other funds sponsored by SSBT and offered by the Plan during the Class Period, including the Large Cap Equity Fund, the Small Cap Equity Fund, the Conservative Asset Allocation Fund, the Moderate Asset Allocation Fund, the Aggressive Allocation Fund, the Bond Market and the SSgA Target Retirement 2030 Fund. Mr. Henriquez resides in Frederick, Maryland. Mr. Henriquez brings this action as a representative plaintiff on behalf of all similarly situated plans.

10. **Defendant State Street Bank and Trust Company ("SSBT").** Defendant State Street Bank and Trust Company is incorporated in Massachusetts and is headquartered in

[2] The "International Equity Fund" is the fund name used by SSBT on disclosures to participants in the Plan. The International Equity Fund's name, according to the International Equity Fund's Forms 5500 for 2009 and 2010, filed by SSBT with DOL, is the "Active Intl Stock Selection SL SF CL I (CM8J [sic]." From 2006 through 2008, the International Equity Fund's name, according to the International Equity Fund's Forms 5500 filed by SSBT with DOL was the "International Alpha Select SL Series Fund – [sic]." The foreign fund names may refer to the International Equity Fund at a particular point in time, as well as to one or more of several classes of interests offered in the International Equity Fund.

Boston, Massachusetts. Defendant State Street Bank and Trust Company directly, or indirectly through one or more subsidiaries, operates as a custodial bank for ERISA covered benefit plans and for collective investment funds offered by defined contribution plans. SSBT is a subsidiary of State Street Corporation, a financial holding company headquartered in Boston, Massachusetts.

11. **Defendant State Street Global Markets, LLC ("SSGM")**. Defendant State Street Global Markets, LLC, a subsidiary of State Street Corporation, is incorporated in Delaware and is headquartered in Boston, Massachusetts. SSGM describes itself as "the investment research and trading arm of State Street Corporation." It provides specialized investment research and trading in foreign exchange, equities, fixed income, and derivatives to ERISA covered benefit plans.

12. **Defendants Does 1-20**. Does 1-20 are fiduciaries of the Plans relevant to this lawsuit whose exact identities will be ascertained through discovery.

IV. FACTUAL BACKGROUND

A. The Plans.

13. **Waste Management Retirement Savings Plan**. The Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A). Pursuant to ERISA, the relief requested in this action is for the benefit of the Plan.

14. **Other Similarly Situated Plans**. Defendants provide services similar to those provided to the Plan to other, similarly situated Plans, either directly as plan custodian or indirectly as custodian of funds in which the Plans invest.

B. Defendants' Fiduciary Status

15. Every plan governed by ERISA must have fiduciaries to administer and manage the plan. A custodial bank is among these fiduciaries.

16. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA §402(a)(1), but also any other persons who in fact perform fiduciary functions. ERISA §3(21)(A)(i), 29 U.S.C. §1002(21)(A)(i) (stating that a person is a fiduciary "to the extent . . . he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets. . .") (emphasis added).

17. Defendants functioned as fiduciaries to the Plan by exercising authority and control over Plan assets.

18. SSBT served as custodian for the Plans' assets, including both defined benefit and defined contribution plans. As custodian, SSBT is a fiduciary under ERISA. SSBT is a fiduciary of the Plan and owed fiduciary duties to the Plan and its participants under ERISA.

19. SSGM exercised authority and control over plan assets in its role as SSBT's affiliate responsible for setting the exchange rates on FX transactions and executing those transactions. As discussed below, this process created the maximum spread between the marked up custody exchange rate offered to custodial clients and the marked down exchange rate used to process repatriation and other FX transactions.

C. Retirement Plan Investment Strategy

20. There are two types of retirement plans, defined benefit plans and defined contributions plans. Both types of retirement plans, especially over the last decade, have found it to be necessary and prudent to expand their investments to include exposure to foreign markets. Accordingly, defined benefit plans have expanded international holdings, and defined contribution plans frequently include at least one, if not several, international investment options.

21. Retirement plans regularly purchase and sell foreign securities, receive dividends that are paid in foreign currencies, or participate in other investments that require the exchange

of foreign currency into and from US Dollars ("USD"), that is, FX trading, either directly or through participation in collective investment funds.

22. A "custodian" is an institution that holds securities on behalf of investors. The responsibilities entrusted to a custodian include the guarding and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities. Custodians may also perform ancillary services for their clients. Custodians are typically used by institutional investors who do not wish to leave securities on deposit with their broker-dealers or investment managers. The use of a custodial bank is intended to reduce the risk of misconduct by separating the custodial and asset management duties. An independent custodian ensures that the investor has unencumbered ownership of the securities other agents represent to have purchased on its behalf.

23. SSBT served as custodian for ERISA covered defined benefit plans.

24. SSBT operated collective investment funds invested in foreign securities in which ERISA covered defined contribution plans invested during the Class Period. SSBT served as custodian for these collective investment funds. Collective investment funds that invest in foreign securities, such as the SSBT-sponsored International Equity Fund offered in the Plan, must engage in FX transactions in order to buy and sell securities, to repatriate dividends or interest payments, and to engage in other transactions.

25. Class members placed a high degree of trust in Defendants. Plaintiff and the Class depended upon Defendants to both execute and report FX trades honestly and accurately.

26. SSBT described itself as "a leading specialist in meeting the needs of institutional investors." In its Class Period filings with the SEC, the Company repeatedly stated that its customer relationships were "predicated upon our reputation as a fiduciary and a service provider that adheres to the highest standards of ethics, service quality and regulatory compliance." One of the services provided by SSBT to its custodial clients was the execution of foreign exchange

transactions, which allowed clients to purchase and sell foreign securities or engage in currency trades.

D. SSBT's Scheme

27. On October 20, 2009, the California Attorney General ("California AG") filed a complaint alleging that State Street had overcharged two of California's largest public pension funds by tens of millions of dollars for foreign exchange trades conducted over a period of at least eight years. The California AG's action was based on an extensive eighteen-month investigation, which included interviewing witnesses and reviewing hundreds of thousands of internal State Street documents.

28. On information and belief, and according to the California AG, Defendants, starting in 2001, added an undisclosed and substantial "mark-up" to the exchange rate it used when making foreign exchange trades for its clients. The scheme was simple and not disclosed to the Plans. Defendants had agreements with their large custodial clients that obligated Defendants to charge their clients the same "exchange rate" as the one that Defendants actually used to execute foreign exchange trades requested by the client. Rather than doing so, however, SSGM would execute the trade at one exchange rate without informing its client, and then monitor fluctuations in the rate throughout the day. Then, before the end of the day, SSGM would pick a rate that was more beneficial to Defendants, and tell its clients that the trade had occurred at this other, false rate.

29. For instance, if the transaction was a purchase of a foreign security, SSGM would charge the client a higher foreign exchange rate that occurred later in the day, thus causing the client to pay more than what SSGM had already paid. If the transaction was a sale of a foreign security, SSGM would charge the client a lower foreign exchange, thus paying the client less than what SSGM actually received. In either event, Defendants would take for itself the

difference between the amount for which the trade was actually executed and the amount that SSBT charged its clients.

30. Defendants' clients, including the Plans, had no way of discovering the truth because the records, including statements of account and transaction records provided by State Street in the ordinary course to their clients, including the Plans, showed only that the trade had been executed within the range of rates occurring during that day, notwithstanding that the rate reported was not the actual rate for the transaction. Defendants' clients, including the Plans, were never informed of the actual rates at which FX transactions were made. Defendants' providing such incomplete statements and transaction records to their clients, including the Plans, was a course of conduct designed to conceal evidence of their breaches of fiduciary duty and prohibited transactions set forth herein. The Plans were not on actual or constructive notice of such evidence despite their exercise of reasonable diligence.

31. All foreign exchange transactions are executed at a prevailing exchange rate, which determines how much one currency is worth in terms of another. The most commonly used exchange rate is the Interbank Rate, which fluctuates throughout each day and is tracked and published by various industry sources. Throughout the Class Period, Defendants executed two types of foreign exchange transactions for its clients. Some of Defendants' clients would conduct "direct" or "negotiated" foreign exchange trades. In a direct trade, an institution would contact a Defendants' representative who would quote an exchange rate that the institution could accept or reject. If Defendants' rate was sufficiently competitive, the client would accept and the trade would be executed at the agreed upon exchange rate. Defendants would collect a fee for processing the trade and pass along the cost of the exchange rate to its client.

32. For more than 75% of SSBT's large custodial clients, however, Defendants would conduct "indirect" or "standing instruction" foreign exchange trades. In a standing instruction trade, neither the institution nor its outside investment manager would be quoted an exchange

rate. Instead, the client would request a transaction involving a foreign exchange (such as a purchase of foreign securities), and Defendants would execute the transaction pursuant to its contract with its client. On information and belief, under the terms of SSBT's custodial arrangements, SSBT was obligated to provide its clients the same exchange rate that Defendants actually used to make the trade. This arrangement was supposed to be beneficial to Defendants' clients because, among other things, they would not have to incur the expense and time of identifying and choosing the most competitive exchange rate.

33. Defendants, on information and belief, executed FX transactions on behalf of their own collective investment funds using the same standing instruction method. SSBT, as custodian of their own funds, were not subject to substantial scrutiny on these transactions beyond internal controls.

34. However, this was not the case for all clients. Those clients who conducted direct trades would be quoted an exchange rate by SSGM before executing the transaction. These clients – often large hedge funds – typically had easy access to an alternate price source, such as Bloomberg or Reuters, to double-check the truthfulness of SSGM's rate quotes. Accordingly, Defendants could not overcharge these clients, and thus referred to them internally as "smart" clients or "smart money."

35. As detailed by the California AG, the other clients or their investment managers would initiate a foreign exchange transaction by sending a request, often electronically, to the Securities Processing Unit of SSBT, which was located on the "custody side" of the Company. This request was then sent electronically to the State Street foreign exchange trading desk in SSGM, where it would appear on the Market Order Management System ("MOMS") software used by Defendants' traders.

36. The duty of "best execution" requires that a broker-dealer seek to obtain for its customers the most favorable terms reasonably available under the circumstances. At a

minimum, therefore, "best execution standards" require that Defendants execute trades on terms that are no less favorable than those offered to unrelated parties in a comparable arm's-length transaction.

37. Plaintiff and the Class reasonably expected, because Defendants represented and because ERISA so requires, that they or the collective investment funds they participated in would be offered terms on "standing instructions" trades that were no less favorable than those offered by Defendants to unrelated parties in comparable arm's-length FX transactions.

38. FX trading takes place around the world on a nearly 24-hour cycle, five-and-a-half days a week. The official FX trading week begins at 7:00 a.m., New Zealand time on Monday, with each subsequent trading day ending at 5:00 p.m., New York City time.

39. On information and belief, SSGM's FX traders were informed of SSBT's aggregated standing instruction trade requirements during the course of the day. The FX traders will, that day, trade on the interbank FX market in order to satisfy SSBT's standing instruction positions. This process is called "offsetting" the trades.

40. On information and belief, upon receipt of the request, SSGM's foreign exchange traders checked the exchange rate, set a price, and executed the transaction, which typically occurred early in the day because SSGM traders were at their desks by 7 a.m. Eastern Standard Time. All of those transactions were then entered by the trader into a separate software system called Wall Street Systems ("WSS"), which memorialized the transaction and charged the cost (for purchases) or remitted the payment (for sales) directly to Defendants. The WSS recorded time stamps for the actual, "real time" transaction.

41. On information and belief, although the transaction was now completed and the price locked in, Defendants did not inform the client. Instead, on information and belief, SSGM observed market fluctuations until sometime around 3 p.m. in the afternoon and then assigned either a higher exchange rate (for purchases) or a lower exchange rate (for sales) to the foreign

exchange transactions that occurred during that day. SSGM then applied that rate to all of the "standing instruction" foreign exchange transactions it had conducted that day.

42. On information and belief, at all relevant times to this Complaint, this pricing scheme was used for FX transactions for both custodial clients and for transactions involving SSBT's collective investment funds.

43. With each FX trade priced in this manner, Defendants did not simply profit; they made the biggest possible profit on each trade, based upon the range-of-the-day's FX rates at the point the trade was priced for the Plan.

44. Because Defendants' scheme always priced the trades at the very lowest or very highest rates of the day, Defendants were able to make a profit without any risk to SSBT.

45. On information and belief, by pricing trades in this manner for their standing instruction trades, Defendants secured a spread ten to twenty or more times greater than when a custodial client directly negotiated an FX transaction. That is, Defendants' profits arising from their custodial standing instruction trades were as much as ten to twenty times higher than their profits from comparable, arm's length FX transactions.

46. On information and belief, Defendants' practice of pricing trades in this manner and taking the largest possible mark-up or mark-down was not disclosed to custodial clients like the Plan over the period of time relevant to this Complaint.

47. On information and belief, all Defendants' custodial clients who had standing instruction trades (including spot, forward, swaps, repatriation, and major, minor, emerging, and regulated market trades) suffered from the same inaccurate FX pricing.

48. On information and belief, all of Defendants' collective investment funds which invested in foreign securities and used standing instruction trades (including spot, forward, swaps, repatriation, and major, minor, emerging, and regulated market trades) suffered from the same inaccurate FX pricing.

49. On information and belief, end-of-month reports were prepared by Defendants on or before mid-month. These reports listed the custodial client's FX trades by date, amount, and price, i.e., the fictitious FX rate (as reported to the custody side of SSBT by its FX traders). These reports never contained time-stamps for the FX trades, but there was nothing on the report that would lead a custodial client to suspect that it or a collective investment fund in which it participated had been unfairly charged exorbitant mark-ups (or mark-downs) on its FX trades.

E. SSBT Makes Exceptions for Certain Clients, Offering Them Special Pricing

50. On information and belief, over time, SSBT developed a special class of custodial clients that did not receive the high or low range-of-the-day pricing suffered by other custodial clients, like the Plans or the collective trusts in which the Plans invested. These clients, known internally as "smart money clients," still received the same standing instruction custodial services as the other entities like the Plans or the collective trusts the Plans invested in, but received particular treatment when their FX requirements come to SSBT's FX dealing room.

51. On information and belief, instead of these custodial clients' FX trades being included with the others, like the Plan or the collective trusts in which the Plans invested, and subject to the extreme range-of-the-day mark-up and mark-down, these clients were allowed to deal directly with Defendants – usually by phone – and were given the chance to directly negotiate prices for their FX requirements for that day, every day, despite their trades coming to SSBT as standing instruction trades.

52. As a result, the "smart money" custodial clients always received better pricing than their fellow custodial clients who are still subject to SSBT's pricing schemes.

53. On information and belief, Defendants did not disclose to clients like the Plan over the period of time relevant to this Complaint their practice of providing certain clients, the "smart money clients," FX transactions, resulting from direct dealings on standing instruction trades.

V. CLASS ALLEGATIONS

54. **Class Definition**. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of the Plan and its participants and beneficiaries and the following class of similarly-situated persons (the "Class"):

> All qualified ERISA Plans and the participants and beneficiaries thereof for which State Street Bank and Trust Company or State Street Global Markets, LLC provided foreign exchange transactional services, as custodian of its assets, or by acting as custodian of collective trusts in which those ERISA Plans invested, at any time between January 1, 2001 and October 19, 2009 (the "Class Period").

Class treatment is appropriate in this case because it would promote judicial economy by adjudicating the Defendants' fiduciary breach with respect to all of the Plans and participants and beneficiaries in the class.

55. **Numerosity**. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes that hundreds of ERISA Plans throughout the country invested in these collective trusts during the Class Period, and sustained losses as a result of the Defendants' imprudent FX trading activities. Defendants have more than $5.2 trillion of pension assets under custody. These assets could all be exposed to Defendants' improper pricing scheme. Plaintiff believes that hundreds of ERISA plans are also exposed to Defendants' collective investment funds with investments in foreign securities. For example, Schedule D to the Form 5500 filed by Defendants for the Active Intl Stock Selection SL SF CL I (CM8J fund for 2009 alone lists nine defined contribution plans and assets of nearly $389 million. State Street Bank and Trust Company, Active Intl Stock Selection SL SF CL I (CM8J [sic], Annual Return/Report of Employee Benefit Plan (Form 5500), at Schedule H, Part I (December 31, 2009).

56. **Commonality**. The claims of Plaintiff and all Class members originate from the same misconduct, breaches of duties and violations of ERISA perpetrated by Defendants with regard to management of its FX trading program. The questions of law and fact common to the Class include, but are not limited to:

a. Whether Defendants breached their fiduciary duties to the Plans by using an FX trading scheme to overcharge the Plans, or the collective investment funds in which the Plans invested, for FX trading;

b. Whether Defendants' self-interested FX transactions constituted transactions prohibited under ERISA's statutory restrictions;

c. Whether Defendants' fiduciary breaches caused losses to the Plans; and

d. Whether Defendants' prohibited transactions caused losses to the Plans.

57. **Typicality**. Plaintiff's claims on behalf of his Plan are not only typical of, but the same as, claims that would be brought with respect to other Plans. If cases were brought and prosecuted individually, each of the members of the Class would be required to prove the same claims based upon the same conduct of the Defendants, using the same legal arguments to prove Defendants' liability, and would be seeking the same relief.

58. **Adequacy**. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel that is competent and experienced in class action and ERISA litigation. Plaintiff has no interests antagonistic to, or in conflict with those of the Class. Plaintiff has undertaken to protect vigorously the interests of the absent members of the Class.

59. **Rule 23(b)(1)(A) & (B) Requirements**. Class action status is warranted under Fed. R. Civ. P. 23(b)(1)(A), because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is also warranted under Rule 23(b)(1)(B), because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual

members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

60. **Rule 23(b)(2) Requirements**. Certification under Rule 23(b)(2) is warranted because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other equitable relief with respect to the Class as a whole. No plan-by-plan inquiry would be required to determine whether Defendants' breached their fiduciary duties.

61. **Rule 23(b)(3) Requirements**. In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to Class members predominate over any questions affecting only individual members, and class action treatment is superior to the other available methods for the fair and efficient adjudication of this controversy.

VI. CLAIMS FOR RELIEF

COUNT I

Engaging in Self-Interested Prohibited Transactions (Violation of § 406 of ERISA, 29 U.S.C. § 1106 by Defendants)

62. All previous averments are incorporated herein.

63. At all relevant times, the Defendants acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), by exercising authority and control over Plan assets.

64. The Defendants, by their actions throughout the Class Period, caused the Plans to engage in unfairly and unreasonably priced FX transactions.

65. During the Class Period, Defendants engaged in FX transactions using plan assets that were not for the exclusive benefit of the Plans' or their participants.

66. Through their FX transactions and pricing scheme, Defendants dealt with assets of the Plans for their own financial benefit and for their own account. This is a violation of ERISA § 406(b)(1) & (3), 29 U.S.C. 1106(b)(1) & (3).

67. As a direct and proximate result of these prohibited transaction violations, the Plans, directly or indirectly, paid millions of dollars in transaction fees that were prohibited by ERISA and suffered millions of dollars in losses.

68. Pursuant to ERISA Defendants are liable to disgorge all fees paid them for the Plans' FX transactions, restore all losses suffered by the Plans as a result of the prohibited transactions, and all profits earned on the fees paid by the Plans to Defendants.

COUNT II

Breach of Duties of Prudence and Loyalty
(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by Defendants)

69. All previous averments are incorporated herein.

70. Defendants breached their ERISA fiduciary duties of prudence and loyalty by, inter alia:

a. Using plan assets for the own benefit, causing losses to the Plans and the participants;
b. Charging the Plans (or the collective trusts in which the Plans invested) fees for FX trading that were unreasonable and in excess of what Defendants had agreed to charge;
c. Failing to disclose to the Plans, their fiduciaries, or participants the amount of fees being charged for FX trading, that those fees were in excess of what Defendants had agreed to charge, and that other clients were charged less for the same services;

71. These actions during the Class Period were breaches of Defendants fiduciary duties of loyalty and prudence to the Plans under ERISA and Defendants did not execute their

fiduciary responsibilities for the exclusive benefit of the Plans. § 404(a)(1)(A), (B), 29 U.S.C. §§ 1104(a)(1)(A), (B).

72. Defendants committed these breaches consistently from 2001 to 2009, during each FX transaction involving assets of the Plans.

73. As a direct and proximate result of these breaches of duty, the Plans, and indirectly Plaintiff and the Plans' other participants and beneficiaries, realized losses.

74. Pursuant to ERISA the Defendants are liable to restore all losses suffered by the Plans caused by the Defendants' breaches of fiduciary duty.

COUNT III

Liability for Breach of Co-fiduciary
(Violation of § 405 of ERISA, 29 U.S.C. § 1105)

75. All previous averments are incorporated herein.

76. SSGM violated ERISA, 29 U.S.C. §1105(a)(1), by knowingly undertaking to conceal SSBT's fiduciary breaches. It did so through the actions and omissions of its employees and agents by concealing and failing to provide complete and accurate information to the Plans regarding the cost of FX transactions.

77. SSGM violated ERISA, 29 U.S.C. §1105(a)(3), because it knew that SSBT had breached its fiduciary duties of prudence and loyalty, but failed to take reasonable steps under the circumstances to remedy the breach.

78. On account of SSGM's violations of these provisions, SSGM is liable for the breach of its co-fiduciary, SSBT.

79. As a result of SSGM's actions, the Plans suffered losses.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

80. Declare that the Defendants have violated ERISA's prohibited transactions provisions;

81. Declare that the Defendants breached their fiduciary duties under ERISA;

82. Issue an order compelling a proper accounting of the foreign exchange transactions in which the Plans have engaged;

83. Issue an order compelling Defendants to restore all losses caused to the Plans;

84. Issue an order compelling the Defendants to disgorge all fees paid and incurred to Defendants, including any profits thereon;

85. Order equitable restitution and other appropriate equitable monetary relief against the Defendants;

86. Award such other equitable or remedial relief as may be appropriate, including the permanent removal of the Defendants from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to serve as custodian to the Plans;

87. That this action be certified as a class action and that each Class be designated to receive the amounts restored to the Plans by Defendants and a constructive trust be established for distribution to the extent required by law;

88. Enjoin Defendants collectively, and each of them individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

89. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g) and/or the Common Fund doctrine; and

90. Award such other and further relief as the Court deems equitable and just.

Dated: November 18, 2011

Respectfully Submitted,
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By his attorneys,

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, AND THOSE SIMILARLY SITUATED,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS LLC AND DOES 1-20,

Defendants.

CIVIL ACTION No. 11-cv-12049-MLW

AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Arnold Henriquez (bringing this action pursuant to ERISA on behalf of the Waste Management Retirement Savings Plan ("WM Plan") and its participants and beneficiaries), Michael Cohn (bringing this action pursuant to ERISA on behalf of the Citigroup 401(k) Plan ("Citi Plan") and its participants and beneficiaries), and William Taylor and Richard Sutherland (both bringing this action pursuant to ERISA on behalf of the Retirement Plan of Johnson and Johnson ("J&J Plan") and its participants and beneficiaries) (collectively, "Plaintiffs") bring this action as a class action on behalf of a class of similarly-situated ERISA retirement plans (collectively, the "Plans") and their participants and beneficiaries against State Street Bank and Trust Company ("SSBT") and State Street Global Markets, LLC ("SSGM") (collectively, "Defendants"). The allegations below are based on the investigative efforts of private whistleblower firms, the State of California, the Securities and Exchange Commission

("SEC"), and an investigation by counsel, which included reviewing: Internal Revenue Service Forms 5500 ("Forms 5500") filed with the United States Department of Labor ("DOL"); filings with the United States Securities and Exchange Commission, including Annual Reports on Forms 10-K; documents filed in other litigation; and other publicly available documents related to this action.

I. NATURE OF THE ACTION

2. This is a civil enforcement action brought pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*, and in particular under ERISA §§ 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), to recover losses and obtain equitable relief on behalf of the WM Plan, the Citi Plan, and the J&J Plan (the "Named Plaintiffs' Plans"), and pursuant to applicable law as a class action to obtain relief for all other similarly situated ERISA plans.

3. SSBT and SSGM were required to act prudently and solely in the interest of the Plans' participants and beneficiaries in their capacity as ERISA fiduciaries. On information and belief, rather than fulfilling their fiduciary duties under ERISA (the "highest known to the law"),[1] the Defendants charged, or allowed to be charged, improper, undisclosed markups on transactions in foreign currency ("FX transactions" or "FX trading") and engaged in prohibited transactions in connection with such FX transactions.

4. The Named Plaintiffs' Plans and the similarly situated Plans are established and sponsored by private entities in accordance with ERISA.

[1] *Donovan v.Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982).

5. Plaintiffs allege that Defendants violated ERISA by causing the Plans, or collective funds (the "Collective Investment Funds") operated by SSBT in which the Plans were invested, to purchase foreign securities through the use of FX transactions at rates favorable to Defendants. These transactions were prohibited transactions under ERISA § 406, 29 U.S.C. § 1106.

6. Plaintiffs also allege that Defendants failed to act solely in the interest of the participants and beneficiaries of the Plans and breached their fiduciary duties of prudence and loyalty with respect to the Plans. Specifically, Plaintiffs allege that Defendants, as fiduciaries of the Plans, violated their fiduciary duties under ERISA § 404, 29 U.S.C. § 1104, by causing the Plans or the Collective Investment Funds operated by Defendants in which the Plans were invested to engage in transactions that were not to the exclusive benefit of the Plans or their participants and beneficiaries.

II. JURISDICTION AND VENUE

7. ERISA provides for exclusive federal jurisdiction over these claims. The Plans are "employee benefit plans" within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and Plaintiffs are participants in the Named Plaintiffs' Plans within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), who are authorized pursuant to ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3), to bring the present action on behalf of those plans and their participants and beneficiaries to obtain appropriate relief.

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because some or all of the fiduciary breaches for which relief is sought occurred in this district and the Defendants reside and may be found in this district.

III. PARTIES

A. Plaintiffs

10. **Plaintiff Arnold Henriquez** is a participant in the WM Plan, an ERISA-covered plan. At all material times from the second quarter of 2005 through the second quarter of 2009, Mr. Henriquez invested in the "International Equity Fund" [2] sponsored by SSBT and offered by the Plan. Mr. Henriquez also invested in other funds sponsored by SSBT and offered by the WM Plan during the Class Period, including the Large Cap Equity Fund, the Small Cap Equity Fund, the Conservative Asset Allocation Fund, the Moderate Asset Allocation Fund, the Aggressive Allocation Fund, the Bond Market, and the SSgA Target Retirement 2030 Fund. Mr. Henriquez resides in Frederick, Maryland.

11. **Plaintiff Michael T. Cohn** is a participant in the Citi Plan, an ERISA-covered plan. At all material times from his initial enrollment in the Citi Plan in January 2005 through

[2] The "International Equity Fund" is the fund name used by SSBT on disclosures to participants in the WM Plan. The International Equity Fund's name, according to the International Equity Fund's Forms 5500 for 2009 and 2010, filed by SSBT with DOL, is the "Active Intl Stock Selection SL SF CL I (CM8J [*sic*]." From 2006 through 2008, the International Equity Fund's name, according to the International Equity Fund's Forms 5500 filed by SSBT with DOL was the "International Alpha Select SL Series Fund – [*sic*]." From 1999 to 2005, the WM Plan offered the SSgA International Growth Opportunities Fund Series A Non-Lending as the "International Equity Fund." The foregoing fund names may refer to the International Equity Fund at a particular point in time, as well as to one or more of several classes of interests offered in the International Equity Fund.

August 2007 Mr. Cohn was invested in the "Aggressive Focus Fund" offered by the Citigroup 401(k) Plan. According to the Citigroup 401(k) Plan Aggressive Focus Fund Fact Sheet for the second quarter of 2004, this fund had the objective of "seek[ing] as high a total return over time as is consistent with a primary emphasis on equity securities and a secondary emphasis on fixed-income and money market securities." The Aggressive Focus Fund was a "fund of funds" managed by SSBT that included two funds focused on international equities: (a) the Daily EAFE Index Securities Lending Series – Class T; and (b) the Daily Emerging Markets Index Non Lending Series Fund. These two funds accounted for 24% of the Aggressive Focus Fund's total holdings in 2004. In September 2007, the Citigroup 401(k) Plan changed its investment options, and Mr. Cohn invested in the newly offered "Emerging Market Equity" collective investment fund. He is still invested in that fund as of the date of this complaint. This Emerging Market Equity fund has used SSBT as an investment manager since it was first offered to the Citigroup 401(k) Plan in 2007. Mr. Cohn resides in Highland Park, Illinois.

12. **Plaintiff William R. Taylor** is a participant in the Retirement Plan of Johnson and Johnson, an ERISA-covered plan. Mr. Taylor began working at Johnson and Johnson and accruing service towards his pension benefit on September 21, 1998. At all relevant times to this complaint, SSBT served as the trustee and custodian of both the J&J Plan and the Johnson and Johnson Pension and Savings Plan Master Trust in which the J&J Plan was wholly invested. Mr. Taylor resides in Aston, Pennsylvania. The J&J plan holds foreign investments in both international securities that cannot be purchased on a domestic exchange and foreign currency. Each of these types of holdings requires FX transactions.

13. **Plaintiff Richard A. Sutherland** is a participant in the Retirement Plan of Johnson and Johnson, an ERISA-covered plan. Mr. Taylor began working at Johnson and

Johnson and accruing service towards his pension benefit on January 1, 1999. At all relevant times to this complaint, SSBT served as the trustee and custodian of both the J&J Plan and Johnson and Johnson Pension and Savings Plan Master Trust in which the defined benefit plan was wholly invested. Mr. Sutherland resides in Albuquerque, New Mexico. The J&J plan holds foreign investments in both international securities that cannot be purchased on a domestic exchange and foreign currency. Each of these types of holdings requires FX transactions.

B. Defendants

14. **Defendant State Street Bank and Trust Company** ("SSBT") is incorporated in Massachusetts and is headquartered in Boston, Massachusetts. Defendant State Street Bank and Trust Company directly, or indirectly through one or more subsidiaries, operates as a custodial bank for ERISA-covered benefit plans and for the Collective Investment Funds offered by ERISA-covered plans. SSBT is a subsidiary of State Street Corporation, a financial holding company headquartered in Boston, Massachusetts. SSBT describes itself as a leading specialist in meeting the needs of institutional investors. In its Class Period filings with the SEC, State Street Corporation repeatedly stated that its customer relationships were predicated upon our reputation as a fiduciary and a service provider that adheres to the highest standards of ethics, service quality and regulatory compliance. One of the services provided by SSBT to its custodial clients was the execution of FX transactions, which allowed clients to purchase and sell foreign securities or to engage in foreign currency trades for other purposes. Another of the services provided by SSBT to its custodial clients is investment management of custodial client assets through the use of "collective investment funds," which are described more fully below.

15. **Defendant State Street Global Markets, LLC** ("SSGM"), a subsidiary of State Street Corporation, is incorporated in Delaware and is headquartered in Boston, Massachusetts. SSGM is a broker/dealer registered with the SEC, the Financial Industry Regulatory Authority, ten self-regulatory authorities, and fifty-three U. S. states and territories. SSGM is the only State Street Corporation subsidiary registered as a brokerage firm. SSGM is the corporate successor of State Street Brokerage Services, Inc. and State Street Capital Markets, LLC. On or about June 1, 1999, State Street Capital Markets, LLC assumed all of the assets and liabilities of State Street Brokerage Services. Inc. State Street Brokerage Services, Inc. was dissolved, but "State Street Brokerage Services," not followed by "Inc.," continued to exist as a division of State Street Capital Markets, LLC. On or about March 1, 2002, SSGM assumed all of the assets and liabilities of State Street Capital Markets, LLC. SSGM describes itself as "the investment research and trading arm of State Street Corporation." SSGM provides specialized investment research and trading in foreign exchange, equities, fixed income, and derivatives to ERISA covered benefit plans. Confusingly, in their answer to the complaint-in-intervention of the California Attorney General described below,[3] SSBT and SSGM assert that SSBT executed FX transactions for its clients through a division of SSBT called "State Street Global Markets," which was a separate entity from Defendant State Street Global Markets, LLC. In marketing documents for its "Foreign Exchange Global Strategy,"[4] State Street Corporation has described

[3] *People of the State of Calif. v. State Street Corp.*, Case No. 34-2008-00008457-CU-MC-GDS. (Cal. Super. Ct., Sacramento County, April 12, 2010.).

[4] State Street Corporation added further confusion through its marketing materials, which state that "[p]roducts and services outlined in this document are offered to professional investors through State Street Global Markets LLC, which is a member of FINRA and SIPC, and State Street Bank and Trust Company, State Street Global Markets International Limited and State Street Bank Europe Limited, all of which are authorized and regulated by the Financial Services Authority in the United Kingdom, and their affiliates." State Street Global Markets, *Foreign Exchange Global Strategy*, www.statestreetglobalmarkets.com, 09-SGM08041209 (2010).

"State Street Global Markets" as "the marketing name and a registered trademark of State Street Corporation, used for its financial markets business and that of its affiliates."[5] Any action taken by the "State Street Global Markets" division of SSBT was an action of SSBT.

16. State Street Corporation, SSBT, and SSGM are under common control within the meaning of 29 C.F.R. § 2510.3-21(e)(1)(i). Further, State Street Corporation, SSBT, and SSGM are "affiliates" within the meaning of (a) Prohibited Transaction Exemption 94-20, § IV.(d), (e), 59 Fed. Reg. 8022-02, 8026 (Feb. 17, 1994) and (b) Prohibited Transaction Exemption 98-54 §IV. (e), (l), 63 Fed. Reg. 63503, 63510, because they directly or indirectly, or through one or more intermediaries, control, are controlled by, or are under common control with each other.

17. **Defendants Does 1-20** are fiduciaries of the Plans relevant to this lawsuit whose exact identities will be ascertained through discovery.

IV. THE FOREIGN EXCHANGE SCHEME

A. SSBT's General FX Trading Practices for Non-ERISA Clients

18. According to its September 26, 2006 Investment Manager Guide, SSBT purported to offer two generic types of foreign exchange transactions to third party investment managers for SSBT's custody clients. It offered "direct deals" whereby investment managers "deal[t] foreign exchange directly with [SSBT] Treasury trading desks." SSBT also offered "indirect deals" whereby "requests to execute a foreign exchange transaction [could be] sent to the processing site with the related securities instruction or as a separate instruction." As set forth below, indirect deals were also sometimes described as "standing instruction" trades.

[5] *Id.*

19. According to a class action securities fraud complaint filed in this Court on July 29, 2010 (*Hill v. State Street Corp.*, Document No. 51, Master Docket No. 09-cv-12146-NG), for more than 75% of SSBT's large custodial clients, Defendants would conduct "indirect" or "standing instruction" foreign exchange trades, as described in SSBT's September 26, 2006 Investment Manager Guide. Under the terms of SSBT's custodial arrangements, SSBT was obligated to provide its clients the same exchange rate that Defendants actually used to make the trade. This arrangement was supposed to be beneficial to Defendants' clients because, among other things, they would not have to incur the expense and time of identifying and choosing the most competitive exchange rate.

20. On October 20, 2009, based upon an investigation undertaken after the sealed filing of a *qui tam* complaint by "Associates Against FX Insider Trading" on the personal knowledge of Associates' partners, the California Attorney General ("California AG") filed a complaint alleging that SSBT, SSGM, and a third entity, State Street California Inc., had systematically overcharged two of California's largest public pension funds by tens of millions of dollars for foreign exchange trades conducted over a period of at least eight years. *People of the State of Calif. v. State Street Corp.*, Case No. 34-2008-00008457-CU-MC-GDS. (Cal. Super. Ct., Sacramento County Oct. 20, 2009.).

21. The California AG's action was based on an extensive eighteen-month investigation, which included interviewing witnesses and reviewing hundreds of thousands of internal State Street documents.

22. On information and belief, and according to the *qui tam* relators and the California AG, Defendants herein, starting in 2001, added an undisclosed and substantial "mark-up" to the exchange rate they used when making foreign exchange trades for its clients.

23. The California AG's allegations of undisclosed "mark-ups" were based in part on the sworn testimony of a former SSBT employee who worked on the same trading floor as the SSBT or SSGM foreign exchange traders and who overheard how SSBT or SSGM foreign exchange traders were marking up FX trade prices. This trader, in sworn testimony, described the practices of SSBT's FX traders as a "totally unethical thing to do" and said that the FX Traders practices were not within the "industry standard." *People of the State of Calif. v. State Street*, Declaration of Kenny V. Nguyen, Case No. 34-2008-00008457-CU-MC-GDS (January 31, 2012).

24. The California AG went on to explain that Defendants had agreements with their large custodial clients that obligated Defendants to charge their clients the same exchange rate as the one that Defendants actually used to execute FX trades requested by the client. Rather than doing so, however, SSBT or SSGM would execute the trade at one exchange rate, and then monitor fluctuations in the rate throughout the day. Then, before the end of the day, SSBT or SSGM would pick a rate that was more beneficial to Defendants, and tell its clients that the trade had occurred at this other, false rate.

25. The California *qui tam* relators explained that, for instance, if the transaction was a purchase of a foreign security, SSGM or SSBT would execute the transaction, but would charge the client a higher foreign exchange rate that occurred later in the day, thus causing the client to pay more for the security in U.S. Dollars than the U.S. Dollar value at the time SSBT or SSGM executed the transaction. If the transaction was a sale of a foreign security, SSBT or SSGM would execute the transaction, but would credit the client at a lower foreign exchange rate, thus paying the client less in U.S. Dollars than the U.S. Dollar value of what SSBT or SSGM actually received at the time SSBT or SSGM executed the transaction. In either event, Defendants would

take for themselves the difference between the amount for which the trade was actually executed by SSBT or SSGM and the amount that SSBT or SSGM charged its custody clients for the transaction.

26. According to the California AG complaint-in-intervention and a subsequent amended class action complaint filed in the District of Massachusetts,[6] Defendants' clients did not discover the truth because the records, including statements of account and transaction records provided by SSBT in the ordinary course to their clients, showed only that the trade had been executed within the range of rates occurring during that day, notwithstanding that the rate reported was not the actual rate for the transaction. Defendants' clients were not informed of the actual rates at which FX transactions were made. Defendants' providing such incomplete statements and transaction records to their clients was a course of conduct designed to conceal evidence of their breaches of fiduciary duty and prohibited transactions set forth herein.

B. How SSBT's Foreign Exchange Trading Scheme Worked

27. As detailed by the California relators, clients or their investment managers would initiate a foreign exchange transaction by sending a request, often electronically, to the Securities Processing Unit of SSBT, which was located on the "custody side" of the Company. This request was then sent electronically to the State Street foreign exchange trading desk in SSGM, where it would appear on the Market Order Management System ("MOMS") software used by Defendants' traders.

28. According to the Arkansas State Teacher Retirement System amended class action complaint, SSBT or SSGM's FX traders were informed of SSBT's aggregated standing

[6] *Arkansas State Teacher Retirement System v. State Street Corp.*, No. 11-CV-10230 (MLW) (April 15, 2011).

instruction trade requirements during the course of the day. The FX traders would, that day, trade on the interbank FX market in order to satisfy SSBT's standing instruction positions.

29. According to a class action securities fraud complaint filed in this Court ("*Hill*"),[7] upon receipt of the request, SSBT or SSGM's foreign exchange traders checked the exchange rate, set a price, and executed the transaction, which typically occurred early in the day because SSBT or SSGM traders were at their desks by 7 a.m. Eastern Standard Time. All of those transactions were then entered by the trader into a separate software system called Wall Street Systems ("WSS"), which memorialized the transaction and charged the cost (for purchases) or remitted the payment (for sales) directly to Defendants. The WSS recorded time stamps for the actual, real time transaction.

30. According to the *Hill* class action securities fraud complaint, although the transaction was now completed and the price locked in, Defendants did not inform the client. Instead, on information and belief, SSBT or SSGM observed market fluctuations until sometime around 3 p.m. and then assigned either a higher exchange rate (for purchases) or a lower exchange rate (for sales) to the foreign exchange transactions that occurred during that day. SSGM then applied that rate to all of the "standing instruction" foreign exchange transactions it had conducted that day.

31. On information and belief, at all relevant times to this Complaint, this pricing scheme was used for FX transactions for both custodial clients, including custodial ERISA plan clients, and for transactions involving the Collective Investment Funds.

[7] *Hill v. State Street Corporation*, Document No. 51, Master Docket No. 09-cv-12146-NG. (July 29, 2010).

32. On information and belief, with each FX trade priced in this manner, Defendants did not simply profit; they made excessive profits on each trade, based upon the range-of-the-day's FX rates at the point the trade was priced for the Plan.

33. On information and belief, because Defendants' scheme always priced the trades at or near the very lowest or very highest rates of the day, Defendants were able to make a profit with minimal risk to SSBT.

34. According to the California AG complaint-in-intervention, Defendants' practice of pricing trades in this manner and taking the largest possible mark-up or mark-down was not disclosed to custodial clients over the period of time relevant to that Complaint.

35. On information and belief, Defendants' practice of pricing trades in this manner and taking an excessive mark-up or excessive mark-down was not disclosed to investors in the Collective Investment Funds over the period of time relevant to this Complaint.

C. SSBT Made Exceptions for Certain Clients, Offering Them Special Pricing

36. According to the class action securities fraud complaint filed in this Court on July 29, 2010 (*Hill v. State Street Corporation*, Document No. 51, Master Docket No. 09-cv-12146-NG), over time, SSBT developed a special class of custodial clients that did not receive the excessively high or excessively low range-of-the-day pricing suffered by other custodial clients, including ERISA plans. Those clients who conducted "direct trades" would be quoted an exchange rate by SSBT or SSGM before executing the transaction. These clients – often large hedge funds – typically had easy access to an alternate price source, such as Bloomberg or Reuters, to double-check the truthfulness of SSBT or SSGM's rate quotes. Accordingly,

Defendants could not overcharge these clients, and thus referred to them internally as "smart" clients or "smart money."

37. According to the class action securities fraud complaint, instead of including FX trades for these custodial clients with other clients' trades, and subject to the excessive range-of-the-day mark-ups and mark-downs, these clients were allowed to deal directly with Defendants and were given the chance to directly negotiate prices for their FX requirements for that day, despite their trades coming to SSBT as standing instruction trades.

38. As a result, according to the class action securities fraud complaint, the "smart money" custodial clients received better pricing than their fellow custodial clients who are still subject to SSBT's excessive pricing schemes.

V. FACTUAL BACKGROUND OF ERISA PLAN CLAIMS

A. The Plans.

39. **Waste Management Retirement Savings Plan.** The WM Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

40. **Citigroup 401(k) Plan.** The Citi Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

41. **Retirement Plan of Johnson and Johnson.** The J&J Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

42. **Other Similarly Situated ERISA Plans**. Defendants provide services similar to those provided to the Waste, Citi, and J&J Plans to other, similarly situated Plans, either directly as plan custodian or indirectly as custodian of funds in which the Plans invest.

B. *Retirement Plan Investments in Foreign Securities*

43. There are two types of ERISA-covered pension plans — defined benefit plans and defined contribution plans. Both types of retirement plans have, especially over the last decade, found it necessary and prudent to expand their investments to include exposure to foreign markets. Accordingly, defined benefit plans have expanded international holdings, and defined contribution plans frequently include at least one, if not several, international investment options.

44. ERISA-covered plans regularly purchase and sell foreign securities in order to increase diversification and take advantage of opportunities for higher returns. Retirement plans that invest in foreign securities receive principal, dividends, and interest that are paid in foreign currencies, or participate in other investments that require the exchange of foreign currency into and from US Dollars ("USD"), either directly or through participation in collective investment funds. As a result, the purchase and sale of currencies incidental to a foreign securities transaction is vital to a plan's participation in the international securities markets and to the acquisition, holding, and disposition of foreign securities.

45. SSBT served as trustee and custodian to the WM Plan. Beginning in 1999, the WM Plan offered participants the option to invest in certain Collective Investment Funds, the SSgA International Growth Opportunities Fund Series A Non-Lending. For purposes of communications with the WM Plan and its participants, this fund was named the "International Equity Fund." The International Equity Fund is described more fully below. Another example is the SSgA Target Retirement 2030 Fund offered to WM Plan participants. In 2008, the SSgA Target Retirement 2030 Fund invested in another SSBT Collective Investment Fund, the SSgA MSCI ACWI EX-US Index Fund, a collective investment fund that held foreign securities and

would have been, directly or indirectly, party to FX transactions executed by SSBT or its affiliate SSGM. Neither of these Collective Investment Funds could have been operated without FX transactions, whether or not those transactions were executed at the fund level or at the brokerage level. SSBT, as the operator and manager of these funds, was ultimately responsible for the funds' FX transactions.

46. SSBT served as trustee and custodian to the Citi Plan. Similarly, the Citi Plan in 2008 offered four international Collective Investment Funds (either directly or as part of an underlying investment of the fund) operated and managed by SSBT: the SSgA EAFE Fund; the SSgA International Small Cap Fund; the SSgA MSCI EAFE Fund; and the SSgA MSCI Emerging Markets Free [*sic*]. None of these funds could have been operated without FX transactions, whether those transactions were executed at the Collective Investment Fund level or brokerage level. SSBT, as the operator and manager of these funds, was ultimately responsible for those FX transactions.

47. SSBT served as trustee and custodian to the J&J Plan. The J&J Plan did not invest in the Collective Investment Funds. Rather, the J&J Plan directly held foreign assets, including currency, such as Euros, and foreign securities that could not have been purchased on a domestic exchange. An example of one such security is Elpida Memory Inc, a Japanese stock available only on a Japanese exchange. The J&J Plan could not have made use of foreign currencies or purchased foreign securities which are not traded on U.S. securities exchanges without FX transactions. On information and belief, SSBT, as trustee and custodian of the J&J Plan, executed some or all of the J&J Plan's foreign currency transactions in the relevant period.

C. Defendants' Fiduciary Status

48. Every plan governed by ERISA must have fiduciaries to administer and manage the plan. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA §402(a)(1), but also any other person who in fact performs fiduciary functions. ERISA §3(21)(A)(i), 29 U.S.C. §1002(21)(A)(i) (a person is a fiduciary "to the extent … he exercises any discretionary authority or discretionary control respecting management of such plan or ***exercises any authority or control respecting management or disposition of its assets***…") (emphasis added).

49. An ERISA fiduciary is required to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and … for the exclusive purpose of … providing benefits to participants and beneficiaries and … defraying the reasonable expenses of administering the plan …." ERISA § 404(a)(1)(A)(i), (ii), 29 U.S.C. § 1104(a)(1)(A)(i), (ii).

50. Moreover, ERISA prohibits certain transactions. Specifically, unless exempted pursuant to ERISA § 408, 29 U.S.C. 1108:

> A fiduciary with respect to a plan shall not--
>
> **(1)** deal with the assets of the plan in his own interest or for his own account,
>
> **(2)** in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or
>
> **(3)** receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

ERISA §406(b), 29 U.S.C. 1106(b). As described below, Defendants functioned as fiduciaries to the Named Plans both by acting as trustee and custodian for the Plans and by exercising authority and control over Plan assets.

1. SSBT as Custodian

51. An ERISA-covered Plan's custodial bank is an ERISA fiduciary. A "custodian" is an institution that holds securities on behalf of investors. The responsibilities entrusted to a custodian include the guarding and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities. Custodians may also perform ancillary services for their clients. Custodians are typically used by institutional investors who do not wish to leave securities on deposit with their broker-dealers or investment managers. The use of a custodial bank is intended to reduce the risk of misconduct by separating the custodial and asset management duties. An independent custodian ensures that the investor has unencumbered ownership of the securities other agents represent to have purchased on its behalf.

52. SSBT served as the custodian for many ERISA-covered pension plans. Specifically, SSBT served as custodian for the Named Plans' assets. As custodian, SSBT was a fiduciary under ERISA and owed fiduciary duties to the Named Plans. SSGM also exercised authority and control over the Plans' assets in its role as SSBT's affiliate responsible for setting the exchange rates on FX transactions and executing those transactions. As discussed above, this process created the excessive spread between the marked-up FX exchange rates charged to custodial ERISA plan clients and the marked-down FX exchange rates used to process repatriation of principal, dividends, and interest paid in foreign currencies, and other FX transactions.

2. SSBT as Investment Manager of Collective Investment Funds for ERISA Plans

53. SSBT sponsored and operated the Collective Investment Funds and offered them to the ERISA plans, including the Plans and the Similarly Situated ERISA Plans. SSBT served as custodian and trustee for the Collective Investment Funds. The Collective Investment Funds were under the exclusive management and control of SSBT.

54. On information and belief, all of the Collective Investment Funds which invested in foreign securities suffered from the same inaccurate FX pricing described in the California *qui tam* complaint, the California AG complaint-in-intervention, and the *Hill* securities fraud class action complaint. *See* ¶¶ 18-38, *supra*.

55. Investments in collective investment funds are equity interests in a separate legal entity, but are not publicly-offered securities or securities issued by an investment company registered under the Investment Company Act of 1940, *i.e.*, mutual funds. Under ERISA, unlike mutual funds and other publicly-offered securities, investments in collective investment funds are subject to a unique "look-through" rule, pursuant to which, the "plan assets" of an ERISA-covered plan include ***both*** its undivided "equity interest [in the entity] ***and*** an undivided interest in each of the underlying assets of the entity …". 29 C.F.R. § 2510.3-101(a)(2); *see also* ERISA § 3(42), 29 C.F.R. § 1002(42) (authority of Secretary of Labor to define term "plan assets" by regulation) (emphasis added). Specifically, when a Plan acquires or holds an interest in a common or collective trust fund, that is, a Collective Investment Fund, "its assets include its investment and an undivided interest ***in each of the underlying assets*** of the entity." *Id*. § 2510.3-101(h)(1) (emphasis added).

56. "[A]ny person who exercises authority or control respecting the management or disposition of such underlying assets, and any person who provides investment advice with

respect to such assets for a fee (direct or indirect) is a fiduciary of the investing plan." *Id*. § 2510.3-101(a).

57. As the sponsor and operator of the Collective Investment Funds, SSBT exercised authority or control with respect to the management or disposition of plan assets. Accordingly, SSBT was a fiduciary of each and every ERISA Plan which invested in the Collective Investment Funds, including the Named Plaintiffs' Plans and the Plans, with respect to the underlying assets of each and every SSBT Collective Investment Fund.

58. In addition, according to SSBT documents provided by the WM Plan in April 2002 to a participant in the WM Plan in response to the participant's request for plan documents pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), on or about January 1, 1999, the Investment Committee of the WM Plan appointed SSBT to act as Investment Manager of the WM Plan "as such term is defined in Section 3(38) of [ERISA]" with respect to designated assets of the WM Plan. The designated assets included five of the Collective Investment Funds, one of which was the "International Growth Opportunities Fund Series A," that is, the International Equity Fund. Accordingly, SSBT also had authority and control over plan assets in its capacity as Investment Manager, including assets invested in the Collective Investment Funds, and specifically including assets invested in the International Equity Fund. This arrangement continued throughout the WM Plan's association with SSBT, regardless of the specific international equity fund being offered to participants at any given time.

3. Foreign Exchange Transactions Under ERISA

59. Certain of the Collective Investment Funds SSBT operated and offered to ERISA-covered plans during the Class Period invested in foreign securities. SSBT served as custodian

and trustee for these Collective Investment Funds. Collective investment funds that invest in foreign securities, or a person acting on their behalf, must engage in FX transactions in order to buy and sell securities, to repatriate dividends or interest payments, and to engage in other transactions. As the trustee of the Collective Investment Funds, SSBT was authorized to convert any monies into any currency through foreign exchange transactions and responsible for ensuring that these transactions were within the bounds of SSBT's fiduciary responsibilities and the limitations of ERISA.

60. For example, according to SSBT documents provided by the WM Plan in April 2002 to a participant in the WM Plan in response to the participant's request for plan documents pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), the stated investment objective of the International Equity Fund in the Waste Management Plan was "to provide long-term capital appreciation through equity investments ***in markets outside the United States***." (Emphasis added).

61. The WM Plan's Investment Policy Statement noted that "[t]he goal of the International Equity Fund is to invest in a portfolio of common stocks that will provide a vehicle for investing in a broad cross section of non-U.S. equities." The International Equity Fund was also permitted to invest in equity-based derivatives of foreign securities and fixed income securities issued by governments and corporations located in those countries. The "investable universe" of the International Equity Fund was "the equities of all developed market countries, excluding the U.S., including American Depositary Receipts." The International Equity Fund's benchmark was the "MSCI-EAFE Index, an index of more than 1,100 stocks in 21 countries outside of North and South America …."

4. SSGM as a Functional Fiduciary of ERISA Plan Assets

62. As noted above, many of the securities purchased, held, or sold in the Collective Investment Funds were foreign securities that could not be purchased or sold except on foreign securities exchanges in transactions denominated in foreign currencies.

63. As described more fully below, as a practical matter, unless a Collective Investment Fund invested solely in American Depositary Receipts or derivatives issued in the jurisdiction of the United States, the Investment Manager of the Collective Investment Fund, *i.e.*, SSBT, or some person acting on its behalf, such as a broker, was required to engage in foreign currency transactions in order to acquire equity securities "in markets outside the United States." Any funds used to acquire such securities at any level within SSBT, or through any affiliate thereof, would constitute "plan assets" under 29 C.F.R. § 2510.3-101.

64. On information and belief, SSGM provided brokerage services, that is, the purchase and sale of foreign securities, to the Collective Investment Funds. To the extent that the Collective Investment Funds settled such purchases and sales in U.S. Dollars, the Collective Investment Funds did not engage directly in FX trading in connection with the purchase or sale of foreign securities. Rather, they engaged in FX trading indirectly through SSGM, in that SSGM would have executed a purchase or sale of a foreign security in foreign currency and then converted the transaction to a U.S. Dollar-denominated transaction for purposes of settlement with the Collective Investment Funds.

65. On information and belief, SSGM also served as the conduit for the repatriation of dividend, principal, and interest payments by issuers of foreign securities and for receipt of proceeds of sales of foreign securities, and engaged in FX transactions in order to remit such payments to the Collective Investment Funds in U.S. Dollars.

66. SSGM's conversion of foreign currency to U.S. dollars constituted the exercise of authority or control respecting the management or disposition of the underlying assets of the Collective Investment Funds and, therefore, of assets of the ERISA Plans, within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(1), and 29 C.F.R. § 2510.3-101(a). Accordingly, SSGM was a fiduciary of the ERISA Plans.

5. Defendants' Prohibited Transactions

67. According to its September 26, 2006 Investment Manager Guide, SSBT purported to comply with a special procedure when effecting foreign exchange transactions for ERISA trust and custody clients. Until at least September 26, 2006, the so-called "FX Procedure" purported to be "designed to satisfy the conditions of Prohibited Transaction Exemption 94-20 ("PTE 94-20"). A prohibited transaction exemption permit[ted] certain 'directed' FX transactions between [SSBT] and its ERISA clients." Under the ERISA "FX Procedure," SSBT "agree[d] to post to its website on a daily basis, a specific buy rate and sell rate for each currency. Each ERISA plan manager [could] direct [SSBT] to effect the plan's FX transactions, including income repatriation and buy/sell related transactions at the posted rates or at rates more favorable if market conditions warrant."

68. The September 26, 2006 Investment Manager Guide did not, however, address foreign exchange transactions conducted in connection with assets managed directly by SSBT, as in the Collective Investment Funds. Under the terms of PTE 94-20, FX transactions generated by SSBT as investment manager of the Collective Investment Funds and executed by SSBT or SSGM could not be conducted under this so-called "FX Procedure," because, among other things, SSBT as investment manager would be dealing with itself, regardless of whether the FX

transactions were conducted internally at SSBT or through its affiliate, SSGM, without the benefit of an independent fiduciary.

69. Nor was there any other applicable prohibited transaction exemption. As set forth above, the terms of FX transactions conducted on behalf of the Collective Investment Funds were conducted on terms less favorable than the terms generally available in comparable arm's length FX transactions between unrelated parties and on terms less favorable than the terms generally afforded by the bank in comparable arm's length FX transactions between unrelated parties. Accordingly, the Defendants could not engage in FX transactions in connection with plan assets in the Collective Investment Funds without engaging in a prohibited transaction.

VI. CLASS ALLEGATIONS

70. **Class Definition**. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of the Plan and its participants and beneficiaries and the following class of similarly-situated persons (the "Class"):

> All qualified ERISA Plans (including the participants and beneficiaries thereof) for which State Street Bank and Trust Company or State Street Global Markets, LLC served as investment manager (including serving as the manager of a collective trust in which such a Plan invested) or trustee or custodian of assets and for which State Street Bank and Trust Company or State Street Global Markets, LLC provided foreign currency exchange transactional services (including foreign currency transactional services provided to entities such as collective trusts that held such ERISA Plans' assets), at any time between January 1, 2001 and the present (the "Class Period").

Class treatment is appropriate in this case because it would promote judicial economy by adjudicating the Plaintiffs' ERISA fiduciary breach and prohibited transaction claims with respect to all of the Plans and participants and beneficiaries in the class.

71. **Numerosity**. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that hundreds of ERISA Plans throughout the country invested in the Collective Investment Funds during the Class Period, and sustained losses as a result of the Defendants' imprudent FX trading activities. Defendants have more than $5.2 trillion of pension assets under custody. These assets could all be exposed to Defendants' improper pricing scheme. Plaintiffs believe that hundreds of ERISA plans are also exposed to the Collective Investment Funds with investments in foreign securities.

72. **Commonality.** The claims of Plaintiffs and all Class members originate from the same misconduct, breaches of duties and violations of ERISA perpetrated by Defendants with regard to management of its FX trading program. The questions of law and fact common to the Class include, but are not limited to:

a. Whether Defendants breached their fiduciary duties to the Plans by using an FX trading scheme to overcharge the Plans, or the Collective Investment Funds in which the Plans invested, for FX trading;

b. Whether Defendants' self-interested FX transactions constituted transactions prohibited under ERISA's statutory restrictions;

c. Whether Defendants' fiduciary breaches caused losses to the Plans; and

d. Whether Defendants' prohibited transactions caused losses to the Plans.

73. **Typicality.** Plaintiffs' claims on behalf of their Plans are not only typical of, but the same as, claims that would be brought with respect to other Plans. If cases were brought and prosecuted individually, each of the members of the Class would be required to prove the same

claims based upon the same conduct of the Defendants, using the same legal arguments to prove Defendants' liability, and would be seeking the same relief.

74. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel that are competent and experienced in class action and ERISA litigation. Plaintiffs have no interests antagonistic to, or in conflict with those of the Class. Plaintiffs have undertaken to protect vigorously the interests of the absent members of the Class.

75. **Rule 23(b)(1)(A) & (B) Requirements.** Class action status is warranted under Fed. R. Civ. P. 23(b)(1)(A), because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is also warranted under Rule 23(b)(1)(B), because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

76. **Rule 23(b)(2) Requirements.** Certification under Rule 23(b)(2) is warranted because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other equitable relief with respect to the Class as a whole. No plan-by-plan inquiry would be required to determine whether Defendants' breached their fiduciary duties.

77. **Rule 23(b)(3) Requirements.** In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to Class members predominate over any

questions affecting only individual members, and class action treatment is superior to the other available methods for the fair and efficient adjudication of this controversy.

VII. CLAIMS FOR RELIEF

COUNT I

Engaging in Self-Interested Prohibited Transactions
(Violation of § 406 of ERISA, 29 U.S.C. § 1106 by Defendants)

78. All previous averments are incorporated herein.

79. At all relevant times, the Defendants acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), by exercising authority and control over ERISA plan assets.

80. The Defendants, by their actions throughout the Class Period, caused the Plans to engage in unfairly and unreasonably priced FX transactions.

81. During the Class Period, Defendants engaged in FX transactions using plan assets that were not for the exclusive benefit of the Plans' or their participants.

82. Through their FX transactions and pricing scheme, Defendants dealt with assets of the Plans for their own financial benefit and for their own account. This is a violation of ERISA § 406(b)(1) & (3), 29 U.S.C. 1106(b)(1) & (3).

83. As a direct and proximate result of these prohibited transaction violations, the Plans, directly or indirectly, paid millions of dollars in transaction fees that were prohibited by ERISA and suffered millions of dollars in losses.

84. Pursuant to ERISA, Defendants are liable to disgorge all fees paid them for the Plans' FX transactions, to restore all losses suffered by the Plans as a result of the prohibited transactions, and to disgorge all profits earned on the fees paid by the Plans to Defendants.

COUNT II

Breach of Duties of Prudence and Loyalty (Violation of § 404 of ERISA, 29 U.S.C. § 1104 by Defendants)

85. All previous averments are incorporated herein.

86. Defendants breached their ERISA fiduciary duties of prudence and loyalty by, *inter alia*:

a. Using plan assets for the own benefit, causing losses to the Plans and the participants;

b. Charging the Plans (or the Collective Investment Funds in which the Plans invested) fees for FX trading that were unreasonable and in excess of what Defendants had agreed to charge;

c. Failing to disclose to the Plans, their fiduciaries, or participants the amount of fees being charged for FX trading, that those fees were in excess of what Defendants had agreed to charge, and that other clients were charged less for the same services;

87. These actions during the Class Period were breaches of Defendants' fiduciary duties of loyalty and prudence to the Plans under ERISA, and Defendants did not execute their fiduciary responsibilities for the exclusive benefit of the Plans. § 404(a)(1)(A), (B), 29 U.S.C. §§ 1104(a)(1)(A), (B).

88. Defendants committed these breaches during each FX transaction involving assets of the Plans.

89. As a direct and proximate result of these breaches of duty, the Plans, and indirectly Plaintiffs and the Plans' other participants and beneficiaries, realized losses.

90. Pursuant to ERISA, the Defendants are liable to restore all losses suffered by the Plans caused by the Defendants' breaches of fiduciary duty.

COUNT III

Liability for Breach of Co-fiduciary (Violation of § 405 of ERISA, 29 U.S.C. § 1105)

91. All previous averments are incorporated herein.

92. SSGM violated ERISA, 29 U.S.C. §1105(a)(1), by knowingly undertaking to conceal SSBT's fiduciary breaches. It did so through the actions and omissions of its employees and agents by concealing and failing to provide complete and accurate information to the Plans regarding the cost of FX transactions.

93. SSGM violated ERISA, 29 U.S.C. §1105(a)(3), because it knew that SSBT had breached its fiduciary duties of prudence and loyalty, but failed to take reasonable steps under the circumstances to remedy the breach.

94. On account of SSGM's violations of these provisions, SSGM is liable for the breach of its co-fiduciary, SSBT.

95. As a result of SSGM's actions, the Plans suffered losses.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

a. Declare that the Defendants have violated ERISA's prohibited transactions provisions;

b. Declare that the Defendants breached their fiduciary duties under ERISA;

c. Issue an order compelling a proper accounting of the foreign exchange transactions in which the Plans have engaged;

d. Issue an order compelling Defendants to restore all losses caused to the Plans (or that will be caused to the Plans after the filing of this Complaint);

e. Issue an order compelling the Defendants to disgorge all fees paid and incurred to Defendants (or that will be paid or incurred by the Plans after the filing of this Complaint), including any profits thereon;

f. Order equitable restitution and other appropriate equitable monetary relief against the Defendants;

g. Award such other equitable or remedial relief as may be appropriate, including the permanent removal of the Defendants from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to serve as custodian to the Plans;

h. That this action be certified as a class action and that each Class be designated to receive the amounts restored to the Plans by Defendants and a constructive trust be established for distribution to the extent required by law;

i. Enjoin Defendants collectively, and each of them individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

j. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g) and/or the Common Fund doctrine; and

k. Award such other and further relief as the Court deems equitable and just.

Dated: February 24 , 2012

By: /s/ Bryan T. Veis
J. Brian McTigue (*pro hac vice*)
Bryan T. Veis (*pro hac vice*)
James A. Moore (*pro hac vice*)
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Bryan T. Veis, hereby certify that on February 24, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Bryan T. Veis

EX. 25

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - - - - - - - - - - - -x

ARKANSAS TEACHER :
RETIREMENT SYSTEM, :
et al., :
Plaintiffs, : CA No. 11-10230-MLW
v. :
STATE STREET BANK :
AND TRUST COMPANY, :
Defendant. :

- - - - - - - - - - - - - - -x

July 6, 2017
Washington, D.C.

Deposition of:

ALAN KOBER,

called for oral examination by Counsel to the Special Master, pursuant to notice, at JAMS, 1155 F Street, Northwest, Suite 1150, Washington, D.C. 20004, before Christina S. Hotsko, RPR, of Veritext, a Notary Public in and for the District of Columbia, beginning at 8:32 a.m., when were present on behalf of the respective parties:

disability program for the member companies. And, well, in my tenure there, we got put in a 401(k) for the employees.

In 2000, late 1999, I was offered a job with the Andover Companies. And I had met with the president of the Andover Company on numerous occasion because, as I said, they were the largest member of the association.

The Andover Company, in my opinion, had a very fine reputation. I will give you the -- as an aside, I will say that two or three months after I went to work there, my wife asked something about what my vacation policy was. And my daughter, who was a CPA, married to a CPA, they were at the house. And I said, I have no idea what the vacation -- what I have for vacation.

My son said, well, go get your offer letter. And I said, offer letter? What's that? I don't have an offer letter.

He said, well, what do you have? I said, I have a handshake with the president of the company, Bill Nichols. And, I mean, that's the culture of this company.

And I stayed -- well, I had a guaranteed ten years. I was 63 at the time. I had a

guaranteed ten years, and I ended up staying 14 and a half years.

Q. So Mr. Kober, you were asked to run the three subsidiary companies in approximately 2000.

A. 2000. Yes.

Q. And --

A. And --

Q. Go ahead, sir.

A. Well, I forgot one thing. When I was in New Jersey, I finally got smart enough to say I should go to college. So Fairleigh Dickinson University was in a campus in the town that I lived at in Madison, New Jersey. So I went nights for six years and got a BS in business.

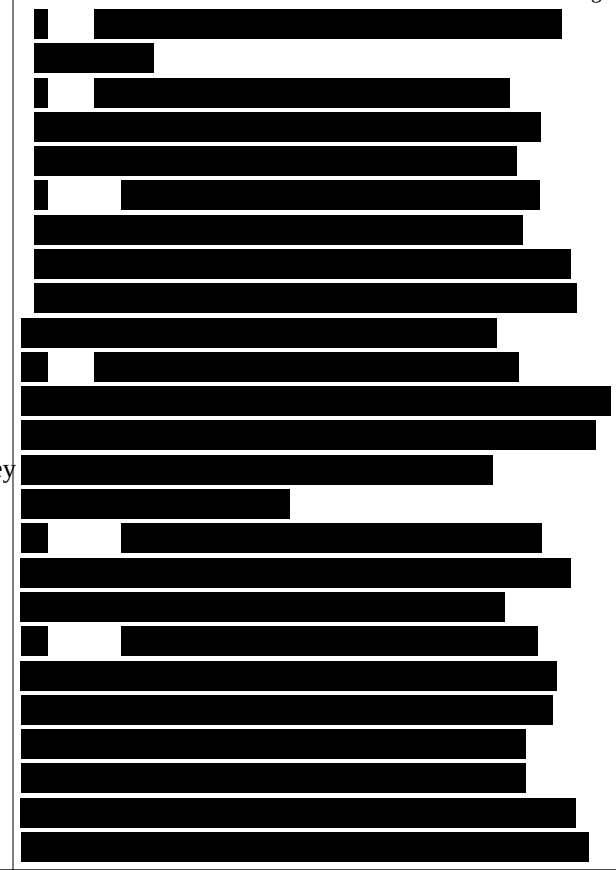
Q. And sir, how old were you when you were appointed vice-president and trustee?

A. 63.

Q. All right. And you said that you served for approximately 14 years before retiring. When did you retire?

A. June 1st of 2014.

Q. And three years later, you still have some involvement in the company. I would imagine your wife's questioning as to why you're doing this has continued; is that correct?



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there with State Street's lawyers.
So what else?
Q. In addition to giving the deposition in that prior case, did you compile any documents or do anything else?
A. Yes. We supplied all the documents that they requested. I kept abreast with what was going on with various phone conversations with Laura and e-mails.
Yes. I was very active in that one.
Q. And when you left your position at Andover Companies on June 1, 2014, did you have a successor?
A. Yes, I did. Janet Wallace, who is here with me now.
Q. And did you recommend Ms. Wallace for the position?
A. I did.
Q. And when you transitioned with Janet, did you give her any kind of an overview as to the State Street case?
A. Yes. Well, she was pretty much aware of as to what was going on because a lot of the documents that were -- well, all of the documents that were being requested channeled through

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Q. All right, sir. Any other reaction?
A. No. And there was a follow-up story recently in the Globe talking about Garrett Bradley. And I sort of forget the gist of the whole article, but it appears that he's not someone I would put my trust in.
Q. Now, sir, you've been involved in financial services for many years. Based on your familiarity with this case, do you have any recommendations as to how the problems that have been alleged in this case might be avoided?
A. I -- actually, I really can't think of any recommendations except that perhaps when different law firms bill you, they should all give you a list of everybody that's involved so that you would know that, gee, John Jones worked for all three law firms? That doesn't seem likely to me.
Q. All right, sir. And what was your reaction to the -- strike that.
Thank you for that recommendation.
And how many hours in total do you think you spent on this most recent State Street case?
A. I have no idea. As I previously said, I wished I had kept a logbook or a journal. Not

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only my hours. Janet's hours. Joline Pomerleau, who gathered all the documents and stuff. You know, there's a lot of hours involved and a lot of different pay rates, too.
Q. And is that part of your reasoning for believing that $10,000 service award does not compensate the company for the amount of time that it allocated for you and Janet and others to work on the case?
A. That is the reasoning. Yes.
Q. And sir, one final question on the Globe article. Do you recall the reference to Mr. Michael Bradley in that story?
A. I do.
Q. And what was your reaction to the allegations against Michael Bradley?
A. Well, as a public defender, he's billing the state for $53 an hour, and they're charging $500 an hour for his services. Something is way off somewhere. Maybe public defenders should get more money. I don't know. But in the initial article -- or maybe it was in the subsequent article. They pointed out that his brother, Garrett Bradley, got through a -- a bill through the state government to increase their -- the pay

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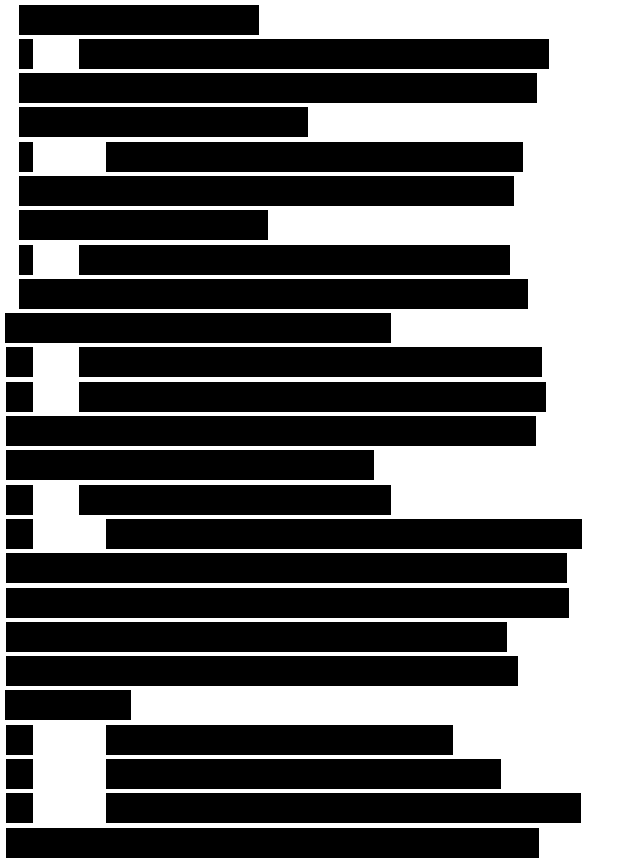

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EX. 26

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
- - - - - - - - - - - - - - -x
ARKANSAS TEACHER :
RETIREMENT SYSTEM, :
et al., :
Plaintiffs, : CA No. 11-10230-MLW
v. :
STATE STREET BANK :
AND TRUST COMPANY, :
Defendant. :
- - - - - - - - - - - - - - -x

July 6, 2017
Washington, D.C.

Deposition of:
JAMES STANGELAND,
called for oral examination by Counsel to the Special Master, pursuant to notice, at JAMS, 1155 F Street, Northwest, Suite 1150, Washington, D.C. 20004, before Christina S. Hotsko, RPR, of Veritext, a Notary Public in and for the District of Columbia, beginning at 5:33 p.m., when were present on behalf of the respective parties:

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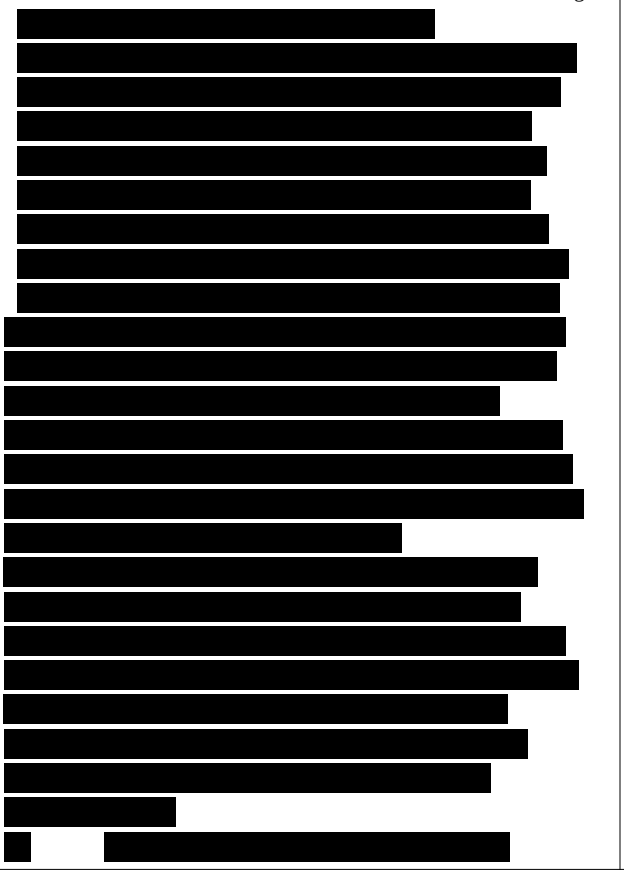

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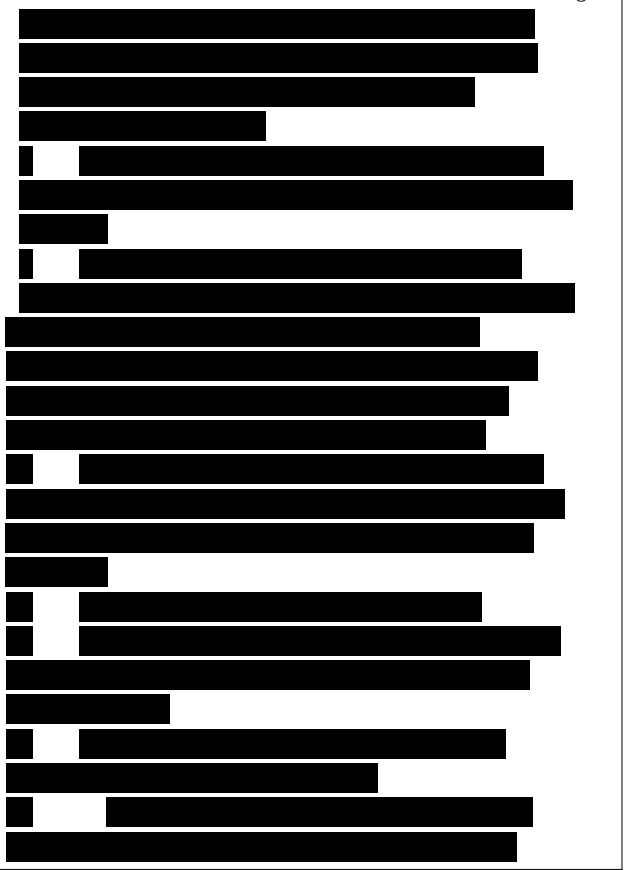

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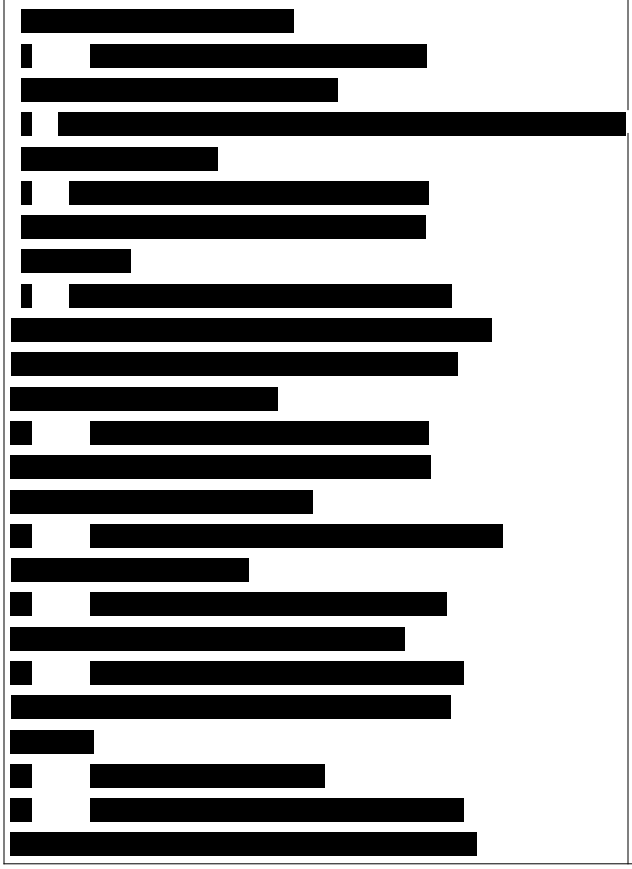

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in --
MR. SINNOTT: Let's leave it the way it is. As long as you can hear us, let's just go with it.
THE WITNESS: Okay.
BY MR. SINNOTT:
Q. So go ahead, your responsibilities.
A. Yeah. Supervising the case; acting in the best interest of the class, not just myself; providing documents to Keller Rohrback; answering any questions asked in relation to the case; reviewing documents that were to be submitted and making sure that I understood them; if I had questions, asking questions; if I had comments, adding my comments. Yeah.
Q. So is it fair to say you've played an active role as part of your -- in your capacity as class representative?
A. Yes.
Q. Let me direct your attention to Boeing's company plan. Are you a participant in the 401(k) program?
A. Yes.
Q. And how long have you been involved in that?

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A. Since arriving at Boeing. So yeah, roughly September 2004.
Q. And as part of your involvement in that, have you participated in contributing money to funds which were being traded in the foreign exchange market?
A. Yes.
Q. And do you choose the funds that you invest in?
A. There are a variety of funds, and I can choose where my money goes. So yes.
Q. And what information is provided to you about foreign exchange funds that are being traded?
A. Foreign exchange transactions that take place by those funds? Is that what you mean?
Q. Yes, sir.
A. None.
Q. Okay. Do you receive information or have you in the past regarding trading practices?
A. Not that I'm aware of.
Q. All right. And prior to the State Street case, had you ever been involved in a class action litigation?
A. No.

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[redacted]

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conversation, did you have any follow-up conversations with other attorneys at Keller Rohrback?
A. Yes. After that, I contacted Laura Gerber.
Q. All right. And at some point did you agree to become a class representative?
A. I did.
Q. And what did Keller Rohrback ask you to do in your capacity as class representative?
A. They asked me to supervise the case, to act on the best interest of the class, to provide documents to them, and to support the case in any manner I could.
Q. And did you see any downside in your acting as a class representative?
A. They assured -- well, I didn't believe that there would be a problem with Boeing, and they assured me that Boeing was legally not allowed to have a problem with me doing this. So no.
Q. And you have not received any interference or pushback from Boeing, have you?
A. None at all.
Q. All right. Now, did your law firm make

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any promises to you about the chances for success in this litigation?
A. No.
Q. Did they promise you that you'd receive a service award of any kind?
A. No.
Q. Did they promise results of any kind?
A. Well, no. I mean, they promised to pursue the case. I guess --
Q. All right. But they didn't promise you that there was going to be a large settlement or any kind of a settlement in the case?
A. No.
Q. And at some point in time, did you read a civil complaint?
A. The complaint that KR filed on my behalf?
Q. Yes, sir.
A. Yes.
Q. All right. And did you have any input into that complaint before it was filed?
A. I don't recall what my response to that e-mail was, but I -- I read through it, and I recall approving of it and signing it.
Q. And had you provided factual information to your law firm prior to that complaint being

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shown to you?
A. Yes. A good deal.
Q. Were there any risks involved in suing State Street, as far as you knew?
A. Well, there was a risk that we wouldn't win.
Q. Okay. And was there discussion as to the identities of any of the other plaintiffs in the case?
A. I was made aware of who they were, I believe.
Q. All right.
A. I mean, they were in the documents that were filed.
Q. All right, sir.
And let me ask you about attorneys' fees in the case and any discussion you might have had with Keller Rohrback. At some point did you sign a class representative agreement?
A. I believe so. Yes.
Q. And do you remember whether that agreement had any indication of hourly rates or include information about what percentage would be paid to the attorneys if the case was successful?
A. It talked about percentage, I believe.

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[redacted]

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[redacted]

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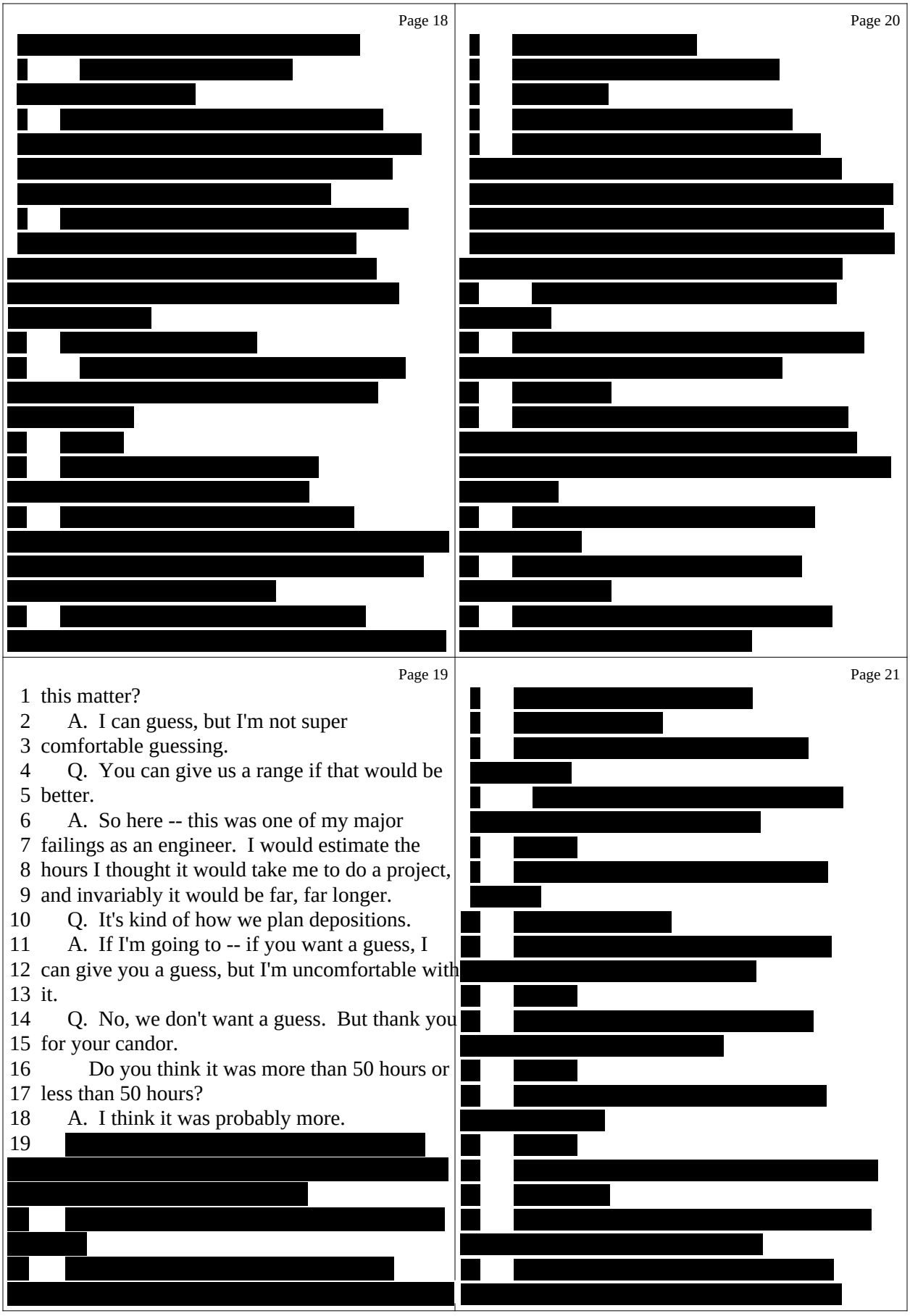
Q. All right, sir. And that was with Judge Wolf?
A. Correct.
Q. And did you attend any meetings with other law firms besides Keller Rohrback?
A. There was some in that courtroom. But besides that, I don't believe so.
Q. And during the life of the case between the time that you came on board as a class representative and the settlement, were you advised by the Keller Rohrback attorneys as to the progress of the case?
A. Yes.
Q. And how would that communication take place?
A. I'd say primarily by e-mail but also via several phone conversations.
Q. And did you have any discussions with those attorneys, as far as their litigation strategy?
A. Well, they kept me apprized of what they were doing and the status of the case. I didn't dictate strategy. That's their department.
(Interruption in the proceedings.)
MR. SINNOTT: Just a moment. We're



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this matter?
A. I can guess, but I'm not super comfortable guessing.
Q. You can give us a range if that would be better.
A. So here -- this was one of my major failings as an engineer. I would estimate the hours I thought it would take me to do a project, and invariably it would be far, far longer.
Q. It's kind of how we plan depositions.
A. If I'm going to -- if you want a guess, I can give you a guess, but I'm uncomfortable with it.
Q. No, we don't want a guess. But thank you for your candor.
Do you think it was more than 50 hours or less than 50 hours?
A. I think it was probably more.

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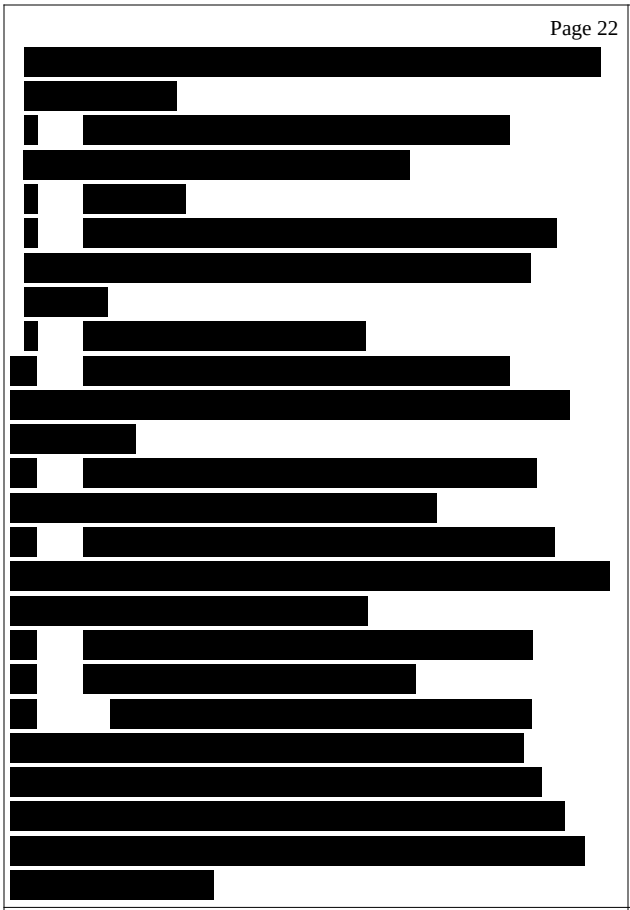

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duties and responsibilities and what you actually did in the course of your role as class representative.

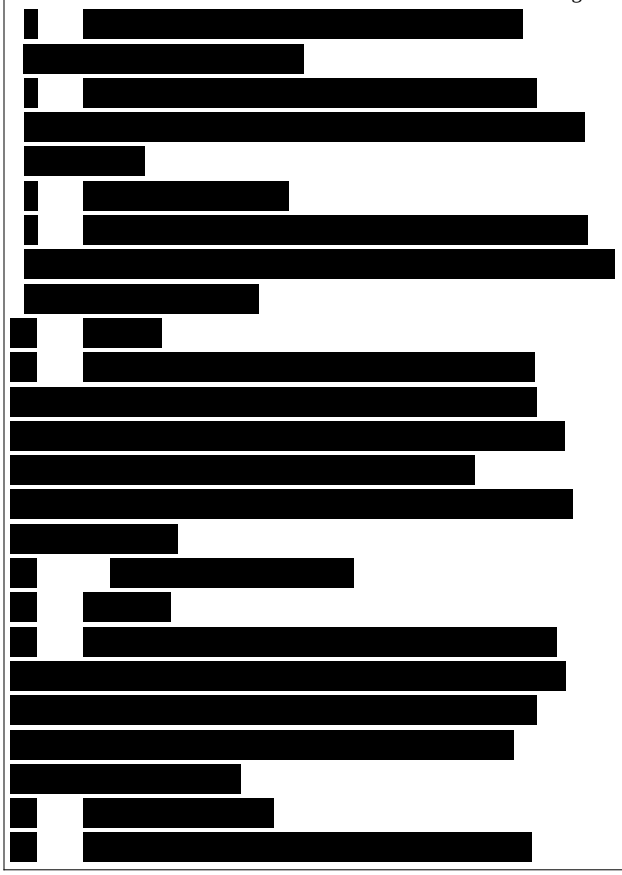
A. Sure. Well, it started with contacting KR. And then they wanted to see if I would be suitable as a class representative, which required looking at some documents that I provided them. We pretty quickly established that it looked like the Stage 3 case did, in fact, apply to Boeing and to myself.

They filled out a draft complaint, I guess you would call it. I read through that, signed it. A little bit later we amended it. I read through that, signed it.

I continued to provide more documents from my retirement plan. I could get up to two years' history online and just get that in PDF form and e-mail it off to them, but we wanted to go back farther than that. I had to submit a request for hard copies, which I did. Got those, supplied that to Keller Rohrback.

Had the interview with the FBI and Department of Labor.

At that point, I believe we entered into the mediation, which was a span of roughly three



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years. And KR kept me apprized of what was going on, but that was definitely a decreased level of activity over those three years as opposed to the initial three months, where it was pretty comparatively hectic.

And then once all the parties involved had agreed to the proposed settlement, Keller Rohrback provided me with that. I read through that and indicated my approval and submitted that to the court.

Q. Thank you, sir. That's helpful.

When did you first learn about the issue of double -- duplicate billing in the fee petitions?

A. It was after the case was settled. I was made aware of it by Laura Gerber. I could get an exact date for you if I were to go through my e-mail, but I don't know it off the top of my head.

Q. Did you read a newspaper article?

A. She provided -- I can't remember if she provided a link or a copy of it. But yes, I did.

Q. And what was your reaction?

A. Looks bad.

Q. Okay. And any recommendations for the

EX. 27

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-10230 MLW
ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, STATE STREET GLOBAL MARKETS, LLC and DOES 1-20, Defendants.	No. 11-cv-12049 MLW
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on behalf of itself and all others similarly situated, and JAMES PEHOUSHEK-STANGELAND, and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendants.	No. 12-cv-11698-MLW

KELLER ROHRBACK L.L.P.'S RESPONSES TO SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) SECOND SUPPLEMENTAL INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Keller Rohrback L.L.P. ("Keller Rohrback" or the "Firm") responds as follows to the Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories ("Interrogatories").

Keller Rohrback's answers are based on facts presently known. Keller Rohrback's responses are made without waiving the right to amend, modify or supplement the answers stated herein, if necessary.

RESPONSES TO THE SECOND SUPPLEMENTAL INTERROGATORIES

INTERROGATORY NO. 1: Identify by name any referring attorney, forwarding attorney, local or other counsel outside of your firm who received any portion of the attorneys' fees in the SST Litigation.

RESPONSE TO INTERROGATORY NO. 1:

Keller Rohrback objects to Interrogatory No. 1 to the extent it requires the Firm to provide responses regarding the receipt or disbursement of attorneys' fees from the SST Litigation by other counsel subject to this investigation, for which the Firm lacks first-hand information or any personal knowledge.

Subject to this objection, Theodore ("Ted") Hess-Mahan, attorney at the law firm of Hutchings Barsamian Mandelcorn, LLP ("Hutchings Barsamian"), served as Keller Rohrback's official local counsel in *The Andover Companies Employee Savings and Profit Sharing Plan v. State Street Bank and Trust Company*, No. 12-cv-11698. With the informed consent of all class counsel in the case, Keller Rohrback agreed to compensate Hutchings Barsamian out of Keller Rohrback's portion of the joint fee award. At the conclusion of the case, Lead Counsel disbursed to Keller Rohrback 1/3 of the ERISA Counsel Portion of Awarded Fees

($2,486,393.59, representing fee amount of $2,484,708.33 and interest on fee). Keller Rohrback then compensated Hutchings Barsamian. There was no other counsel involved in the *Andover* case that received any attorney fees from Keller Rohrback in the SST Litigation. There was no referring or forwarding counsel in the *Andover* ERISA case.

INTERROGATORY NO. 2: For each firm or lawyer identified above, describe what work if any, it/she/he performed in exchange for receiving its/her/his portion of the fee.

RESPONSE TO INTERROGATORY NO. 2: Keller Rohrback and Hutchings Barsamian both performed work in exchange for receiving 1/3 of the ERISA Counsel Portion of Awarded Fees. These two firms were counsel of record in the *Andover* case, and they were the only two firms who received any portion of *Andover* ERISA Counsel portion of the joint class fee award. Keller Rohrback has no direct knowledge of the disbursement of any fees by Labaton Sucharow LLP from the Attorney Fee Fund other than the amount disbursed to Keller Rohrback.

Keller Rohrback served as lead counsel in *The Andover Companies Employee Savings and Profit Sharing Plan v. State Street Bank and Trust Company*, and was responsible for directing the course and conduct of the litigation and ensuring that the matter was prosecuted in a timely and professional matter. Because the cases were consolidated and settled globally, Keller Rohrback's work also benefitted the *Henriquez v. State Street Bank and Trust Company* case and the *Arkansas Teacher Retirement System v. State Street Bank and Trust Company* case. During the pendency of these cases, the Firm's attorneys zealously represented the interests of the class members by investigating and preparing the complaint, working with the other ERISA counsel to lead discovery efforts on behalf of the ERISA class by propounding, negotiating, and processing document discovery received from State Street Bank, and responding to document discovery requests from State Street Bank to the Firm's clients. Lynn Sarko, Managing Partner of Keller

Rohrback, also personally facilitated the complex multi-party discussions and mediation of the matter among Plaintiffs from the consumer class and ERISA class, Defendants, the Securities and Exchange Commission, the Department of Justice, and the Department of Labor. From inception until November 2, 2016, when the global settlement of the matter was approved, Keller Rohrback's attorneys and staff expended 4,690.65 hours of time performing these duties. Keller Rohrback's lodestar in the case was $2,561,287.00. *See* ECF No. 104-18.

Ted Hess-Mahan of Hutchings Barsamian was official local counsel of record in *The Andover Companies Employee Savings and Profit Sharing Plan v. State Street Bank and Trust Company* matter, and was responsible for being familiar with the practices and procedures of the Court, for handling administrative matters and communications between the Court and counsel, as well as any other tasks assigned by Keller Rohrback. As local counsel, Mr. Hess-Mahan filed the initial *Andover* complaint. *See* KR00000978-1026. He also filed numerous other pleadings and is listed as counsel of record in many other docket entries. *See* KR00001027-95, 1099-191. Mr. Hess-Mahan handled service of process issues, and was the local point of contact for the Court, State Street Bank's defense counsel at Wilmer Hale, the Boston Department of Labor office, and the press for matters pertaining to the *Andover* ERISA case. *See* KR00001096-98. He sponsored the *pro hac vice* motions of several Keller Rohrback lawyers who entered notices of appearance in the *Andover* ERISA case. *See* KR00001027-37; 1187-91. From inception until November 2, 2016, when the global settlement of the matter was approved (over a 4-year period), Mr. Hess-Mahan spent 15.5 hours of time performing his local counsel duties. Once Keller Rohrback received the fee and cost disbursement from Lead Counsel, it forwarded a $10,000 check to Hutchings Barsamian representing Hutchings Barsamian's costs and its

lodestar for 15.5 hours of work in the case, rounded up to a round number as a professional courtesy.

INTERROGATORY NO. 3: State whether such fees, if any, were disclosed a) to the Court; b) to ERISA class members; c) to the customer – side law firms; and d) to each other.

RESPONSE TO INTERROGATORY NO. 3:

In response to Interrogatory No. 3, subpart a, the fee application, as described in the class notice, sought a combined fee award on behalf of the ERISA counsel and the customer counsel in the amount of $74,541,250.00 (plus accrued interest). The total fee amount applied for was disclosed the Court, to ERISA named plaintiffs, to ERISA class members (through the class notice), to the customer-side law firms, and to ERISA law firms.

The specific allocation of the gross class fee award among the Customer and ERISA class law firms was not disclosed to the Court. Rather, the Court awarded a single fee amount to class counsel. *See* Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 41 ("The Court hereby awards fees in the amount of $74,541,250,00 plus any accrued interest, which is approximately 25% of the Class Settlement Fund...."). The sub-allocations between class counsel was left to be determined by the agreement of Customer and ERISA class counsel, and was the subject of several letter agreements. First, in December of 2013, the ERISA class counsel and the Customer class counsel agreed that counsel for Plaintiffs in the *Andover* and *Henriquez* actions would receive 9% of any attorneys' fee agreed to or awarded in any collective or joint resolution of the cases. *See* KR00000045-50 (Agreement Between Counsel for Consumer and ERISA Plaintiffs Regarding Division of Attorneys' Fees, dated December 11, 2013). Second, by letter agreement dated October 26, 2016 among Customer and ERISA class counsel, ERISA counsel instructed

Lead Counsel to distribute their "costs as awarded by the Court plus at least 9% of the aggregate attorneys' fee awarded by the Court ("ERISA Counsel Portion of Awarded Fees"), and further instructed that Lead Counsel was to distribute "the ERISA Counsel Portion of Awarded Fees 1/3 to Zuckerman Spaeder LLP, 1/3 to McTigue Law LLP, 1/3 to Keller Rohrback L.L.P." *See* KR00000051-53; 1201-05 (Letter re: ERISA counsel portion of aggregate attorneys' fee award, dated October 26, 2016). In relevant part, the October 26 Letter Agreement also stated, "to the extent that Hutchings Barsamian Mandelcorn, LLP has a right to fees, it shall be from the funds distributed to Keller Rohrback L.L.P., per the agreement between those firms." *Id.* Likewise, all counsel knew and agreed that any fees to be distributed to Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman LLC, and Feinberg, Campbell & Zack, P.C. (additional counsel in the *Henriquez* case) were going to be from the funds distributed to Zuckerman Spaeder LLP and McTigue Law LLP.

The *Declaration of Lynn Sarko on Behalf of The Andover Companies Employee Savings and Profit Sharing Plan and James Pehoushek-Stangeland in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses* ("Sarko Declaration"), ECF No. 104-18, disclosed to the Court the existence of Hutchings Barsamian as local counsel for Keller Rohrback in the *Andover* case and Keller Rohrback's substantial lodestar that supported the requested combined fee award to ERISA counsel and the customer counsel. Moreover, the Hutchings Barsamian firm was listed on the Court's docket as the counsel of record in the *Andover* case. *See* KR00000978-83.

In response to Interrogatory No. 3, subpart b, the *Andover* named plaintiffs—The Andover Companies Employee Savings and Profit Sharing Plan, and James Pehoushek-Stangeland—approved the agreement to divide attorneys' fees in December 11, 2013 and knew

that the ERISA Counsel would receive 9% of the aggregate attorneys' fee awarded by the Court. Before the *Andover* plaintiffs approved the global settlement, they also approved counsel seeking a fee of 25% of the gross settlement award.

All notices to class members (including the ERISA members) detailed the gross fee amount being sought, or 25% of the $300,000,000 Class Settlement Fund, after first deducting Court-awarded litigation expenses (not to exceed $1,750,000) and Court-awarded service awards for the seven named plaintiffs (not to exceed $85,000 in the aggregate). The specific dollar allocations of fees to individual class law firms from the gross fee award was not detailed in any written disclosure to the ERISA named plaintiffs, other ERISA class members, or the ERISA counsel. The notices to class members also stated that the ERISA portion of the allocation from the global settlement was 20% of $300,000,000, or $60,000, and the notice stated that no more than $10,900,000 of the total attorneys' fees awarded would be paid out of the ERISA portion of the global settlement allocation. The actual attorneys' fees paid to ERISA counsel were far less than $10,900,000—total aggregate ERISA attorneys' fees paid to ERISA counsel were only $7,454,125. Keller Rohrback does not know whether the full $10,900,000 was taken out of the ERISA portion of the global settlement allocation for attorneys' fees. If that occurred, arguably $3,445,875 in attorneys' fees would have been paid to non-ERISA counsel—Lead Counsel, other customer-side law firms and/or Mr. Chargois—out of the ERISA portion of the global settlement allocation.

In response to Interrogatory No. 3, subparts c and d, the customer-side law firms were aware that the ERISA Counsel Portion of Awarded Fees was being distributed 1/3 to Zuckerman Spaeder LLP, 1/3 to McTigue Law LLP, 1/3 to Keller Rohrback L.L.P. The final percent allocation of attorneys' fees to ERISA counsel in November of 2016 was increased by Lead

Counsel to 10% of the awarded fee in light of the excellent work and contribution of ERISA counsel. *See* KR00001206-08. The customer-side law firm that prepared the allocation was also aware of the actual amounts of $2,484,708.33 paid to each of the three firms as attorneys' fees. The customer-side law firms were also aware that any fees to be distributed to Hutchings Barsamian Mandelcorn, LLP in the case were going to be from the funds distributed to Keller Rohrback, and any fees to be distributed to Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman LLC, and Feinberg, Campbell & Zack, P.C. were going to be from the funds distributed to Zuckerman Spaeder LLP and McTigue Law LLP, consistent with the instructions provided by ERISA Counsel to Mr. Lawrence Sucharow in the October 26, 2016 Letter. *See* KR00000051-53; 1201-05. Following receipt of the Keller Rohrback portion of the fee, Keller Rohrback did not inform other ERISA counsel or the customer-side law firms of the specific amount it paid to Hutchings Barsamian for its portion of the fee award.

INTERROGATORY NO. 4: State whether such firm's or lawyer's fees, if any, are included in the respective ERISA-firm fee petitions provided to Labaton Sucharow for filing with the Court.

RESPONSE TO INTERROGATORY NO. 4:

At the request of Lead Counsel, the Sarko Declaration did not include the lodestar of Ted Hess-Mahan of Hutchings Barsamian. Instead the Sarko Declaration complied with the request of Lead Counsel and set forth Keller Rohrback's substantial lodestar that supported the requested combined fee award to ERISA counsel and the customer counsel, and the amount of recoverable costs incurred by Keller Rohrback and Hutchings Barsamian. The Sarko Declaration also noted the role played by Hutchings Barsamian as local counsel for Keller Rohrback in the Andover case. Lead Counsel at Labaton Sucharow, Nicole Zeiss, stated in an email, dated August 31, 2016, to Keller Rohrback and other ERISA Counsel:

> Also, back when we were working on the expense cap for the notice, your firms provided me with info about expenses, but also the expenses of additional

> counsel: Hutchings ($500 in expenses); Beins Axelrod ($1,400 in expenses), Richardson Patrick ($7,600 in expenses), Feinberg Campbell ($1,400). **Optically, however, we think it would be beneficial for us to avoid submitting a dozen small fee decs with the motion**, when Judge Wolf is most familiar with your 3 firms, us, Thornton and Lieff. **We would ask you to consider whether these additional counsel could forgo submitting declarations.** Their expenses are minimal, but we don't know about their lodestar. Obviously, the Dec 2013 fee agreement still governs, as would whatever agreements you have with these firms. Please think about it and let us know.

See KR00001192-98 (emphasis added).

At Lead Counsel's request, and in view of Ted Hess-Mahan's comparative lodestar of less than 0.017 percent of the total lodestar, Mr. Hess-Mahan's additional lodestar was not included in the Sarko Declaration. Previous to that, both the Court and Lead Counsel were well aware of Hutchings Barsamian's involvement in the case, as Mr. Hess-Mahan appeared as *Andover* local counsel in 2012, had been counsel of record continuously since that time, and actively filed pleadings in the *Andover* case. Moreover, Mr. Hess-Mahan's local counsel role was known to both defense counsel at Wilmer Hale and to the Department of Labor.

RESPECTFULLY SUBMITTED this 6th day of October, 2017.

KELLER ROHRBACK L.L.P.

/s/Lynn Lincoln Sarko
Lynn Lincoln Sarko (*pro hac vice*)
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Attorneys for Plaintiffs THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on behalf of itself and all others similarly situated, and JAMES PEHOUSHEK-STANGELAND, and all others similarly situated

CERTIFICATE OF SERVICE

I, Lynn Lincoln Sarko, hereby certify that I have caused a copy of the forgoing Keller Rohrback L.L.P.'s Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories to be served via e-mail and Federal Express upon William F. Sinnott, Esq., Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, MA 02108.

/s/ Lynn Lincoln Sarko
Lynn Lincoln Sarko

EX. 28

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
- - - - - - - - - - - - - - -x
ARKANSAS TEACHER :
RETIREMENT SYSTEM, :
et al., :
Plaintiffs, : CA No. 11-10230-MLW
v. :
STATE STREET BANK :
AND TRUST COMPANY, :
Defendant. :
- - - - - - - - - - - - - - -x

July 6, 2017
Washington, D.C.

Deposition of:
LYNN L. SARKO,
called for oral examination by Counsel to the Special Master, pursuant to notice, at JAMS, 1155 F Street, Northwest, Suite 1150, Washington, D.C. 20004, before Christina S. Hotsko, RPR, of Veritext, a Notary Public in and for the District of Columbia, beginning at 2:35 p.m., when were present on behalf of the respective parties:

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being managing partner is an elected position, and I'm happy to say or I'm unhappy to say I've been the managing partner ever since.

SPECIAL MASTER ROSEN: Were you elected each time by acclimation?

THE WITNESS: Yes. There's a period -- we have a rotating executive committee to terms. And the managing partner currently serves a three-year term.

BY MR. SINNOTT:

Q. And, Lynn, have you been involved in other class action representations?

A. Yes. Since I came to Keller Rohrback, I would say my career since then -- at the beginning I did some white-collar criminal defense work, some other types of actions. But since around 1991, I have done probably 95 percent -- I wouldn't say all class actions -- class actions and contingent fee commercial litigation.

In fact, currently, I would say in the last ten years the complex litigation department, by revenue, has been about 50 percent class actions and 50 percent commercial contingent fee litigation, direct actions on behalf of financial institutions, other types of large companies.

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Q. All right. And could you give us an idea of the types of cases that you've -- class action cases that you've worked on?

A. I've personally been involved all the way in the way from environmental cases, such as the Exxon Valdez oil spill, others of those types, a large number of ERISA cases. In fact, I think the firm Keller Rohrback -- the firm and some of my partners and I have probably been involved in almost every major ERISA class action probably in the last 15 years.

We also do a large amount of anti-trust, torts, employment-type cases, mortgage backed securities. So many of those cases they make my head spin. But generally a pretty good overview of the type of commercial and class action cases going on in the country.

SPECIAL MASTER ROSEN: Those are all on a contingent basis?

THE WITNESS: Those are all either on a contingent -- as I said, about 50 percent would be contingent fee, what we call an alternative fee arrangement, or class actions. In fact, over the last ten years, you know, one of the other firms in our building we do and have done work with is

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[redacted]

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THE WITNESS: In the BNY case we were one of the ERISA counsel. In fact, Brian McTigue was one of the ERISA counsel. The non-ERISA counsel included Lieff Cabraser and Kessler Topaz.

BY MR. SINNOTT:

Q. Lynn, could you give us an overview of your involvement in the incident case, the State Street Trust case?

A. Yes. My involvement in this case goes back to originally we were involved in a prior State Street case that I think we had discussed earlier this morning. That was before Judge Howell in the Southern District of New York, it had to do with their bond funds and mortgage backed securities. That case ended in -- my recollection is the settlement was in the fall of 2009 and final approval hearing was in 2010.

In the fall of 2009, the attorney general for the State of California unsealed a whistleblower case that they had dealing with State Street FX cases. At that point we started looking at it, investigating the State Street case. We were gathering evidence. We talked to different pension funds, et cetera, including the [redacted], gathering evidence. We

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[redacted]

Page 15

[redacted]

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Did they -- let me just put it to you directly.
THE WITNESS: All right.
SPECIAL MASTER ROSEN: Did they approach you and ask you to become involved in this case because of some concern about the case or concern about the law that this case could make or any other reason?
THE WITNESS: Let me answer it in a very delicate and direct way.
SPECIAL MASTER ROSEN: This isn't the time to be modest.
THE WITNESS: The Department of Labor had good professional relationships with us, with me and some of the other lawyers. They thought we did a good job and knew the law. And this was a case that some people at the Department of Labor, lawyers, were concerned about. And that they -- some of them expressed to me that they wished "too bad you guys weren't involved." Something like that.
I'm being sensitive because the Department of Labor does not direct private counsel to file cases.
However, the Department of Labor has a limited budget, and they're very careful about

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[redacted]

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was a decision by the mediator or a decision -- or was it done at the request of the consumer class representatives?

THE WITNESS: Let me tell you factually what I know, and then I won't speculate, which I'm not supposed to do.

Factually, I know that Lieff Cabraser had no problem, or at least Bob Lieff had no problem. Thought it would be helpful.

I didn't know -- had no conversations with the Thornton firm, so I didn't know. And I didn't know what Larry Sucharow thought, but had no great reason to believe that he was against it.

I do know that there was some concerns -- there might have been some concerns by his client, but that's speculating.

If I had to guess, my issue was that there was concerns at State Street. If I speculate greatly from discussions that day and subsequent days, I think if you graft how old the lawyer was, the younger lawyers thought separate silos were a great idea, and the older lawyers thought, you know, probably if this is going to get done, it's going to be a grand bargain.

And when I -- and the mediator -- there

Page 24

[redacted]

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[redacted]

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[redacted]

So I think those two pieces. I will also say that knowing the mediator as well as I do, I must have had 25-some mediations, probably more, with him. There are some mediators that would have taken the other approach. But that doesn't surprise me.

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BY MR. SINNOTT:
Q. Did you and Jeff Rudman have a prior relationship as well?
A. We did. We had been involved in cases together. We had appeared at conferences together. We had a purely professional relationship, but great respect for each other. So that was not unknown.
You have to understand, too, is that there was -- you know, the Arkansas case, they had filed their case, they had been litigating for a while. They had survived a motion to dismiss. And then suddenly these ERISA folks come along.
And I think if you'll just look at the relative size of the cases, the ERISA case volume we thought was between 5 and 9 percent. So, you know, if it they were the United States, we were Lithuania. You know? So it doesn't totally surprise me.
And, you know, some of them -- there's been some discussion, oh, the ERISA people would take their case. I think as Mike Lesser kind of -- you know, his view in talking to him, he was always very helpful because I thought -- he thought we were the tail on the dog. And the

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[redacted]

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trustee, in the last case, the last State Street case. Called them up to tell them about the case and see if they were interested.
And as an aside, it was very important, we thought, to add a plan to the case. Because I mentioned before that there were three entities that could have standing to bring a case: A planned participant, a trustee on behalf of the plan, or the Department of Labor.
This case, I thought, was a no-brainer on class certification for ERISA, bringing it as a single case. The risk came whether you could bring what's called a class of plans case. Was it -- could you bring a case where State Street was the fiduciary for a plan on behalf of all plans that State Street was the fiduciary for.
And that's an area of law that has developed over time. We actually, and Rebecca, I think have had those cases and were part of helping develop that law, have gotten courts to certify those cases.
So that was to me the class certification risk here. And the way to reduce that risk was to do that.
I will say, it is not easy to find a

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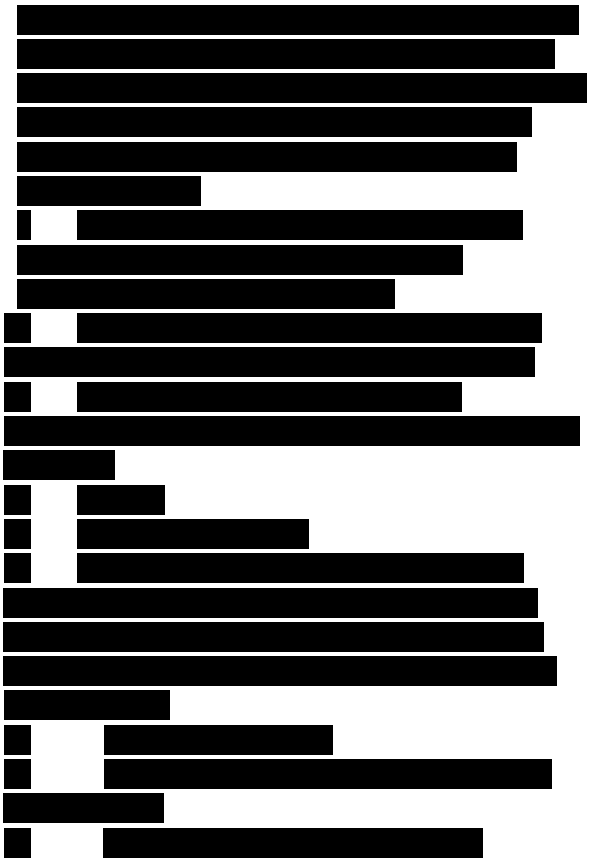
plan, an ERISA plan, who is willing to be a class rep because they tend to be conservative or, you know, they're busy, they're doing other things. And I will say usually it costs them more money than they ever will recover. And one of the issues is a lot of them will say if it costs us money, how can we justify to the plan as a fiduciary that we're spending their money to recover something for the plan, might be a small amount of money.
BY MR. SINNOTT:
Q. And how did you come to represent Mr. Stangeland in the case?
A. He was an acquaintance, friend, of a person by the name of Ben Gould, who is a lawyer at the firm. Which I should actually alter my fee submission because the table that has all the lawyers, it incorrectly lists Mr. Gould as a paralegal. And he actually is an accomplished lawyer, clerked for, I think, Tenth Circuit and also on the Ninth Circuit.
But he told them about the case. At least it was reported to me that he was [redacted]



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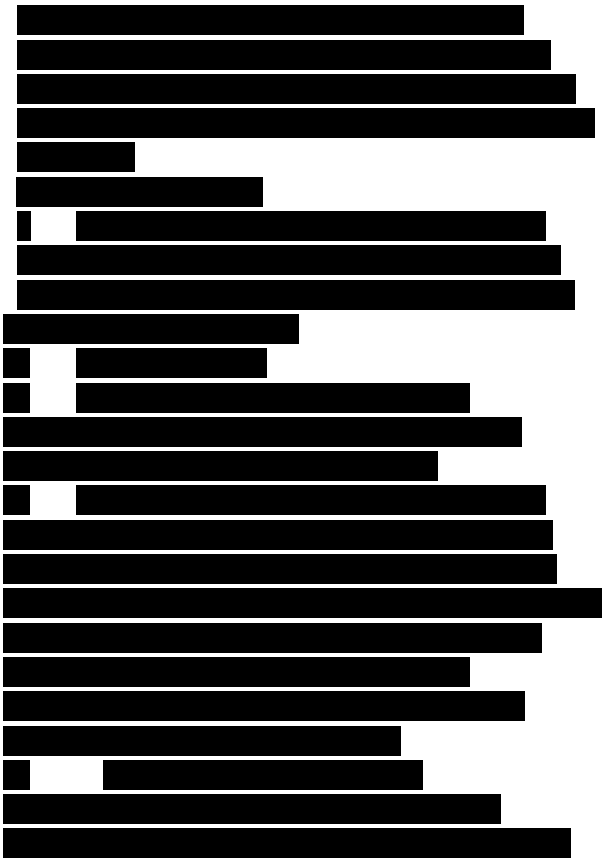
exempt of what's considered a prohibited transaction violation. In other words, you cannot take money from the client and stick it in your own pocket, you know, if you're advantaging yourself. I guess to put it -- break it down as simple as possible.

And in this case, the reason why it's a very good claim for us, and from the very beginning the beat on State Street about that was that they actually -- at least our theory was if they were engaged in all of these transactions, they had to provide their best most advantageous pricing to the ERISA plans.

So we basically could just go through and figure out who did they give a better -- who got a better deal, and we should get that same deal for fiduciary. It makes damages calculations easy and different than a customer class case.

The customer class, 93A, at least as I understand it, is a very powerful tool. It has challenges, which are class certification challenges. You know, it -- it's based as misrepresentation, sort of fraud-like claims, which, you know, based on issues where you have different contracts can be a challenge. But not



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unlike a lot of those cases.

So the differences in the two cases were, on the defense side, class certification was huge for the customer class. And damages, how to calculate them.

On the ERISA side, we had different -- you know, we had different issues we had to look at and overcome. We had our class of plans issue, whether they were a fiduciary, those types of things. Which flows into that one of the discussions of the mediation, to understand, was when we started mediating, we didn't know whether this was going to be a one-month or two-month or two-session deal.

First, we didn't really know how long it would take until we went and spoke -- talked to Judge Wolf. And, in fact, we had an in-chambers session in which there was a court reporter, and there was a record of that. The transcript is floating around. In which we told him our pitch. And this was a joint pitch of State Street, ERISA, and customer class. To basically say let's put the litigation on hold and discovery on hold and see if we can proceed in mediation.

And the pitch to him is we would not

[redacted]

say, the Southern District of New York. You had the Department of Labor. One difference is the Boston field office is very active. And certain other places you would have the main office of DOL would be more in charge of the litigation. In Boston it was the Boston office.

So you had those issues. You had to get ours settled. It was complicated because if you were State Street, at least the pitch we made was it was cheaper for State Street and more beneficial for all the private plaintiffs if we could settle everything at once. That being the private plaintiffs could get more money in settlement and State Street would have to pay less. Because when you settled separately, there's all this money lost.

For example, the Department of Labor has a penalty that if the Department of Labor settles the case, they take 10 percent of the settlement amount, that has to go as a penalty into the Treasury. It doesn't even go to victims or anything. It goes right into the general treasury to buy bombers and bombs and stuff, whatever.

So in all of these cases, if you're able to resolve the case in the private sector with the

Department of Labor signing off or issuing a small penalty, you save 10 percent right there.

You also have issues where, as you know, there's huge litigation costs. I mean, this case -- you know, there was a fee awarded. But even out-of-pocket costs in a case like this can be huge. So there's settlement issues.

Then litigation. It's an expensive case to litigate. In a lot of these cases, whether you have, you know, a $10 million recovery or 60 million or 300 million, to some extent you have to do a lot of the same work.

SPECIAL MASTER ROSEN: Let me ask a question. On the issue of who was instigating having the ERISA folks put on the sidelines at the beginning of the mediation, you thought maybe it was State Street.

THE WITNESS: Well, I thought it was the mediator. But as to why -- because the mediator said he spoke to all the parties, and that was his conclusion.

[redacted]

[redacted]

Now, as to -- you know, within that organization who wanted it to work and who didn't? I have no clue.

BY MR. SINNOTT:

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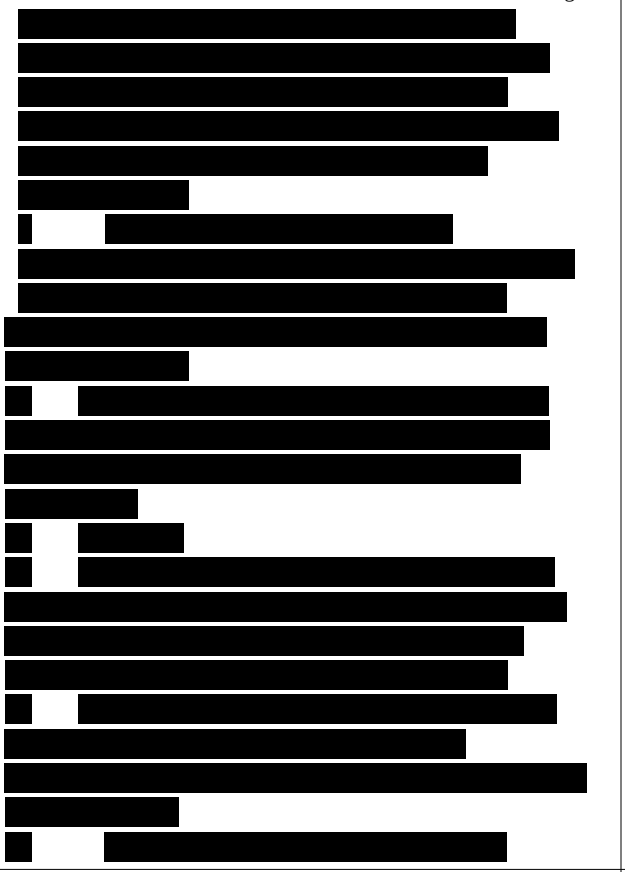

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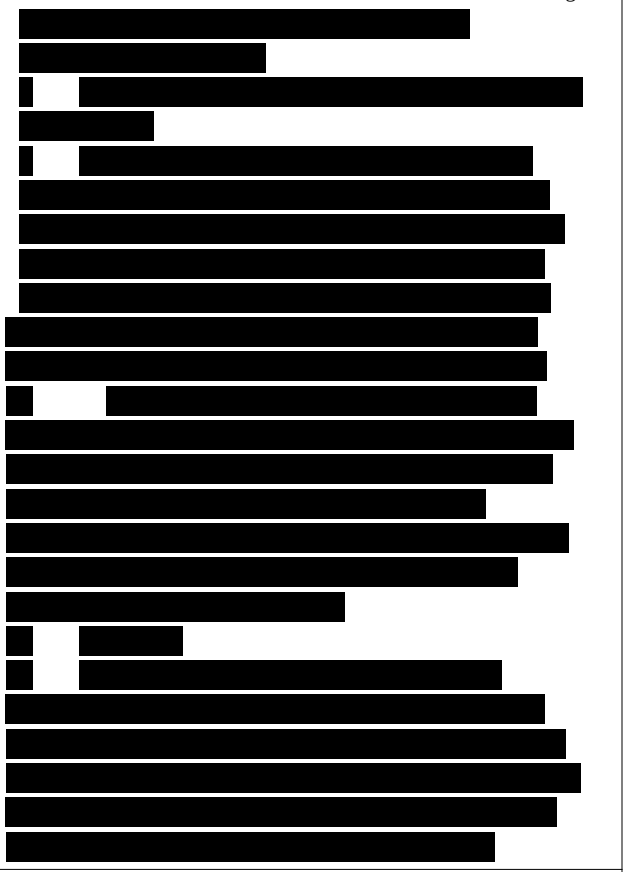

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fiduciary for all the ERISA plans or none.
Q. And were there any other hurdles or risks that you recall?
A. No. I thought the biggest risk was, again, there's also an issue of how to measure damages.
And I would say that our analysis was pretty accurate in the sense of, as we moved through the case and towards the end, we actually had lots of discussions with the Department of Labor. And they cross-examined us about what our theories were, what we thought our risks were, what the chances of success, how they evaluated the case, how we evaluated it.
And they did their evaluations separately. They had the documents that were produced or produced to them. And they did their evaluation and damages. And then, you know, at the end, before they could sign off, they had to agree that the settlement was adequate and they accepted our analysis.
Q. And with respect to the measure of damages, what was the total damage figure for ERISA as far as you can recall, ERISA participants?

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A. I don't recall.
Q. Okay. So the --
A. I mean, I will say that, you know, I thought -- I was going to say that it was well -- I mean, I think the recovery we received on behalf of the ERISA participants I want to say was more than 20 percent of what the damages we thought there was for the ERISA participants.
Q. All right. So with all of these challenges in mind, what was the ERISA strategy with respect to litigation and mediation?
A. Well, twofold. I think one thing to understand that seems to -- from the questions that have been asked that people don't quite recognize is the ERISA case was not part of the Arkansas case. You know, the Arkansas case was filed. It was before Judge Wolf. There was an order for interim lead counsel that covered that case. There were no ERISA claims in it. It had nothing to do with it.
Also before Judge Wolf was the Henriquez case. And then, subsequently, the Andover case is filed.
There also was never an order appointing leadership in the ERISA cases. So sort of the

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procedure, the steps were the ERISA case, the lawyers organized themselves. You know, we had two cases. We had known each other -- I knew Brian. I did not know Carl before this case. And I had known some of the prior counsel that were on the ERISA case with Brian before. A North Carolina firm. We'd done work with them before.
Q. Is that Richardson Patrick?
A. Richardson Patrick. Right.
You know, Michael Bradley, we'd had several cases. So we knew lawyers there. But there were --
Q. Michael Bradley?
A. Brickman, sorry. I didn't know Michael Bradley. But they were gone by the time we got involved.
Q. Describe, Lynn, if you would the coordination between ERISA counsel and customer class, or the big three. Was there any tension involved in the relationship?
A. Well, I don't think there was any tension, at least from my viewpoint, with any of the ERISA on the customer class side. I thought they were all perfectly professional.
There was a difference, and I think this

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has to back up to the way State Street viewed it.
When we agreed to go into the mediation, the understanding was that they would provide certain documents to customer class, and we would not have access to those. And we were provided certain documents on the ERISA side that I don't know whether the class received. The reason being that we, of course, think about it, had not survived a motion to dismiss. We're in the process of amending our complaint. And, therefore, we got -- we negotiated with State Street to get the documents we got that we needed for -- you know, for settlement purposes.
On the other hand, the customer class received all kinds of documents; for example, class certification was an issue for them. And in our discussions with State Street, they said, "[redacted]
So we had separate confidentiality agreements at the beginning. We did not have access to those documents. [redacted]

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So we started by taking the documents that we received from State Street. And we had our own separate database.
Now, I knew that -- I knew or I assumed, or don't remember what, that they had a database or they were using something. But we didn't have access to that.
[redacted]
And I think that was the history of why there was no -- you know, we didn't receive write-ups of documents for any work they had done because we couldn't see those documents at State Street. And even though they produced to us the -- some of the same stuff, I mean, we did receive the documents from California. We

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received, for example, all the documents produced to the Department of Labor. I don't know if Arkansas got those documents or not.

But it was State Street kept those two silos separate so that they could settle with one and not the other.

And, in fact, all the way up to the final settlement, there was the threat that we would not settle or that they would be settling without us. And I guess one point I differ a little bit with Carl is we had discussions all the way to the end, until the Department of Labor agreed to sign off, about the possibility of them going ahead and litigating. And we, in fact, kept the option open that the customer class could settle without us and we could not settle -- we would go settle --

SPECIAL MASTER ROSEN: You kept the option open. But did State Street keep the option open?

THE WITNESS: Oh, yeah. Well, State Street -- it's interesting when you get into the final negotiations when people say things and they mean something different.

State Street made it clear that they were not bound to settle with anyone unless it was a

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[redacted]

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now, it was going to be a long war. A long war with State Street.

SPECIAL MASTER ROSEN: So, Carl, what you heard seemed to imply that one of the important contributions that the ERISA plaintiffs brought to the table was in bringing the Department of Labor into the settlement under the larger tent and thereby paving the way to a global settlement.

THE WITNESS: Yes. And I think that's absolutely true. And I think that was also --

SPECIAL MASTER ROSEN: But you seem to be now be backing away from that --

THE WITNESS: I'm not backing away. I guess what I quibble with is the $300 million figure. And I'm being careful about it. It was not like there's $300 million and now you have to divide it. The division and allocation amount wasn't set in stone until all the pieces were in play. 60 million, 300 million, it was always a possibility that we could walk away.

SPECIAL MASTER ROSEN: From whose perspective? Yours or State Street's? What I'm getting at is this. Carl seemed to say that a value that was added to the ultimate settlement by the ERISA plaintiffs was bringing the Department

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[redacted]

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SPECIAL MASTER ROSEN: Exactly my point.
THE WITNESS: All of those parties. And a lot of work went into getting everyone on board, getting all those parties to agree.
And in the allocation, there was some of the government settlements recognize the amounts that State Street had paid in the private settlements as counting towards the government settlement.
SPECIAL MASTER ROSEN: Were you the one who was principally the liaison during the mediations and settlement talks to the Department of Labor.
THE WITNESS: Yes. Now, Carl was very involved. And, you know, as it went on I tried to have --
SPECIAL MASTER ROSEN: But it sounded like you had the relationship -- the pre-existing relationship --
THE WITNESS: I had the pre-existing relationship. And there was two Departments of Labor. There was the Department of Labor headquarters and there was the Department of Labor Boston office.
SPECIAL MASTER ROSEN: And did each have

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a secretary of war and a secretary of defense?
THE WITNESS: And I handled almost all of the discussions with DOL office in Washington, D.C., and Carl and I were involved in dealing with the Boston DOL office.
And just so you know what the involvement is, we had to satisfy them that we had fully --
SPECIAL MASTER ROSEN: Compensated --
THE WITNESS: -- compensated and analyzed. And also that we were prepared to continue litigating the case if we couldn't -- there wasn't going to be a settlement. That we weren't just not selling out. We had done our work and were ready to go.
BY MR. SINNOTT:
Q. Did you have discussions with the big three about strategy or strengths and weaknesses of the case that included discussions of the DOL component?
A. Yes. I mean, I think that at least my view with the Thornton, Lieff, and Labaton firms were that we were selling to State Street that we could settle ours and do our best to deliver the government with us. I'm being careful because the government agencies decide on their own. But that

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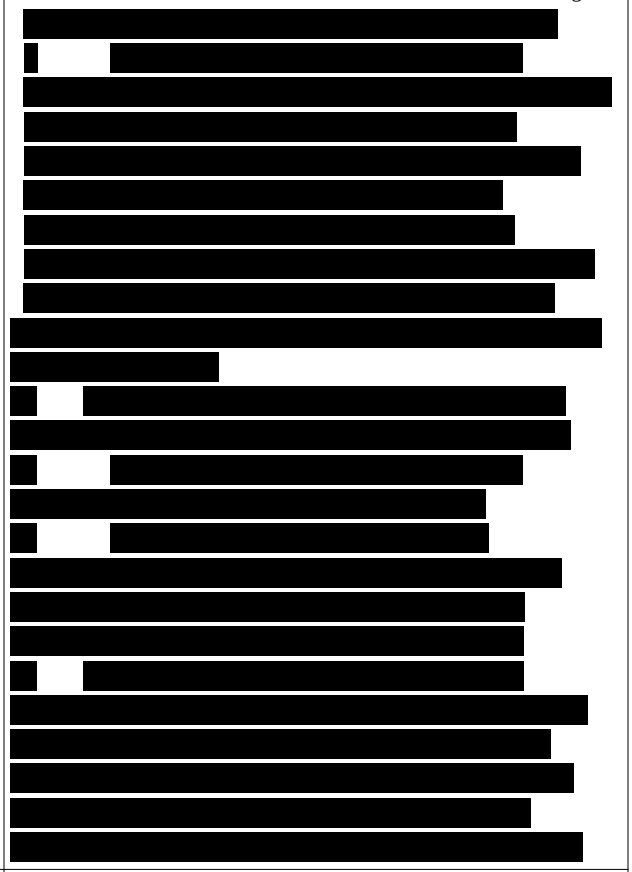

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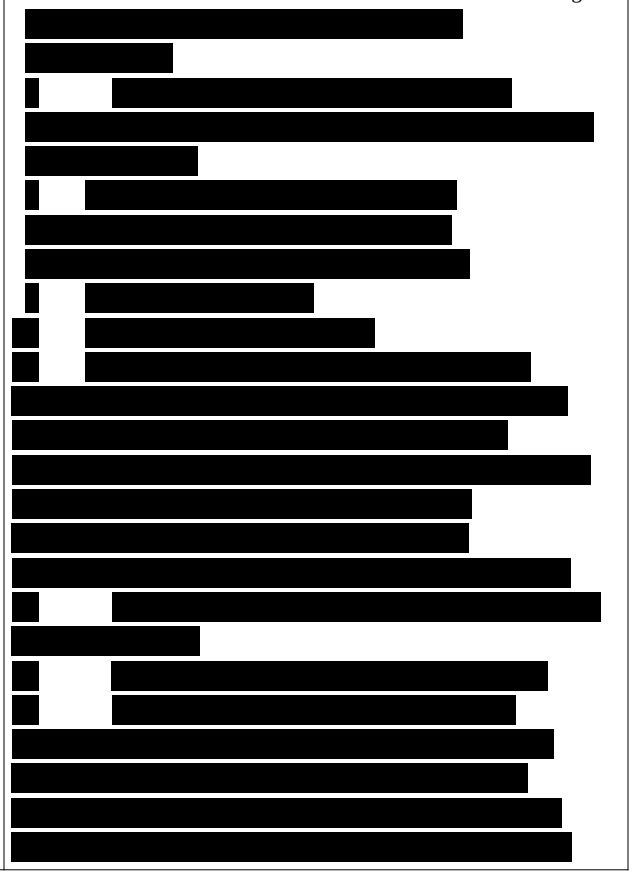

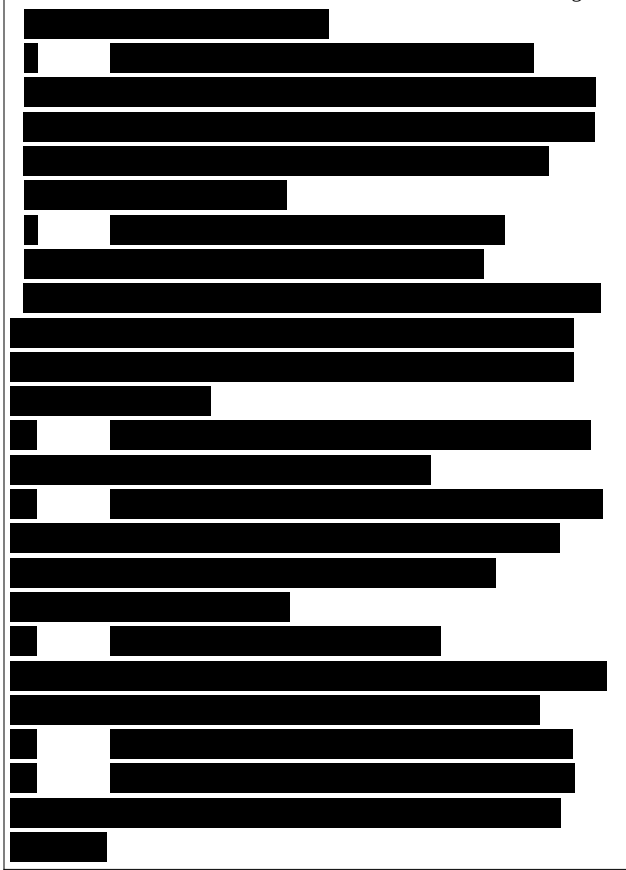

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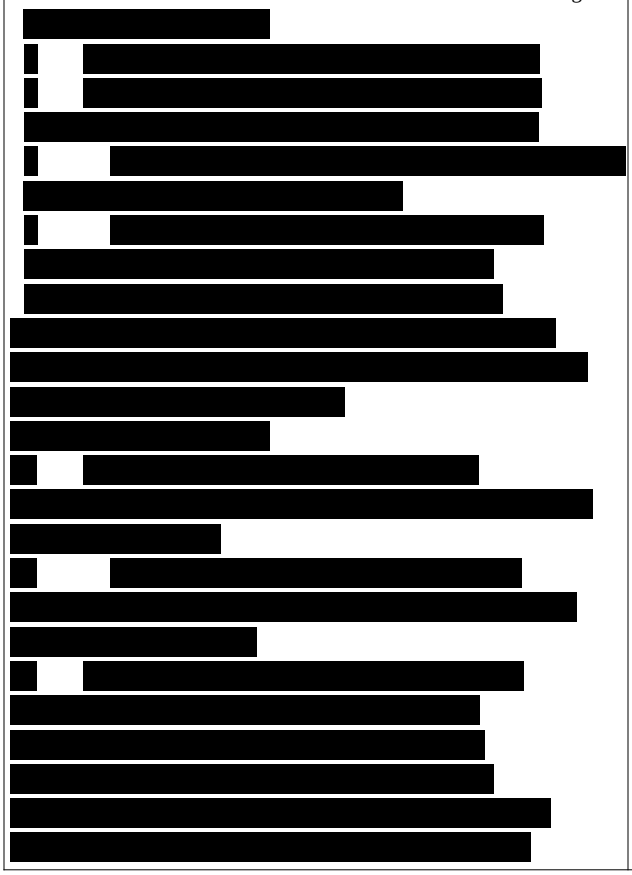

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was an ERISA fiduciary, the answer is no. It was not possible for them to represent them because their whole argument was built on they were covered by 93A. And I think there's a very high chance it would be preempted.

I guess I would give you as a comparison. In the customer -- in the company stock ERISA cases, you would have securities cases, and the securities cases would also represent ERISA plans. And there would be ERISA lawsuits on behalf of the same plan. And that's because it was a federal statute for securities, federal statute for ERISA, and ERISA did not preempt as a federal statute.

In this case, I think the law is crystal clear that the ERISA statute would preempt this, in this case, the Massachusetts 93A. But that was my opinion. And I don't think the customer and class lawyers necessarily agreed with that.

So if -- so to the extent that that was even a risk, it was difficult for you to argue to represent both theories. Because if you're representing both of them, you do not want the non-ERISA plans to be compensated richer than the ERISA plans.

So I think they would have separate

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representation. If the cases were consolidated, Judge Wolf could have cured it by having a subclass that had separate ERISA counsel representing them. And they could have been, you know, litigated together in a consolidated action.

In this case, that didn't happen in part because we went off into the mediation, and that was not the bargain that State Street bargained for.

Q. Let me take you to the settlement, Lynn, and ask you if you thought that the big number, the $300 million, was fair and reasonable.

A. Yes.

Q. And beyond that, were you part of the discussions with respect to the ERISA fee allocation?

A. Yes.

Q. Describe those conversations. I'm assuming it's approximately 2013. And how those numbers or that number was arrived at back then.

A. Well, there were actually two fee discussions. One was the ERISA counsel to divide the fee a third, a third, a third, between the three groups. The original discussions were 50, then 60/40, you know. And my thought was that we

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had filed our case more recently and that Brian and Carl, you know, were agreeing that we thought we would do the cases equally in the sense of pooled but more equally. And, therefore, a third, a third, a third seemed to be fair.

I guess I also believed that that agreement and the subsequent agreement was not meant to take away the power from Judge Wolf. You know, I've had judges explain to me on numerous occasions that in a class action the judge is in charge of the fees and that whatever agreements the lawyers have, if the judge doesn't agree to them, you have no power. And that's -- you know, we made sure that -- at least that was my view going into it.

So that was the first agreement with Henriquez counsel.

And then in 2013, over the course of time I had had some discussions with Bob Lieff that, you know, it might make sense for us to try to see if we can come up with some tentative agreement on how to divide the fee between the ERISA case and the customer class case. And I guess it was more -- in my view it was important not to have the lawyers fight with each other, or at least be

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a greater chance of getting them to cooperate if they didn't think if affected what fees they received.

Q. Did trading volume play any role in that second discussion?

[redacted]

And, therefore, he was constantly harping back to me that it was a small piece. And we tried to quantify that. And my recollection was that he thought it was 9 percent -- between 5 and 9 percent, something like that. And the discussions with the customer counsel was that we would receive 9 percent, which, at least my understanding, is what the ERISA portion of the case was. And that at least my pitch was that we would be worth every penny of it and that we should not fight, we should work together and we could make the pie bigger. It would cost them

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nothing.

Q. And so ultimately you made a practical decision?

A. We made a practical decision. And they were very -- it was very easy, and they were professional about it.

Q. And who participated in that discussion with respect to the 9 percent that was arrived at?

A. You know, I think that ultimately, at the end, it was agreed to by -- there's agreement and signatories on it. I think it was, you know, Thornton. I forgot who at the Lieff firm signed it. And I think Dan Chiplock and Larry Sucharow and the three ERISA firms.

Q. And ultimately, in 2016, that 9 percent went to 10 percent, correct?

A. It did.

Q. Were you part of that third meeting where that was discussed?

A. It wasn't necessarily a meeting. I was part of that discussion. In fact, I think I was the only one in the discussion from the ERISA side.

There was a mention of it by Bob Lieff. Also, Larry Sucharow mentioned it to me and I

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think Gary Bradley, that they were thinking of it. I can't recall who mentioned it in what order. And I think -- at least it was represented to me that they thought that I had done a great job getting the Department of Labor involved.

MR. SINNOTT: Let's go off the record.

(Discussion off the record.)

THE WITNESS: Going back to it, I had discussions with those three lawyers. I think it was instigated by them that they were thinking about this. I talked about, you know, the time I might --

SPECIAL MASTER ROSEN: This was at their own initiative?

THE WITNESS: I think so. It might have been harping for a while about, you know, this certainly didn't work out so well and that, you know, at least I personally was going to end up with a negative lodestar.

But for whatever reason, they said that they were thinking of giving the ERISA folks an additional percent. They thought we had done a great job, been great team players. And I said to them rather quickly that, you know, if they gave us an additional percent, it should be poured into

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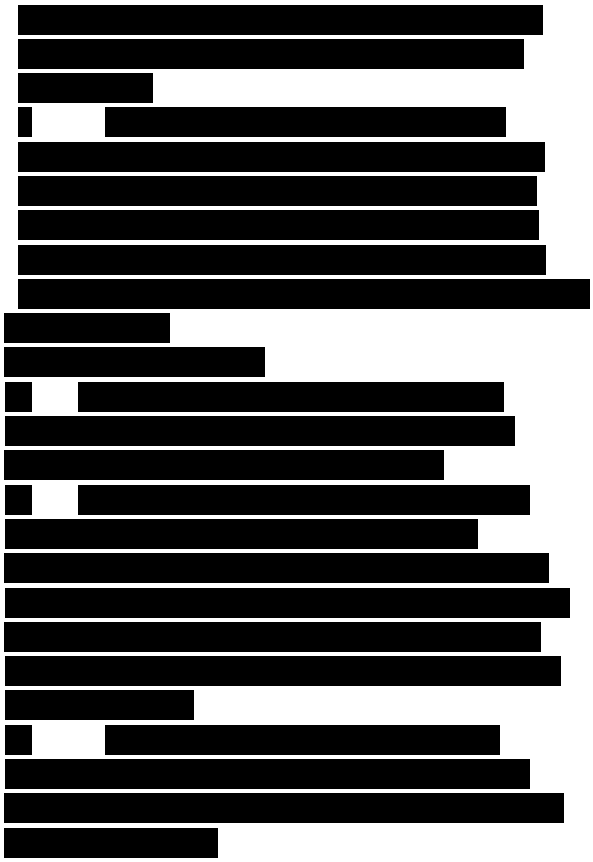

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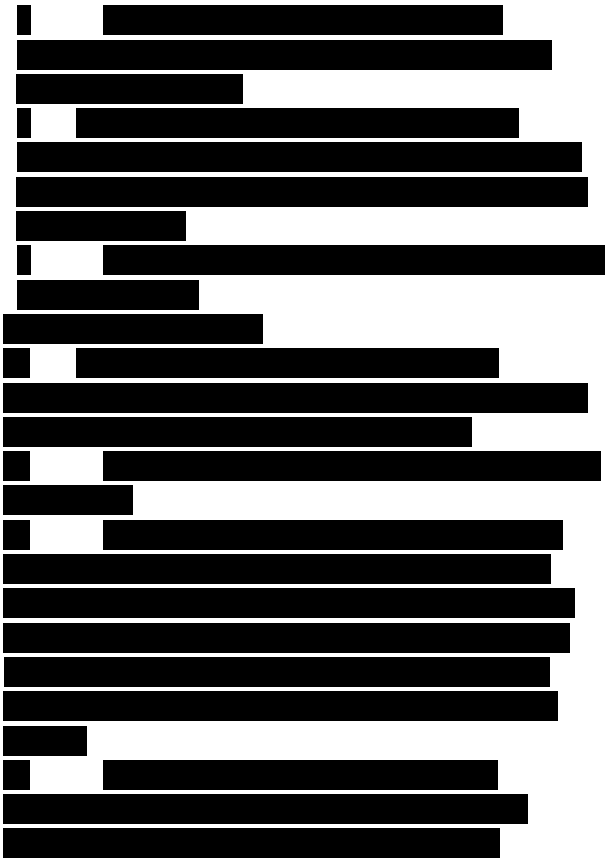

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SPECIAL MASTER ROSEN: That doesn't really answer the question.
THE WITNESS: I guess in my view was, you know, in the perfect world, we would have received --
SPECIAL MASTER ROSEN: Something commensurate with what the ERISA trading value turned out to be?
THE WITNESS: Correct. Or you can say, put it differently, should we receive a lower multiplier than certain other folks?
BY MR. SINNOTT:
Q. All right. Let me go back, Lynn, to the issue of document review and how it was managed. Did you have any conversations with the big three with respect to how documents received from State Street would be reviewed and shared or processed?
A. None. And part of that was because we were not supposed to be working with them on documents.
Q. What do you mean you were not supposed to be -- because of the protective order?
A. Yes. State Street had produced documents separately in different groups of documents, and they had their case. And at least when the case

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started out, it was -- it was important for State Street not to have us take documents that we didn't have access to to be able to use to prepare an amended complaint.
SPECIAL MASTER ROSEN: In the end, though, would it not have been more cost efficient and resource efficient to have been able to share document production and platforms with the customer base, with the customer counsel?
THE WITNESS: I think the answer would be yes, but that's totally unrealistic, for the same reason why in most cases the defense firms don't share their platform with the plaintiff's firms. I mean, it would be more efficient if the defense and the plaintiff's counsel had one set.
But when you get into confidentiality issues and work issues and everything else, no one will do it. Because if they settle their case and it's their platform, our documents disappear. And you can set them up on databases so that they are somewhat separate --
SPECIAL MASTER ROSEN: I was just going to say, you can --
THE WITNESS: -- but that is difficult. Then you get into the issue of what database

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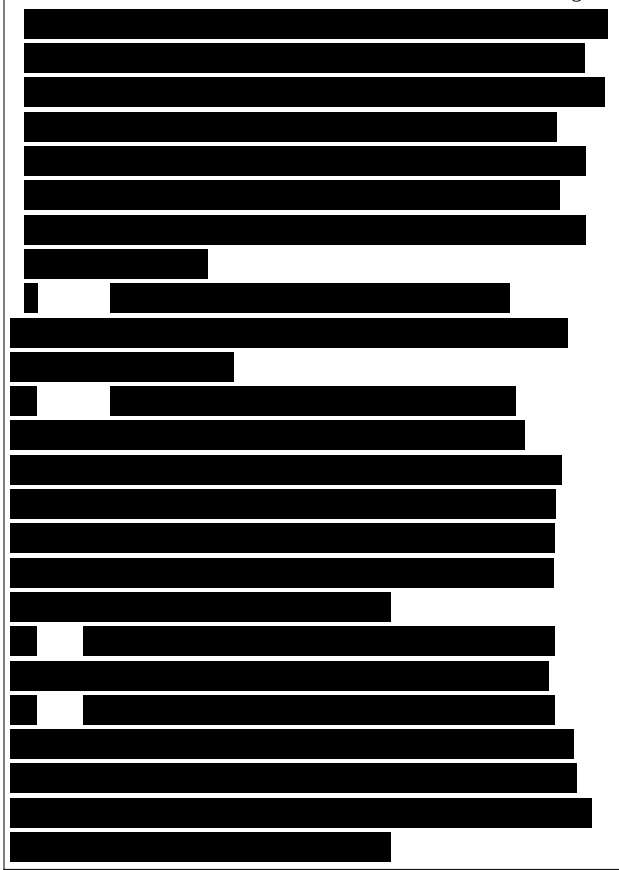

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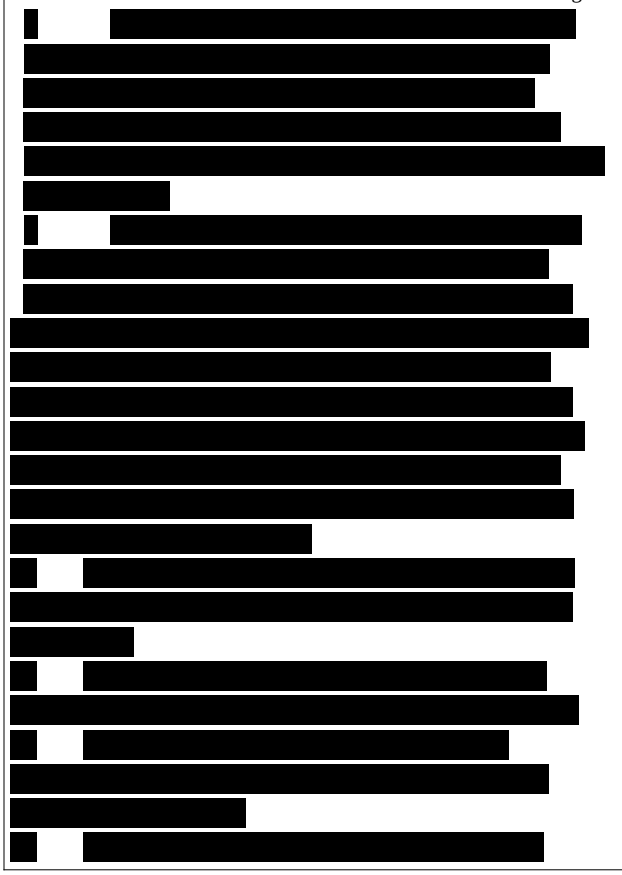

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attorneys. Staff attorneys is kind of an odd word, which I'm not sure what it means. You know, some people say not partnership track, which I always laugh because if you take Sullivan and Cromwell, and you say what is a non-partnership track, it's somebody who leaves before they become partner.

But we just -- put it a little differently. All the attorneys who worked on this case were, I guess I would say, regular attorneys who --

SPECIAL MASTER ROSEN: Employees of the firm?

THE WITNESS: Employees of the firm, appear on our website, listed by our malpractice insurance, have business cards.

BY MR. SINNOTT:

Q. Received W-2s?

A. Received W-2s, you know, et cetera. Everyone on here was salaried, you know, through the --

SPECIAL MASTER ROSEN: That was my next question. Were any of the attorneys that worked on the document review paid by the hour?

THE WITNESS: No. And we didn't have --

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I mean, we didn't have -- we don't separate it that way. We had -- all of the attorneys who worked on the case were regularly working in the firm on, you know, other types of cases. So there were no difference.

The staff attorney label is, you know, more specific to different law firms, I've found. I have to say, after doing this for 15 years and being lead counsel in lots of cases, they have all kinds of different titles. To me, the big issues are, you know, are they employees, are they not employees? If they're not employees, are they contract attorneys? And, you know, if we're going to take a break, we can get into it afterwards, but there is lots of controversy amongst the judiciary about contract attorneys and what that means.

BY MR. SINNOTT:

Q. Okay. And I think you already answered this, but is it fair to say that there was no exchange of hot documents or highly relevant documents between the ERISA firms and the big three?

A. No. I will say we did not violate the confidentiality orders.

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Q. All right.

A. There was a period of time where they got relaxed somewhat. One of the issues was -- at least in my view was if State Street showed us a document in a mediation, it was fair game for us to show it to each other.

Q. And did that happen in the mediation?

A. Yeah. That happened. Or we would have times with Bill Paine -- you know, I'd ask him, you know, "Can I share this?"

Q. Who were the key players during the mediations that you were involved in?

A. Well, Mike Lesser was very involved with, you know, factual issues. I would say that the active negotiators were, you know, Larry Sucharow, Bob Lieff, Dan Chiplock, Mike Thornton, Gary Bradley to, you know -- but I would say on -- the leading spokesperson on the customer class I think was Larry and Bob Lieff to some extent.

Q [redacted]

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[redacted]

Q. Did any of the ERISA team have tensions with the customer class lawyers?

A. I think people -- I think people handle their frustrations in different ways. You'll have a chance to hear Brian later. I think that Brian legitimately was frustrated sometimes by the customer -- some customer class people. You know, the whole issue about whether they represented the ERISA class or not.

[redacted]

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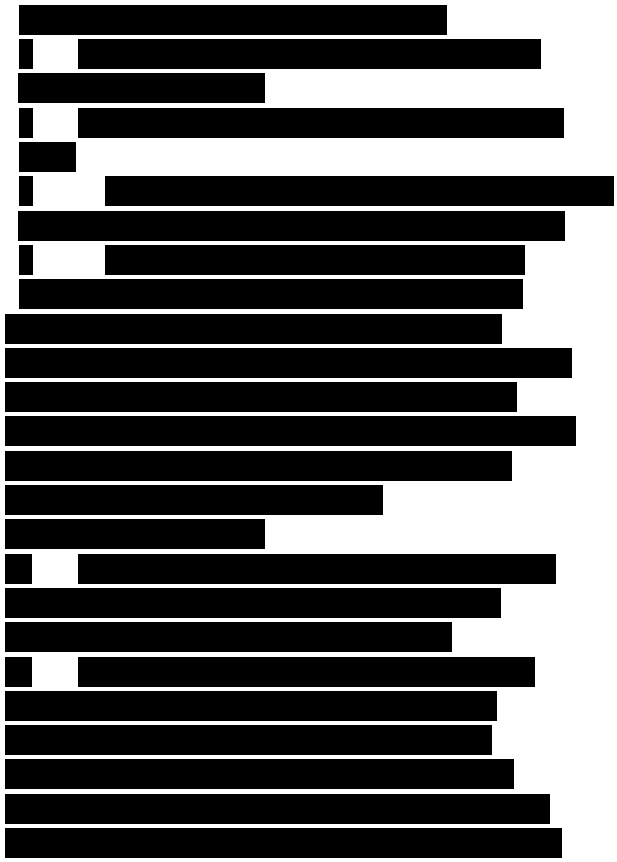

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have an active program depending on who currently is the Secretary of Labor is more robust or less. That's mainly involved at the appellate level. They are somewhat involved at the district court level.

They monitor cases like this to see what's going on as it go on, check in with the counsel to find out. And mainly it's a warning system. If they think the case is going off track where people are making arguments that they believe are against the proper development of ERISA law, they will step in.

So they very much care not only about the amount of money, but they care about, you know, protecting the integrity of the law.

Q. And what role did you play, Lynn, in conducting liaison with the various government agencies during the life of this case?

A. I think -- well, I was looked upon by the participants in the mediation, as that was one of the roles I took on and that I, you know, carried out.

Q. Did any of the other plaintiff attorneys have relationships or histories with federal government agencies?

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A. Yeah. Brian, you know, talks with the Department of Labor. Carl in this case, you know, got involved with the Boston DOL office. I mean, the amount of work that it took to bring along and satisfy the Department of Labor, you know, was quite large in this case. They were -- they wanted to understand everything, and they were just not going to pass on it. Their view was they did their own investigation, we did our investigation, and they wanted to make sure that the work we had done was proper and that the settlement was adequate.

Q. All right. Did any of the other, to your knowledge, plaintiff's attorneys have relationships with the government?

A. With the other units in the government?

Q. Yes.

A. Yeah, I think --

SPECIAL MASTER ROSEN: Or DOL.

BY MR. SINNOTT:

Q. Or DOL.

A. Or DOL. In this case I think that the Thornton firm was involved in discussions with the Boston DOJ -- you know, AG's office. There were -- I know the Lieff firm had discussions, I

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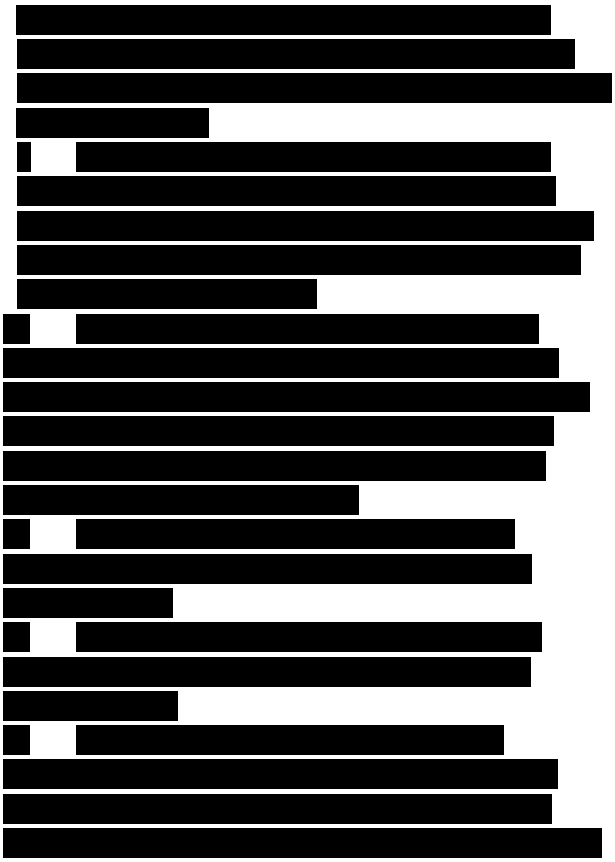

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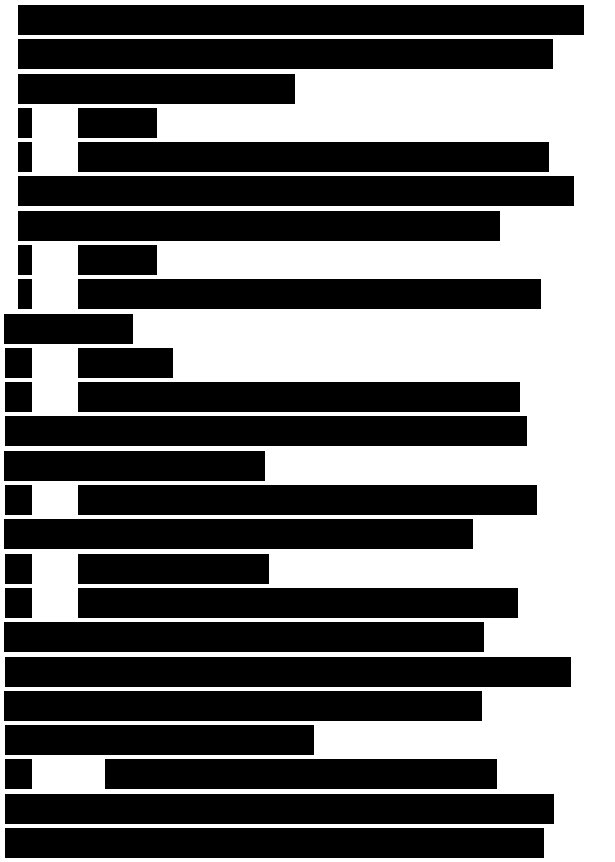

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most of the larger firms, we have a computerized system. Rates are put in for each department for each timekeeper. Rates are reviewed every year. And, you know, whether it's in December or January, any adjustments are made. Whenever you record your time, it goes into the system and it's calculated based upon the -- you know, you can hit historical lodestar or you can hit current rates, what it is.

In I would say 95 percent of the cases I've ever been involved in, when judges have asked for a common fee petition for your rates in class actions, they use current rates as opposed to historical rates. Their theory is that it's to compensate you for time, value and money. So in most class actions, that's what people are expecting to happen. But in modern systems, your rates are built in. Your standard rate is recorded unless there is a special override for a discount, you know, that's the rate that goes in.

And, in fact, we don't allow people to discount the rates unless they get a sign-off from a managing partner, for obvious reasons. And the rates that are recorded are the firm's standard regular rack rates.

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I know in this litigation there's been some questioning about what does the term "regular rates" mean. And I guess, to me, that is a common term that's used in class actions by judges. And what it means is your standard listed rate. And if you're a firm that has all contingent fee work, that's your listed rate that you submit your time at, that isn't made up for this case, isn't made up, isn't higher, isn't raised or ballooned or anything, but that's the rate that you offer your services at.

Q. What role did your expert, Steven Glass, play in the fee declaration?

A. I don't recall that he played a role in the fee application. He might have -- I mean, I have no present recollection. If so, it would have been useful to have an expert opine on damages, you know, calculation of damages.

Q. Did all of the ERISA firms pay for Mr. Glass or was it just Keller Rohrback?

A. I don't recall, but I -- you know, we shared expenses, most expenses, with the other ERISA firms. So, I mean, if it would have been a small amount, we might have written a check to him and not sought reimbursement. But, you know, the

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I actually as a -- before I came here, I didn't bring with me. But actually as an exercise had all the rates put in this case that all the firms charged. And then had them sorted by billing rate in descending order because I wanted to be able to tell you that, actually, Keller Rohrback was -- might be a bad manager but had amongst the lowest rates of the different firms.

SPECIAL MASTER ROSEN: In each tier?

THE WITNESS: In each tier.

SPECIAL MASTER ROSEN: In each tier, partners, junior partners, senior associates.

THE WITNESS: Right. Brian's rates were also low.

BY MR. SINNOTT:

Q. Do you have an annual process for determining rates at the firm?

A. We do.

Q. Could you describe that for us?

A. It basically consists of three major parts. One is, during the year we gather information from plaintiff's firms, from fee applications of rates that are charges. We basically know who our competitors are. Not only the competitors by the firm but also having worked

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with people, we know that, for example, John Doe, that person's comparator at another firm might be these people.

So we take about 20 -- 20 to 25 of those. It's much easier now, now that everything is on -- publicly filed and you can pull it off whatever that system is called, Pacer. So we have those.

Then we also have a stack of defense firms that we are litigating against. And we look at their rates. Mainly pull from bankruptcy filings.

(Interruption in the proceedings.)

THE WITNESS: So the second part is defense firms. We have those, looking at those rates.

The third part is we look at our expense income statements, our expenses for the year, and figure out how much they're going up. And we put those things together and figure out how much to increase them.

We try to not be the top rate firm in our space.

SPECIAL MASTER ROSEN: Your firm has cases with paying clients, correct?

THE WITNESS: All of these clients are

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paying. But yes. Non-class actions.

SPECIAL MASTER ROSEN: Non-class actions and clients whom you bill.

THE WITNESS: Yes.

SPECIAL MASTER ROSEN: And who pay your bills on an hourly rate basis, yes?

THE WITNESS: Yes. Although in the complex litigation group I would say 95 percent or more of the work is non-hourly regular pay. But we have -- even about half of them that are contingent fee, we do send bills. The clients -- many of those blended-fee cases will have a cap where, you know, you will receive your fee up to a certain percentage up to a cap, they actually want to see monthly bills.

So we actually are sending them bills even though -- because they also want to figure out what their costs are, that if we settle, what they're going to end up paying.

So the answer is that they typically monitor the time, the lodestar, as you go.

SPECIAL MASTER ROSEN: And as to your firm's rates --

THE WITNESS: Yes.

SPECIAL MASTER ROSEN: -- to paying

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clients --

THE WITNESS: Yes.

SPECIAL MASTER ROSEN: -- these are the same rates that are claimed in your lodestar?

THE WITNESS: Yes. For this department. I mean, we have, like, trust and estates departments.

SPECIAL MASTER ROSEN: Yes. I understand.

THE WITNESS: Those other things, but yes.

SPECIAL MASTER ROSEN: In your declaration --

THE WITNESS: Yes.

SPECIAL MASTER ROSEN: -- paragraph 4, you say "The hourly rates for attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions."

THE WITNESS: Yes. Two answers to that.

SPECIAL MASTER ROSEN: Yes.

THE WITNESS: One is class actions, some judges just approve a fee petition and some judges specifically say that they've reviewed the rates

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and find they're fair and reasonable. So the answer is -- to that is that we have cases where the courts have found that the rates are fair and reasonable.

But even better than that, we have cases where we have fee shifting. And, in fact, not to put him as a witness here, but Gary Gotto sitting to my left, we had an ERISA case recently in Mississippi in which there was fee shift. So we actually had to put in a declaration with our rates, our regular rates, posted rates that are the same, you know, right out of the computer. And the Court went through that fee shifting and reviewed them and found that they were fair and reasonable to order the other side to pay the fees.

SPECIAL MASTER ROSEN: But you did not add to that sentence, as Carl Kravitz did, "In other complex class actions and are charged to clients paying us currently by the hour."

THE WITNESS: So, yeah, I've heard that. And I just want to say that I'm confused by this line of questioning. Because in the cases that I regularly appear in and judges that actually have you have fee orders at the beginning, regular

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rates, at least to me in the industry that I've seen, are the regular rate, posted rates, whether or not -- doesn't mean and charged to individual clients because most firms -- many of the firms don't have that.

As an aside, I will give you -- if you ever get to best practices -- two good examples are in the Fiat case, commissions case, Judge Chen in the Northern District, just issued his order on -- to lead counsel and PSC on keeping track of fees. And there's a paragraph in there that says you're supposed to record your time at your, quote, regular rates.

And that's a common document that's in the Northern District of California. And it's the same in others. And that is -- that requires -- that's actually filed with the Court as an order, and it requires the parties to send to lead counsel or their designee on a monthly basis their time. It's entered into a computer system, you have to code it, it specifically says your regular rates, which at least, as I understood that term, to be your regular rates that you charge your time.

Whether it's -- and you have to have

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[redacted]

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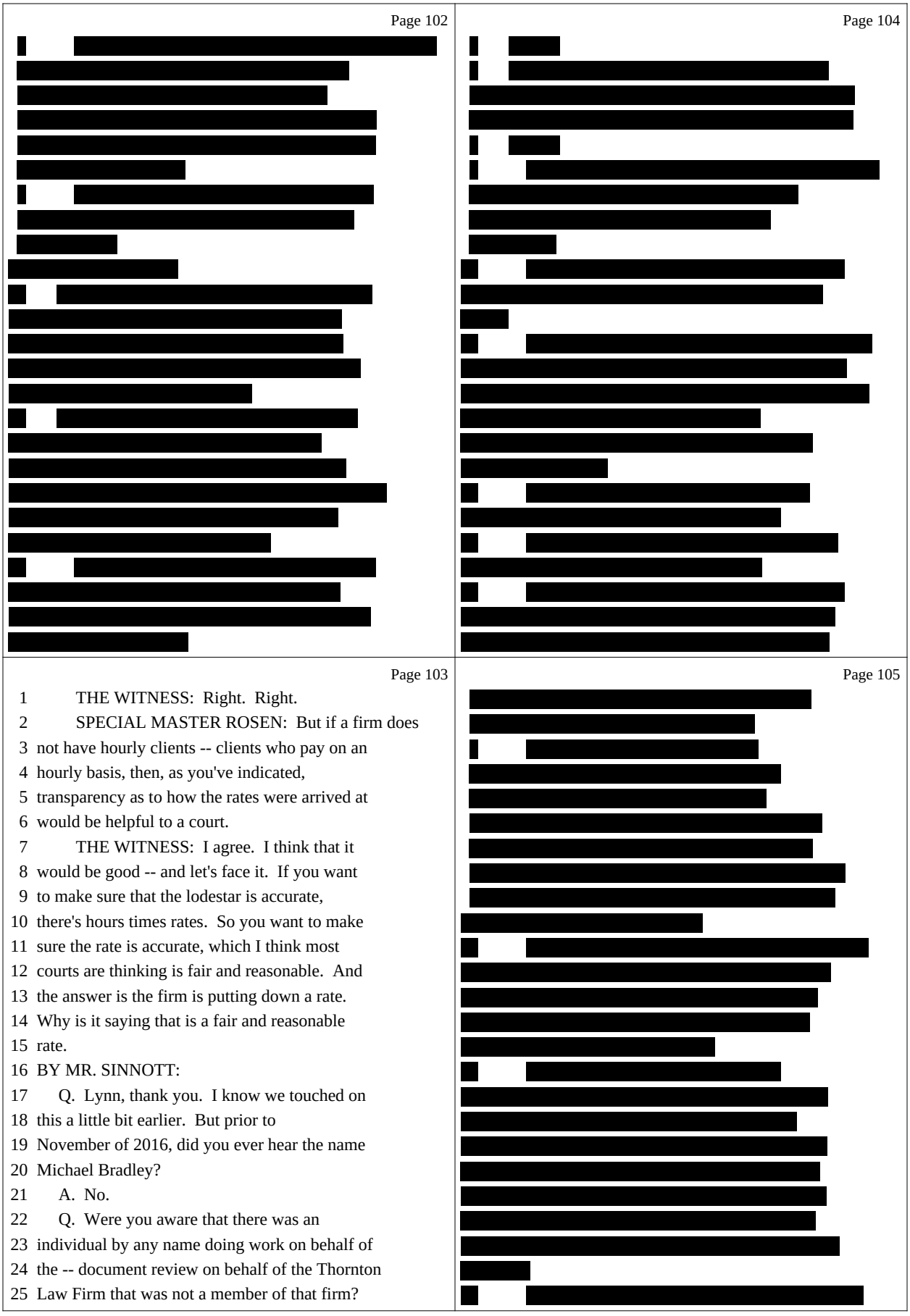
[redacted]



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THE WITNESS: Right. Right.
SPECIAL MASTER ROSEN: But if a firm does not have hourly clients -- clients who pay on an hourly basis, then, as you've indicated, transparency as to how the rates were arrived at would be helpful to a court.
THE WITNESS: I agree. I think that it would be good -- and let's face it. If you want to make sure that the lodestar is accurate, there's hours times rates. So you want to make sure the rate is accurate, which I think most courts are thinking is fair and reasonable. And the answer is the firm is putting down a rate. Why is it saying that is a fair and reasonable rate.
BY MR. SINNOTT:
Q. Lynn, thank you. I know we touched on this a little bit earlier. But prior to November of 2016, did you ever hear the name Michael Bradley?
A. No.
Q. Were you aware that there was an individual by any name doing work on behalf of the -- document review on behalf of the Thornton Law Firm that was not a member of that firm?

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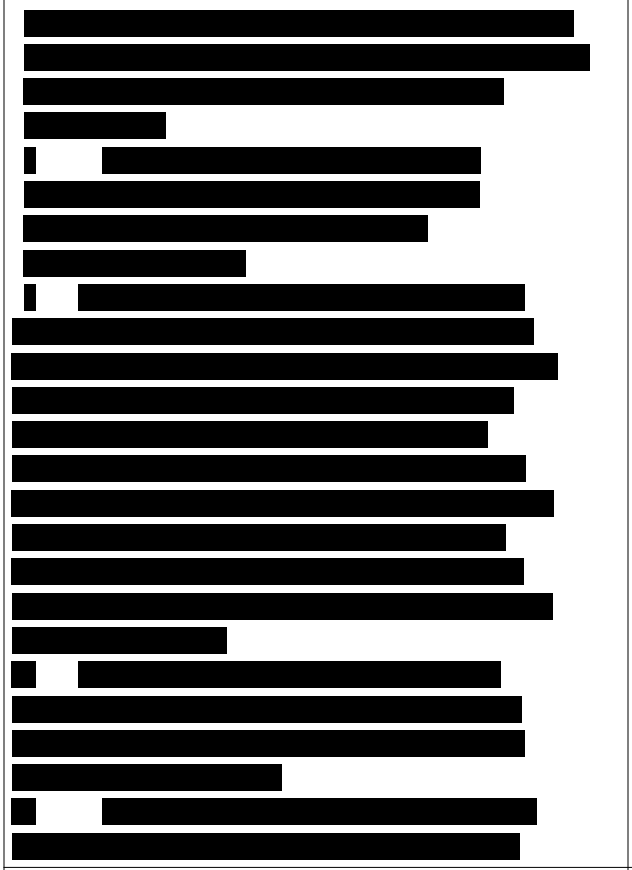

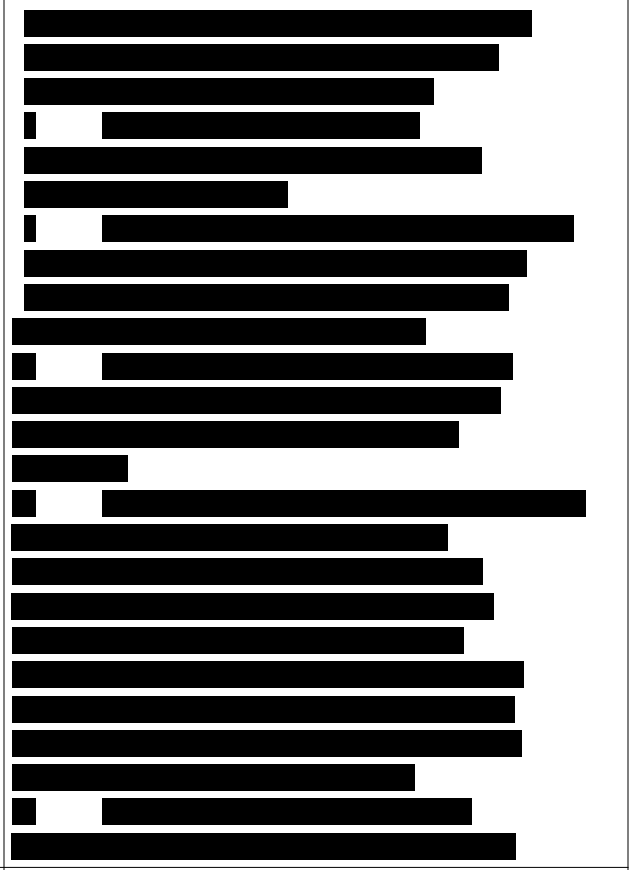

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there might be an article about this or --
THE WITNESS: No, I can't recall. I mean, I obviously saw a draft of the letter that was being sent to Judge Wolf. But my recollection is that that was the first I heard of this. But I can't recall the exact timing.
SPECIAL MASTER ROSEN: Did you weigh in on the draft of the letter to Judge Wolf?
THE WITNESS: I think that -- I think that Carl beat me to it. I remember the one thing I wanted to be in there was that it had nothing to do with the ERISA counsel.
BY MR. SINNOTT:
Q. So you didn't make any edits or have any recommendations that you recall?
A. Not that I recall.
Q. And as far as that allocation of attorneys that I mentioned a moment ago, have you ever seen that in any other cases, Lynn?
A. I've seen lawyers having lawyers from other firms come and work out of their offices. I mean, that -- especially before we got into electronic documents as much. That was even -- you know, 10, 15 years ago, that was very common that you would have document war rooms in your

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we don't end up in situations like this where people are deposed. I mean, it's ironic because, ultimately, if everyone had put the people on their own fee petition, the total fee submission would have looked the same. It would have had their total same number.
SPECIAL MASTER ROSEN: Well, it actually wouldn't have because you wouldn't have had the double-counting.
THE WITNESS: Right. The double counting, I have a good answer as to why -- how to make sure that doesn't happen.
SPECIAL MASTER ROSEN: Right. That's --
THE WITNESS: But if we take out -- once they strip out the double-counting, you know, the issue is it's not the total number because it would be the same. It's as to, you know, what the judge is going to do. If the judge wants to know what the different lodestar of different firms are because he wants to give specific awards to different firms, then it's important.
I mean, the irony here is, I got to say, the result was fabulous. The 25 percent award is right in line. In fact, we talked about the prior State Street case. My recollection was that there

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set and you send it to a recoder to basically figure out are they doing a good job or not. In cases people are fired.

And the reason why I don't want to comment on what happened on the Catalyst database, without getting under the hood, you know, I can't -- I don't really know how they were doing it, what they were doing, et cetera.

I mean, the work product -- the only work product I saw was the information that Mike Lesser provided. And he would always have answers to things. So whatever he was doing was great.

SPECIAL MASTER ROSEN: And the PowerPoint and the --

THE WITNESS: The PowerPoint came about because -- that I saw, the one I recall, was right after we entered into this 9 percent agreement, we actually had a meeting of all counsel. It was in California. And it was a chance to present the differing views of the case. Because we really at that point had been proceeding totally separately. And that was a PowerPoint that was prepared by the customer counsel, and Mike Lesser did the verbalizing of it, presentation, you know, of how they viewed the case, et cetera.

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EX. 29

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Arnold Henriquez, on behalf of the Waste Management Retirement Savings Plan, and all other similarly situated plans, 2217 Wetherburne Way Frederick, Maryland 21702 Plaintiffs, v. State Street Bank and Trust Company, One Lincoln Street Boston, Massachusetts 02111 and State Street Global Markets, LLC One Lincoln Street Boston, Massachusetts 02111 and Does 1-20 Defendants.	Case No.: **CLASS ACTION COMPLAINT**

CLASS ACTION COMPLAINT

Plaintiff Arnold Henriquez alleges the following on behalf of the Waste Management Retirement Savings Plan ("Plan") and a class of similarly-situated ERISA retirement plans (collectively, "Plans") against State Street Bank and Trust Company ("SSBT") and State Street Global Markets ("SSGM") based on the investigative efforts of private whistleblower firms, the State of California, the Securities and Exchange Commission, and an investigation by counsel, which included reviewing: Internal Revenue Service Forms 5500 ("Form 5500") filed with the United States Department of Labor ("DOL"); filings with the United States Securities and Exchange Commission, including Annual Reports on Form 10-K; and other publicly available documents related to this action.

I. NATURE OF THE ACTION

1. This is a civil enforcement action brought pursuant to the Employee Retirement Income Securities Act ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*, and in particular under ERISA §§ 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), to recover losses and obtain equitable relief on behalf of the Plan, and all other similarly situated plans (collectively "Plans").

2. SSBT and SSGM (collectively, "Defendants") were required to act prudently and solely in the interest of the Plans' participants and beneficiaries in their capacity as an ERISA fiduciary. Rather than fulfilling their fiduciary duties under ERISA (the "highest duties known to the law")[1], the Defendants charged improper, undisclosed markups on transactions in foreign currency ("FX" or "FX transactions").

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[1] *Donovan v.Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982).

3. The Plan and the similarly situated Plans are established and sponsored by private entities in accordance with ERISA, 29 U.S.C. §§ 1001, *et seq.*

4. Plaintiff alleges that Defendants, who are fiduciaries of the Plans, violated ERISA by causing the Plans, or the collective funds operated by Defendants in which the Plans were invested, to execute FX transactions at exchange rates favorable to Defendants and reporting those transactions at less favorable rates. These transactions were prohibited transactions under ERISA § 406, 29 U.S.C. § 1106.

5. Plaintiff also alleges that Defendants failed to act solely in the interest of the participants and beneficiaries of the Plans and breached their fiduciary duties of prudence and loyalty with respect to the Plans. Specifically, Plaintiffs allege that Defendants, as fiduciaries of the Plans, violated their fiduciary duties under ERISA § 404, 29 U.S.C. § 1104 by causing the Plans or the collective funds operated by Defendants in which the Plans were invested to engage in transactions that were not to the exclusive benefit of the Plans or their participants and beneficiaries.

II. JURISDICTION AND VENUE

6. ERISA provides for exclusive federal jurisdiction over these claims. The Plan is an "employee benefit plan" within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and Mr. Henriquez is a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), who is authorized pursuant to ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3), to bring the present action on behalf of the Plan and its participants and beneficiaries to obtain appropriate relief.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

8. Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in this district, and some or all of the fiduciary breaches for which relief is sought occurred in this district.

III. PARTIES

A. Plaintiffs

9. **Plaintiff Arnold Henriquez.** Plaintiff Arnold Henriquez is a participant in the Waste Management Retirement Savings Plan, an ERISA-covered defined contribution plan. At all material times from the second quarter of 2005 through the second quarter of 2009, Mr. Henriquez invested in the "International Equity Fund"[2] sponsored by SSBT and offered by the Plan. Mr. Henriquez also invested in other funds sponsored by SSBT and offered by the Plan during the Class Period set forth below, including the Large Cap Equity Fund, the Small Cap Equity Fund, the Conservative Asset Allocation Fund, the Moderate Asset Allocation Fund, the Aggressive Allocation Fund, the Bond Market and the SSgA Target Retirement 2030 Fund. Mr. Henriquez resides in Frederick, Maryland. Plaintiff Henriquez brings this action as a representative plaintiff on behalf of all similarly situated plans.

10. **Defendant State Street Bank and Trust Company** ("SSBT"). Defendant State Street Bank and Trust Company, a subsidiary of State Street Corp, is incorporated in Massachusetts and is

[2] The "International Equity Fund" is the fund name used by SSBT on disclosures to participants in the Plan. The International Equity Fund's name, according to the International Equity Fund's Forms 5500 for 2009 and 2010, filed by SSBT with DOL, is the "Active Intl Stock Selection SL SF CL I (CM8J [*sic*]." From 2006 through 2008, the International Equity Fund's name, according to the International Equity Fund's Forms 5500 filed by SSBT with DOL was the "International Alpha Select SL Series Fund –[*sic*]." The foregoing fund names may refer to the International Equity Fund at a particular point in time, as well as to one or more of several classes of interests offered in the International Equity Fund.

headquartered in Boston, Massachusetts. Defendant State Street Bank and Trust Company operates as a custodial bank for ERISA covered benefit plans and for collective investment funds used in defined contribution plans. These plans have participants and beneficiaries who reside in Maryland, such as the Plaintiff.

11. **Defendant State Street Global Markets, LLC** ("SSGM"). Defendant State Street Global Markets, LLC, a subsidiary of State Street Corp., is incorporated in Delaware and is headquartered in Boston, Massachusetts. It provides specialized investment research and trading in foreign exchange, equities, fixed income and derivatives to ERISA covered benefit plans.

12. **Defendants Does 1-20.** Does 1-20 are fiduciaries of the Plans relevant to this lawsuit whose exact identities will be ascertained through discovery.

IV. FACTUAL BACKGROUND

A. The Plans.

13. **Waste Management Retirement Savings Plan.** The Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A). Pursuant to ERISA, the relief requested in this action is for the benefit of the Plan.

14. **Other Similarly Situated Plans**. Defendants provide services similar to those provided to the Plan to other, similarly situated Plans, either directly as plan custodian or indirectly as custodian of funds in which the Plans invest.

B. Defendants' Fiduciary Status

15. Every plan governed by ERISA must have fiduciaries to administer and manage the plan. A custodial bank is among these fiduciaries.

16. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA §402(a)(1), but also any other persons who in fact perform fiduciary functions. ERISA §3(21)(A)(i), 29 U.S.C. §1002(21)(A)(i) (stating that a person is a fiduciary "to the extent . . . he exercises any discretionary authority or discretionary control respecting management of such plan or *exercises any authority or control respecting management or disposition of its assets. . .*") (emphasis added).

17. Defendants functioned as fiduciaries to the Plan by exercising authority and control over Plan assets.

18. SSBT served as custodian for the Plans' assets, including both defined benefit and defined contribution plans. As custodian, SSBT is a fiduciary under ERISA. SSBT is a fiduciary of the Plan and owed fiduciary duties to the Plan and its participants under ERISA in the manner and to the extent set forth in the governing Plan documents.

19. SSGM exercised authority and control over plan assets in its role as SSBT's affiliate responsible for setting the exchange rates on FX transactions and executing those transactions. As discussed below, this process created the maximum spread between the marked up custody exchange rate offered to custodial clients and the marked down exchange rate used to process repatriation and other FX transactions.

C. Retirement Plan Investment Strategy

20. Retirement plans, especially over the last decade, have found it to be necessary and prudent to expand their investments to include exposure to foreign markets. Defined benefit plans have

expanded international holdings and defined contribution plans frequently include at least one, if not several, international investment options.

21. SSBT served as custodian for ERISA covered defined benefit plans and operated collective investment funds invested in foreign securities in which ERISA covered defined contribution plans invested during the Class Period.

22. SSBT served as custodian for the collective investment funds it operated that invested in foreign securities.

23. Pension funds regularly purchase and sell foreign securities, receive dividends that are paid in foreign currencies, and participate in other investments that require the exchange of foreign currency into and from US Dollars ("USD"). These currency transactions are known as "FX trading."

24. SSBT provided custodial services for the Plan and the other similarly situated ERISA Plans that constitute the Class during the Class Period. A "custodian" is an institution that holds securities on behalf of investors. The responsibilities entrusted to a custodian include the guarding and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities. Custodians may also perform ancillary services for their clients. Custodians are typically used by institutional investors who do not wish to leave securities on deposit with their broker-dealers or investment managers. Separating the custodial and asset management duties, a custodial bank is intended to reduce the risk of misconduct. An independent custodian ensures that the investor has unencumbered ownership of the securities other agents represent to have purchased on its behalf.

25. Collective investment funds that invest in foreign securities, such as the SSBT-sponsored International Equity Fund offered in the Plan, must engage in FX transactions in order to buy and sell securities, to repatriate dividends or interest payments, and to engage in other transactions.

26. Plaintiff and the Class placed a high degree of trust in Defendants. Plaintiff and the Class depended upon Defendants to both execute and report FX trades honestly and accurately.

27. SSBT describes itself as "a leading specialist in meeting the needs of institutional investors." In its Class Period filings with the United States Securities and Exchange Commission ("SEC"), the Company repeatedly stated that its customer relationships were "predicated upon our reputation as a fiduciary and a service provider that adheres to the highest standards of ethics, service quality and regulatory compliance." One of the services that SSBT offers its clients is the ability to conduct foreign exchange transactions, which allows clients to purchase and sell foreign securities or engage in currency trades.

D. SSBT's Scheme

28. On information and belief, Defendants, starting in 2001, added an undisclosed and substantial "mark-up" to the exchange rate it used when making foreign exchange trades for its clients. The scheme was simple and not disclosed to the Plans. Defendants had agreements with its large custodial clients that obligated Defendants to charge its clients the same "exchange rate" as the one that Defendants actually used to execute foreign exchange trades requested by the client. Rather than doing so, however, SSGM would execute the trade at one exchange rate without informing its client, then monitor fluctuations in the rate throughout the day. Then, before the end of the day, SSGM would pick a rate that was more beneficial to Defendants, and tell its clients that the trade had occurred at this other,

false rate. Defendants' clients had no way of discovering the truth because the records they received would show that the trade had been executed within the range of rates occurring during that day.

29. All foreign exchange transactions are executed at a prevailing exchange rate, which determines how much one currency is worth in terms of another. The most commonly used exchange rate is the interbank rate, which fluctuates throughout each day and is tracked and published by various industry sources. Throughout the Class Period, Defendants executed two types of foreign exchange transactions for its clients. Some of Defendants' clients would conduct "direct" or "negotiated" foreign exchange trades. In a direct trade, an institution would contact a Defendants' representative who would quote an exchange rate that the institution could accept or reject. If Defendants' rate was sufficiently competitive, the client would accept and the trade would be executed at the agreed upon exchange rate. Defendants would collect a fee for processing the trade and pass along the cost of the exchange rate to its client.

30. For more than 75% of its large custodial clients, however, SSBT and SSGM would conduct "indirect" or "standing instruction" foreign exchange trades. In a standing instruction trade, neither the institution nor its outside investment manager would be quoted an exchange rate. Instead, the client would request a transaction involving a foreign exchange (such as a purchase of foreign securities), and Defendants would execute the transaction pursuant to its contract with its client. Under the terms of SSBT's custodial arrangements, SSBT was obligated to provide its clients the same exchange rate that Defendants actually used to make the trade. This arrangement was supposed to be beneficial to Defendants' clients because, among other things, they would not have to incur the expense and time of identifying and choosing the most competitive exchange rate.

31. Defendants, on information and belief, executed FX trades on behalf of their own collective investment funds using the same standing instruction method. SSBT, as custodian of their own funds, were not subject to substantial scrutiny on these transactions beyond internal controls.

32. The scheme itself was relatively straightforward. Upon receiving a standing instruction foreign exchange order, SSGM executed the trade early in the day at the foreign exchange rate available at that time. SSGM was obligated to charge the same exchange rate – usually the interbank rate – as the one it actually used to execute the transaction with the client. Instead of doing so, the Company monitored market fluctuations in the exchange rate throughout the day and picked a rate to charge its custody clients that was more beneficial to Defendants.

33. For instance, if the transaction was a purchase of a foreign security, SSGM charged the client a higher foreign exchange rate that occurred later in the day, thus causing the client to pay more than what SSGM had already paid. If the transaction was a sale of a foreign security, SSGM would charge the client a lower foreign exchange, thus paying the client less than what SSGM actually received. In either event, Defendants would take for itself the difference between the amount for which the trade was actually executed and the amount that SSBT charged its clients.

34. However, this was not the case for all clients. Those clients who conducted direct trades would be quoted an exchange rate by SSGM before executing the transaction. These clients – often large hedge funds – typically had easy access to an alternate price source, such as Bloomberg or Reuters, to double-check the truthfulness of SSGM's rate quotes. Accordingly, Defendants could not overcharge these clients, and thus referred to them internally as "smart" clients or "smart money."

35. The duty of "best execution" requires that a broker-dealer seek to obtain for its customers the most favorable terms reasonably available under the circumstances. At a minimum, therefore, "best

execution standards" require that Defendants execute trades on terms that are no less favorable than those offered to unrelated parties in a comparable arm's-length transaction.

36. Plaintiff and the Class reasonably expected, because Defendants represented and because ERISA requires, that they would be offered terms on "standing instructions" trades that were no less favorable than those offered by Defendants to unrelated parties in comparable arm's-length FX transactions.

37. FX trading takes place around the world on a nearly 24-hour cycle, five-and-a-half days a week. The official FX trading week begins at 7:00 a.m. New Zealand time on Monday, with each subsequent trading day ending at 5:00 p.m. New York City time.

38. SSGM's FX traders are informed of SSBT's aggregated standing instruction trade requirements during the course of the day. The FX traders will, that day, trade on the interbank FX market in order to satisfy SSBT's standing instruction positions. This process is called "offsetting" the trades.

39. Upon receipt of the request, SSGM's foreign exchange traders checked the exchange rate, set a price, and executed the transaction, which typically occurred early in the day since SSGM traders are at their desks by 7 a.m. Eastern Standard Time. All of those transactions were then entered by the trader into a separate software system called Wall Street Systems ("WSS"), which memorializes the transaction and charges the cost (for purchases) or remits the payment (for sales) directly to Defendants. The WSS recorded time stamps for the actual, "real time" transaction.

40. Although the transaction was now completed and the price locked in, Defendants did not inform the client. Instead, on information and belief, SSGM observed market fluctuations until sometime around 3 p.m. in the afternoon and then assigned either a higher exchange rate (for purchases)

or a lower exchange rate (for sales) to the foreign exchange transactions that occurred during that day. SSGM then applied that rate to all of the "indirect" foreign exchange transactions it had conducted that day.

41. At all relevant times to this Complaint, this pricing scheme was used for FX transactions for both custodial clients and for transactions involving SSBT's collective investment funds.

42. With each FX trade priced in this manner, Defendants did not simply profit; they made the biggest possible profit on each trade, based upon the range-of-the-day's FX rates at the point the trade is priced for the Plan.

43. Because Defendants' scheme always prices the trades at the very lowest or very highest rates of the day, Defendants are able to make a profit without any risk to SSBT.

44. By pricing trades in this manner for their standing instruction trades, Defendants secured a spread ten to twenty or more times greater than when a custodial client directly negotiated an FX transaction. That is, Defendants' profits arising from their custodial standing instruction trades are at least ten to twenty times higher than its profits from comparable, arm's length FX transactions.

45. Defendants' practice of pricing trades in this manner and taking the largest possible mark-up or mark-down was not disclosed to custodial clients like the Plan over the period of time relevant to this Complaint.

46. All Defendants' custodial clients who had standing instruction trades (including spot, forward, swaps, repatriation, and major, minor, emerging, and regulated market trades) suffered from the same inaccurate FX pricing.

47. All of Defendants' collective investment funds which invested in foreign securities and used standing instruction trades (including spot, forward, swaps, repatriation, and major, minor, emerging, and regulated market trades) suffered from the same inaccurate FX pricing.

48. End-of-month reports are prepared by Defendants on or before mid-month. These reports list the custodial client's FX trades by date, amount, and price, i.e., the fictitious FX rate (as reported to the custody side of SSBT by its FX traders). These reports never contained time-stamps for the FX trades, and there is nothing on the report that would lead a custodial client to suspect that it had been unfairly charged exorbitant mark-ups (or mark-downs) on its FX trades.

E. SSBT Makes Exceptions for Certain Clients, Offering Them Special Pricing

49. Over time, SSBT have developed a special class of custodial clients that do not receive the high or low range-of-the-day pricing suffered by other custodial clients, like the Plan. These clients, known internally as "smart money clients," still receive the same standing instruction custodial services as the other entities like the Plan, but receive particular treatment when their FX requirements come to SSBT's FX dealing room.

50. Instead of these custodial clients' FX trades being included with the others like the Plan and subject to the extreme range-of-the-day mark-up and mark-down, these clients are allowed to deal directly with Defendants – usually by phone – and are given the chance to directly negotiate prices for their FX requirements for that day, every day, despite their trades coming to SSBT as standing instruction trades.

51. As a result, the "smart money" custodial clients always receive better pricing than their fellow custodial clients who are still subject to SSBT's pricing schemes.

52. Defendants did not disclose to clients like the Plan over the period of time relevant to this Complaint their practice of providing certain clients the "smart money clients" FX transactions, resulting in direct dealings on standing instruction trades.

V. CLASS ALLEGATIONS

53. **Class Definition**. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of the Plan and the following class of similarly-situated persons (the "Class"):

> All qualified ERISA Plans, and the participants, beneficiaries, and named fiduciaries of those plans for which State Street Bank and Trust Company or State Street Global Markets, LLC provided foreign exchange transactional services, as custodian of its assets, or by acting as custodian of collective trusts in which those ERISA Plans invested, at any time between October 12, 2005 and October 19, 2009 (the "Class Period").

Class treatment is appropriate in this case because it would promote judicial economy by adjudicating the Defendants' fiduciary breach with respect to all of the Plans and participants in the class.

54. **Numerosity**. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes that hundreds of ERISA Plans throughout the country invested in these collective trusts during the Class Period, and sustained losses as a result of the Defendants' imprudent FX trading activities. Defendants have more than $5.2 trillion of pension assets under custody.[3] These assets could all be exposed to Defendants' improper pricing scheme. Plaintiff believes that hundreds of ERISA plans are also exposed to Defendants' to collective

[3] "Pension – Overview," http://www.statestreetglobalservices.com.

investment funds with investments in foreign securities. For example, Schedule D to the Form 5500 filed by Defendants for the Active Intl Stock Selection SL SF CL I (CM8J fund for 2009 alone lists nine defined contribution plans and assets of nearly $389 million. State Street Bank and Trust Company, Active Intl Stock Selection SL SF CL I (CM8J[*sic*], Annual Return/Report of Employee Benefit Plan (Form 5500), at Schedule H, Part I (December 31, 2009).

55. **Commonality.** The claims of Plaintiff and all Class members originate from the same misconduct, breaches of duties and violations of ERISA perpetrated by Defendants with regard to management of its FX trading program. The questions of law and fact common to the Class include, but are not limited to:

a. Whether Defendants breached their fiduciary duties to the Plans by using an FX trading scheme to overcharge the Plans, or the collective investment funds in which the plan invested, for FX trading;

b. Whether Defendants engaged in transactions prohibited by ERISA;

c. Whether Defendants' fiduciary breaches caused losses to the Plans; and

d. Whether Defendants' prohibited transactions caused losses to the Plans.

56. **Typicality.** Plaintiff's claims on behalf of his Plan are not only typical of, but the same as, claims that would be brought with respect to other plans. If cases were brought and prosecuted individually, each of the members of the Class would be required to prove the same claims based upon the same conduct of the Defendants, using the same legal arguments to prove Defendants' liability, and would be seeking the same relief.

57. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel that are competent and experienced in class action and ERISA litigation.

Plaintiff has no interests antagonistic to, or in conflict with those of the Class. Plaintiff has undertaken to protect vigorously the interests of the absent members of the Class.

58. **Rule 23(b)(1)(A) &(B) Requirements.** Class action status is warranted under Fed. R. Civ. P. 23(b)(1)(A), because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is also warranted under Rule 23(b)(1)(B), because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

59. **Rule 23(b)(2) Requirements.** Certification under Rule 23(b)(2) is warranted because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other equitable relief with respect to the Class as a whole. No plan-by-plan inquiry would be required to determine whether Defendants' breached their fiduciary duties.

60. **Rule 23(b)(3) Requirements.** In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to Class members predominate over any questions affecting only individual members, and class action treatment is superior to the other available methods for the fair and efficient adjudication of this controversy.

VI. CLAIMS FOR RELIEF

COUNT I

Engaging in Prohibited Transactions by Giving More Favorable FX Transaction Terms to Certain Clients
(Violation of § 406 of ERISA, 29 U.S.C. § 1106 by Defendants)

61. All previous averments are incorporated herein.

62. At all relevant times, the Defendants acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), by exercising authority and control over Plan assets.

63. The Defendants, by their actions and throughout the Class Period, caused the Plans to engage in unfairly and unreasonably priced FX transactions.

64. During the Class Period, Defendants engaged in FX transactions using plan assets that were not for the exclusive benefit of the Plans' participants and constituted a transfer to, or use by or for the benefit of a party in interest, of plan assets.

65. Defendants caused the Plans to pay, directly or indirectly, unreasonable FX transaction fees and therefore caused the Plans to engage in transactions that Defendants knew or should have known constituted the use of the assets of the Plans for a transfer to, or use by or for, the benefit of a party in interest in violation of ERISA. § 406(b), 29 U.S.C. 1106(b).

66. As a direct and proximate result of these prohibited transaction violations, the Plans, directly or indirectly, paid millions of dollars in transaction fees that were prohibited by ERISA and suffered millions of dollars in losses.

67. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) and 29 U.S.C. § 1109(a), Defendants are liable to restore all losses suffered by the Plans as a result of the prohibited transactions and all profits earned on the fees paid by the Plans to Defendants

COUNT II

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by Defendants)

68. All previous averments are incorporated herein.

69. Defendants breached their ERISA fiduciary duties of prudence and loyalty by, *inter alia*:

a. Using plan assets for the own benefit, causing losses to the Plans and the participants;

b. Charging the Plans (or the collective trusts in which the Plans invested) fees for FX trading that were unreasonable and in excess of what Defendants had agreed to charge;

c. Failing to disclose to the Plans, their fiduciaries, or participants the amount of fees being charged for FX trading, that those fees were in excess of what Defendants had agreed to charge, and that other clients were charged less for the same services;

70. These actions during the Class Period were breaches of Defendants fiduciary duties of loyalty and prudence to the Plans under ERISA and Defendants did not execute their fiduciary responsibilities for the exclusive benefit of the Plans. § 404(a)(1)(A), (B), 29 U.S.C. §§ 1104(a)(1)(A), (B).

71. Defendants committed these breaches consistently from 2001 to 2009, during each FX transaction involving assets of the Plans.

72. As a direct and proximate result of these breaches of duty, the Plans, and indirectly Plaintiff and the Plans' other participants and beneficiaries, realized losses.

73. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) and 29 U.S.C. § 1109(a), The Defendants are liable to restore all losses suffered by the Plans caused by the Defendants' breaches of fiduciary duty.

COUNT III

Liability for Breach of Co-fiduciary

(Violation of § 405 of ERISA, 29 U.S.C. § 1105)

74. All previous averments are incorporated herein.

75. SSGM violated ERISA, 29 U.S.C. §1105(a)(1), by knowingly undertaking to conceal SSBT's fiduciary breaches. It did so through the actions and omissions of its employees and agents by concealing and failing to provide complete and accurate information to the Plans regarding the cost of FX transactions.

76. SSGM violated ERISA, 29 U.S.C. §1105(a)(3), because it knew that SSBT had breached its fiduciary duties of prudence and loyalty, but failed to take reasonable steps under the circumstances to remedy the breach.

77. On account of SSGM's violations of these provisions, SSGM is liable for the breach of its co-fiduciary, SSBT.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

78. Declare that the Defendants have violated ERISA's prohibited transactions provisions;

79. Declare that the Defendants breached their fiduciary duties under ERISA;

80. Issue an order compelling a proper accounting of the foreign exchange transactions in which the Plans have engaged;

81. Issue an order compelling Defendants to restore all losses caused to the Plans;

82. Issue an order compelling the Defendants to disgorge all fees paid and incurred, Defendants, including disgorgement of profits thereon;

83. Order equitable restitution and other appropriate equitable monetary relief against the Defendants;

84. Award such other equitable or remedial relief as may be appropriate, including the permanent removal of the Defendants from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to serve as custodian to the Plans;

85. That this action be certified as a class action and that each Class be designated to receive the amounts restored to the Plans by Defendants and a constructive trust be established for distribution to the extent required by law;

86. Enjoin Defendants collectively, and each of them individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

87. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g) and/or the Common Fund doctrine; and

88. Award such other and further relief as the Court deems equitable and just.

October 12, 2011

Respectfully Submitted,

By /s/ Jonathan Axelrod

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Counsel for Plaintiff

EX. 30

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Arnold Henriquez, on behalf of the Waste Management Retirement Savings Plan, and all other similarly situated plans,

Plaintiffs,

v.

State Street Bank and Trust Company, State Street Global Markets, LLC and Does 1-20,

Defendants.

Case No.: 1:11-cv-02920-WDQ

Notice of Voluntary Dismissal

NOTICE OF VOLUNTARY DISMISSAL

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiff Arnold Enriquez voluntarily dismisses this action. In connection with this voluntary dismissal, Plaintiff states the following:

1. No defendant has filed an answer or motion for summary judgment herein.
2. Plaintiff has not sought certification of the class herein, and no class has been certified. Accordingly, Plaintiff's voluntary dismissal of this action does not require the Court's approval pursuant to Federal Rule of Civil Procedure 23(e).
3. Plaintiff has not previously dismissed any federal- or state-court action based on or including the claims asserted in the Complaint herein.

November 17, 2011

Respectfully Submitted,

By /s/ Jonathan Axelrod
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Voluntary Dismissal** ("Notice") was filed electronically with the Court on November 17, 2011, and that the **Notice** and a copy of the **Complaint** (Docket No. 1-4) were served that same day by First Class U.S. Mail, postage pre-paid, upon the following registered agents for service of process:

State Street Bank & Trust Company
c/o The Corporation Trust Incorporated
351 West Camden Street
Baltimore, MD 21201-7912

State Street Global Markets LLC
c/o CT Corporation
155 Federal Street
Boston, MA 02110

November 17, 2011 /s/ Jonathan G. Axelrod
Jonathan G. Axelrod

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Arnold Henriquez, on behalf of the Waste Management Retirement Savings Plan, and all other similarly situated plans, 2217 Wetherburne Way Frederick, Maryland 21702 Plaintiffs, v. State Street Bank and Trust Company, One Lincoln Street Boston, Massachusetts 02111 and State Street Global Markets, LLC One Lincoln Street Boston, Massachusetts 02111 and Does 1-20 Defendants.	Case No.: **CLASS ACTION COMPLAINT**

CLASS ACTION COMPLAINT

Plaintiff Arnold Henriquez alleges the following on behalf of the Waste Management Retirement Savings Plan ("Plan") and a class of similarly-situated ERISA retirement plans (collectively, "Plans") against State Street Bank and Trust Company ("SSBT") and State Street Global Markets ("SSGM") based on the investigative efforts of private whistleblower firms, the State of California, the Securities and Exchange Commission, and an investigation by counsel, which included reviewing: Internal Revenue Service Forms 5500 ("Form 5500") filed with the United States Department of Labor ("DOL"); filings with the United States Securities and Exchange Commission, including Annual Reports on Form 10-K; and other publicly available documents related to this action.

I. NATURE OF THE ACTION

1. This is a civil enforcement action brought pursuant to the Employee Retirement Income Securities Act ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*, and in particular under ERISA §§ 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), to recover losses and obtain equitable relief on behalf of the Plan, and all other similarly situated plans (collectively "Plans").

2. SSBT and SSGM (collectively, "Defendants") were required to act prudently and solely in the interest of the Plans' participants and beneficiaries in their capacity as an ERISA fiduciary. Rather than fulfilling their fiduciary duties under ERISA (the "highest duties known to the law")[1], the Defendants charged improper, undisclosed markups on transactions in foreign currency ("FX" or "FX transactions").

[1] *Donovan v.Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982).

3. The Plan and the similarly situated Plans are established and sponsored by private entities in accordance with ERISA, 29 U.S.C. §§ 1001, *et seq.*

4. Plaintiff alleges that Defendants, who are fiduciaries of the Plans, violated ERISA by causing the Plans, or the collective funds operated by Defendants in which the Plans were invested, to execute FX transactions at exchange rates favorable to Defendants and reporting those transactions at less favorable rates. These transactions were prohibited transactions under ERISA § 406, 29 U.S.C. § 1106.

5. Plaintiff also alleges that Defendants failed to act solely in the interest of the participants and beneficiaries of the Plans and breached their fiduciary duties of prudence and loyalty with respect to the Plans. Specifically, Plaintiffs allege that Defendants, as fiduciaries of the Plans, violated their fiduciary duties under ERISA § 404, 29 U.S.C. § 1104 by causing the Plans or the collective funds operated by Defendants in which the Plans were invested to engage in transactions that were not to the exclusive benefit of the Plans or their participants and beneficiaries.

II. JURISDICTION AND VENUE

6. ERISA provides for exclusive federal jurisdiction over these claims. The Plan is an "employee benefit plan" within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and Mr. Henriquez is a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), who is authorized pursuant to ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3), to bring the present action on behalf of the Plan and its participants and beneficiaries to obtain appropriate relief.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

8. Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in this district, and some or all of the fiduciary breaches for which relief is sought occurred in this district.

III. PARTIES

A. Plaintiffs

9. **Plaintiff Arnold Henriquez.** Plaintiff Arnold Henriquez is a participant in the Waste Management Retirement Savings Plan, an ERISA-covered defined contribution plan. At all material times from the second quarter of 2005 through the second quarter of 2009, Mr. Henriquez invested in the "International Equity Fund"[2] sponsored by SSBT and offered by the Plan. Mr. Henriquez also invested in other funds sponsored by SSBT and offered by the Plan during the Class Period set forth below, including the Large Cap Equity Fund, the Small Cap Equity Fund, the Conservative Asset Allocation Fund, the Moderate Asset Allocation Fund, the Aggressive Allocation Fund, the Bond Market and the SSgA Target Retirement 2030 Fund. Mr. Henriquez resides in Frederick, Maryland. Plaintiff Henriquez brings this action as a representative plaintiff on behalf of all similarly situated plans.

10. **Defendant State Street Bank and Trust Company** ("SSBT"). Defendant State Street Bank and Trust Company, a subsidiary of State Street Corp, is incorporated in Massachusetts and is

[2] The "International Equity Fund" is the fund name used by SSBT on disclosures to participants in the Plan. The International Equity Fund's name, according to the International Equity Fund's Forms 5500 for 2009 and 2010, filed by SSBT with DOL, is the "Active Intl Stock Selection SL SF CL I (CM8J [*sic*]." From 2006 through 2008, the International Equity Fund's name, according to the International Equity Fund's Forms 5500 filed by SSBT with DOL was the "International Alpha Select SL Series Fund –[*sic*]." The foregoing fund names may refer to the International Equity Fund at a particular point in time, as well as to one or more of several classes of interests offered in the International Equity Fund.

headquartered in Boston, Massachusetts. Defendant State Street Bank and Trust Company operates as a custodial bank for ERISA covered benefit plans and for collective investment funds used in defined contribution plans. These plans have participants and beneficiaries who reside in Maryland, such as the Plaintiff.

11. **Defendant State Street Global Markets, LLC** ("SSGM"). Defendant State Street Global Markets, LLC, a subsidiary of State Street Corp., is incorporated in Delaware and is headquartered in Boston, Massachusetts. It provides specialized investment research and trading in foreign exchange, equities, fixed income and derivatives to ERISA covered benefit plans.

12. **Defendants Does 1-20.** Does 1-20 are fiduciaries of the Plans relevant to this lawsuit whose exact identities will be ascertained through discovery.

IV. FACTUAL BACKGROUND

A. The Plans.

13. **Waste Management Retirement Savings Plan.** The Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A). Pursuant to ERISA, the relief requested in this action is for the benefit of the Plan.

14. **Other Similarly Situated Plans**. Defendants provide services similar to those provided to the Plan to other, similarly situated Plans, either directly as plan custodian or indirectly as custodian of funds in which the Plans invest.

B. Defendants' Fiduciary Status

15. Every plan governed by ERISA must have fiduciaries to administer and manage the plan. A custodial bank is among these fiduciaries.

16. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA §402(a)(1), but also any other persons who in fact perform fiduciary functions. ERISA §3(21)(A)(i), 29 U.S.C. §1002(21)(A)(i) (stating that a person is a fiduciary "to the extent . . . he exercises any discretionary authority or discretionary control respecting management of such plan or *exercises any authority or control respecting management or disposition of its assets. . .*") (emphasis added).

17. Defendants functioned as fiduciaries to the Plan by exercising authority and control over Plan assets.

18. SSBT served as custodian for the Plans' assets, including both defined benefit and defined contribution plans. As custodian, SSBT is a fiduciary under ERISA. SSBT is a fiduciary of the Plan and owed fiduciary duties to the Plan and its participants under ERISA in the manner and to the extent set forth in the governing Plan documents.

19. SSGM exercised authority and control over plan assets in its role as SSBT's affiliate responsible for setting the exchange rates on FX transactions and executing those transactions. As discussed below, this process created the maximum spread between the marked up custody exchange rate offered to custodial clients and the marked down exchange rate used to process repatriation and other FX transactions.

C. Retirement Plan Investment Strategy

20. Retirement plans, especially over the last decade, have found it to be necessary and prudent to expand their investments to include exposure to foreign markets. Defined benefit plans have

expanded international holdings and defined contribution plans frequently include at least one, if not several, international investment options.

21. SSBT served as custodian for ERISA covered defined benefit plans and operated collective investment funds invested in foreign securities in which ERISA covered defined contribution plans invested during the Class Period.

22. SSBT served as custodian for the collective investment funds it operated that invested in foreign securities.

23. Pension funds regularly purchase and sell foreign securities, receive dividends that are paid in foreign currencies, and participate in other investments that require the exchange of foreign currency into and from US Dollars ("USD"). These currency transactions are known as "FX trading."

24. SSBT provided custodial services for the Plan and the other similarly situated ERISA Plans that constitute the Class during the Class Period. A "custodian" is an institution that holds securities on behalf of investors. The responsibilities entrusted to a custodian include the guarding and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities. Custodians may also perform ancillary services for their clients. Custodians are typically used by institutional investors who do not wish to leave securities on deposit with their broker-dealers or investment managers. Separating the custodial and asset management duties, a custodial bank is intended to reduce the risk of misconduct. An independent custodian ensures that the investor has unencumbered ownership of the securities other agents represent to have purchased on its behalf.

25. Collective investment funds that invest in foreign securities, such as the SSBT-sponsored International Equity Fund offered in the Plan, must engage in FX transactions in order to buy and sell securities, to repatriate dividends or interest payments, and to engage in other transactions.

26. Plaintiff and the Class placed a high degree of trust in Defendants. Plaintiff and the Class depended upon Defendants to both execute and report FX trades honestly and accurately.

27. SSBT describes itself as "a leading specialist in meeting the needs of institutional investors." In its Class Period filings with the United States Securities and Exchange Commission ("SEC"), the Company repeatedly stated that its customer relationships were "predicated upon our reputation as a fiduciary and a service provider that adheres to the highest standards of ethics, service quality and regulatory compliance." One of the services that SSBT offers its clients is the ability to conduct foreign exchange transactions, which allows clients to purchase and sell foreign securities or engage in currency trades.

D. SSBT's Scheme

28. On information and belief, Defendants, starting in 2001, added an undisclosed and substantial "mark-up" to the exchange rate it used when making foreign exchange trades for its clients. The scheme was simple and not disclosed to the Plans. Defendants had agreements with its large custodial clients that obligated Defendants to charge its clients the same "exchange rate" as the one that Defendants actually used to execute foreign exchange trades requested by the client. Rather than doing so, however, SSGM would execute the trade at one exchange rate without informing its client, then monitor fluctuations in the rate throughout the day. Then, before the end of the day, SSGM would pick a rate that was more beneficial to Defendants, and tell its clients that the trade had occurred at this other,

false rate. Defendants' clients had no way of discovering the truth because the records they received would show that the trade had been executed within the range of rates occurring during that day.

29. All foreign exchange transactions are executed at a prevailing exchange rate, which determines how much one currency is worth in terms of another. The most commonly used exchange rate is the interbank rate, which fluctuates throughout each day and is tracked and published by various industry sources. Throughout the Class Period, Defendants executed two types of foreign exchange transactions for its clients. Some of Defendants' clients would conduct "direct" or "negotiated" foreign exchange trades. In a direct trade, an institution would contact a Defendants' representative who would quote an exchange rate that the institution could accept or reject. If Defendants' rate was sufficiently competitive, the client would accept and the trade would be executed at the agreed upon exchange rate. Defendants would collect a fee for processing the trade and pass along the cost of the exchange rate to its client.

30. For more than 75% of its large custodial clients, however, SSBT and SSGM would conduct "indirect" or "standing instruction" foreign exchange trades. In a standing instruction trade, neither the institution nor its outside investment manager would be quoted an exchange rate. Instead, the client would request a transaction involving a foreign exchange (such as a purchase of foreign securities), and Defendants would execute the transaction pursuant to its contract with its client. Under the terms of SSBT's custodial arrangements, SSBT was obligated to provide its clients the same exchange rate that Defendants actually used to make the trade. This arrangement was supposed to be beneficial to Defendants' clients because, among other things, they would not have to incur the expense and time of identifying and choosing the most competitive exchange rate.

31. Defendants, on information and belief, executed FX trades on behalf of their own collective investment funds using the same standing instruction method. SSBT, as custodian of their own funds, were not subject to substantial scrutiny on these transactions beyond internal controls.

32. The scheme itself was relatively straightforward. Upon receiving a standing instruction foreign exchange order, SSGM executed the trade early in the day at the foreign exchange rate available at that time. SSGM was obligated to charge the same exchange rate – usually the interbank rate – as the one it actually used to execute the transaction with the client. Instead of doing so, the Company monitored market fluctuations in the exchange rate throughout the day and picked a rate to charge its custody clients that was more beneficial to Defendants.

33. For instance, if the transaction was a purchase of a foreign security, SSGM charged the client a higher foreign exchange rate that occurred later in the day, thus causing the client to pay more than what SSGM had already paid. If the transaction was a sale of a foreign security, SSGM would charge the client a lower foreign exchange, thus paying the client less than what SSGM actually received. In either event, Defendants would take for itself the difference between the amount for which the trade was actually executed and the amount that SSBT charged its clients.

34. However, this was not the case for all clients. Those clients who conducted direct trades would be quoted an exchange rate by SSGM before executing the transaction. These clients – often large hedge funds – typically had easy access to an alternate price source, such as Bloomberg or Reuters, to double-check the truthfulness of SSGM's rate quotes. Accordingly, Defendants could not overcharge these clients, and thus referred to them internally as "smart" clients or "smart money."

35. The duty of "best execution" requires that a broker-dealer seek to obtain for its customers the most favorable terms reasonably available under the circumstances. At a minimum, therefore, "best

execution standards" require that Defendants execute trades on terms that are no less favorable than those offered to unrelated parties in a comparable arm's-length transaction.

36. Plaintiff and the Class reasonably expected, because Defendants represented and because ERISA requires, that they would be offered terms on "standing instructions" trades that were no less favorable than those offered by Defendants to unrelated parties in comparable arm's-length FX transactions.

37. FX trading takes place around the world on a nearly 24-hour cycle, five-and-a-half days a week. The official FX trading week begins at 7:00 a.m. New Zealand time on Monday, with each subsequent trading day ending at 5:00 p.m. New York City time.

38. SSGM's FX traders are informed of SSBT's aggregated standing instruction trade requirements during the course of the day. The FX traders will, that day, trade on the interbank FX market in order to satisfy SSBT's standing instruction positions. This process is called "offsetting" the trades.

39. Upon receipt of the request, SSGM's foreign exchange traders checked the exchange rate, set a price, and executed the transaction, which typically occurred early in the day since SSGM traders are at their desks by 7 a.m. Eastern Standard Time. All of those transactions were then entered by the trader into a separate software system called Wall Street Systems ("WSS"), which memorializes the transaction and charges the cost (for purchases) or remits the payment (for sales) directly to Defendants. The WSS recorded time stamps for the actual, "real time" transaction.

40. Although the transaction was now completed and the price locked in, Defendants did not inform the client. Instead, on information and belief, SSGM observed market fluctuations until sometime around 3 p.m. in the afternoon and then assigned either a higher exchange rate (for purchases)

or a lower exchange rate (for sales) to the foreign exchange transactions that occurred during that day. SSGM then applied that rate to all of the "indirect" foreign exchange transactions it had conducted that day.

41. At all relevant times to this Complaint, this pricing scheme was used for FX transactions for both custodial clients and for transactions involving SSBT's collective investment funds.

42. With each FX trade priced in this manner, Defendants did not simply profit; they made the biggest possible profit on each trade, based upon the range-of-the-day's FX rates at the point the trade is priced for the Plan.

43. Because Defendants' scheme always prices the trades at the very lowest or very highest rates of the day, Defendants are able to make a profit without any risk to SSBT.

44. By pricing trades in this manner for their standing instruction trades, Defendants secured a spread ten to twenty or more times greater than when a custodial client directly negotiated an FX transaction. That is, Defendants' profits arising from their custodial standing instruction trades are at least ten to twenty times higher than its profits from comparable, arm's length FX transactions.

45. Defendants' practice of pricing trades in this manner and taking the largest possible mark-up or mark-down was not disclosed to custodial clients like the Plan over the period of time relevant to this Complaint.

46. All Defendants' custodial clients who had standing instruction trades (including spot, forward, swaps, repatriation, and major, minor, emerging, and regulated market trades) suffered from the same inaccurate FX pricing.

47. All of Defendants' collective investment funds which invested in foreign securities and used standing instruction trades (including spot, forward, swaps, repatriation, and major, minor, emerging, and regulated market trades) suffered from the same inaccurate FX pricing.

48. End-of-month reports are prepared by Defendants on or before mid-month. These reports list the custodial client's FX trades by date, amount, and price, i.e., the fictitious FX rate (as reported to the custody side of SSBT by its FX traders). These reports never contained time-stamps for the FX trades, and there is nothing on the report that would lead a custodial client to suspect that it had been unfairly charged exorbitant mark-ups (or mark-downs) on its FX trades.

E. SSBT Makes Exceptions for Certain Clients, Offering Them Special Pricing

49. Over time, SSBT have developed a special class of custodial clients that do not receive the high or low range-of-the-day pricing suffered by other custodial clients, like the Plan. These clients, known internally as "smart money clients," still receive the same standing instruction custodial services as the other entities like the Plan, but receive particular treatment when their FX requirements come to SSBT's FX dealing room.

50. Instead of these custodial clients' FX trades being included with the others like the Plan and subject to the extreme range-of-the-day mark-up and mark-down, these clients are allowed to deal directly with Defendants – usually by phone – and are given the chance to directly negotiate prices for their FX requirements for that day, every day, despite their trades coming to SSBT as standing instruction trades.

51. As a result, the "smart money" custodial clients always receive better pricing than their fellow custodial clients who are still subject to SSBT's pricing schemes.

52. Defendants did not disclose to clients like the Plan over the period of time relevant to this Complaint their practice of providing certain clients the "smart money clients" FX transactions, resulting in direct dealings on standing instruction trades.

V. CLASS ALLEGATIONS

53. **Class Definition**. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of the Plan and the following class of similarly-situated persons (the "Class"):

> All qualified ERISA Plans, and the participants, beneficiaries, and named fiduciaries of those plans for which State Street Bank and Trust Company or State Street Global Markets, LLC provided foreign exchange transactional services, as custodian of its assets, or by acting as custodian of collective trusts in which those ERISA Plans invested, at any time between October 12, 2005 and October 19, 2009 (the "Class Period").

Class treatment is appropriate in this case because it would promote judicial economy by adjudicating the Defendants' fiduciary breach with respect to all of the Plans and participants in the class.

54. **Numerosity**. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes that hundreds of ERISA Plans throughout the country invested in these collective trusts during the Class Period, and sustained losses as a result of the Defendants' imprudent FX trading activities. Defendants have more than $5.2 trillion of pension assets under custody.[3] These assets could all be exposed to Defendants' improper pricing scheme. Plaintiff believes that hundreds of ERISA plans are also exposed to Defendants' to collective

[3] "Pension – Overview," http://www.statestreetglobalservices.com.

investment funds with investments in foreign securities. For example, Schedule D to the Form 5500 filed by Defendants for the Active Intl Stock Selection SL SF CL I (CM8J fund for 2009 alone lists nine defined contribution plans and assets of nearly $389 million. State Street Bank and Trust Company, Active Intl Stock Selection SL SF CL I (CM8J[*sic*], Annual Return/Report of Employee Benefit Plan (Form 5500), at Schedule H, Part I (December 31, 2009).

55. **Commonality.** The claims of Plaintiff and all Class members originate from the same misconduct, breaches of duties and violations of ERISA perpetrated by Defendants with regard to management of its FX trading program. The questions of law and fact common to the Class include, but are not limited to:

a. Whether Defendants breached their fiduciary duties to the Plans by using an FX trading scheme to overcharge the Plans, or the collective investment funds in which the plan invested, for FX trading;

b. Whether Defendants engaged in transactions prohibited by ERISA;

c. Whether Defendants' fiduciary breaches caused losses to the Plans; and

d. Whether Defendants' prohibited transactions caused losses to the Plans.

56. **Typicality.** Plaintiff's claims on behalf of his Plan are not only typical of, but the same as, claims that would be brought with respect to other plans. If cases were brought and prosecuted individually, each of the members of the Class would be required to prove the same claims based upon the same conduct of the Defendants, using the same legal arguments to prove Defendants' liability, and would be seeking the same relief.

57. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel that are competent and experienced in class action and ERISA litigation.

Plaintiff has no interests antagonistic to, or in conflict with those of the Class. Plaintiff has undertaken to protect vigorously the interests of the absent members of the Class.

58. **Rule 23(b)(1)(A) &(B) Requirements.** Class action status is warranted under Fed. R. Civ. P. 23(b)(1)(A), because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is also warranted under Rule 23(b)(1)(B), because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

59. **Rule 23(b)(2) Requirements.** Certification under Rule 23(b)(2) is warranted because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other equitable relief with respect to the Class as a whole. No plan-by-plan inquiry would be required to determine whether Defendants' breached their fiduciary duties.

60. **Rule 23(b)(3) Requirements.** In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to Class members predominate over any questions affecting only individual members, and class action treatment is superior to the other available methods for the fair and efficient adjudication of this controversy.

VI. CLAIMS FOR RELIEF

COUNT I

Engaging in Prohibited Transactions by Giving More Favorable FX Transaction Terms to Certain Clients
(Violation of § 406 of ERISA, 29 U.S.C. § 1106 by Defendants)

61. All previous averments are incorporated herein.

62. At all relevant times, the Defendants acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), by exercising authority and control over Plan assets.

63. The Defendants, by their actions and throughout the Class Period, caused the Plans to engage in unfairly and unreasonably priced FX transactions.

64. During the Class Period, Defendants engaged in FX transactions using plan assets that were not for the exclusive benefit of the Plans' participants and constituted a transfer to, or use by or for the benefit of a party in interest, of plan assets.

65. Defendants caused the Plans to pay, directly or indirectly, unreasonable FX transaction fees and therefore caused the Plans to engage in transactions that Defendants knew or should have known constituted the use of the assets of the Plans for a transfer to, or use by or for, the benefit of a party in interest in violation of ERISA. § 406(b), 29 U.S.C. 1106(b).

66. As a direct and proximate result of these prohibited transaction violations, the Plans, directly or indirectly, paid millions of dollars in transaction fees that were prohibited by ERISA and suffered millions of dollars in losses.

67. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) and 29 U.S.C. § 1109(a), Defendants are liable to restore all losses suffered by the Plans as a result of the prohibited transactions and all profits earned on the fees paid by the Plans to Defendants

COUNT II

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by Defendants)

68. All previous averments are incorporated herein.

69. Defendants breached their ERISA fiduciary duties of prudence and loyalty by, *inter alia*:

a. Using plan assets for the own benefit, causing losses to the Plans and the participants;

b. Charging the Plans (or the collective trusts in which the Plans invested) fees for FX trading that were unreasonable and in excess of what Defendants had agreed to charge;

c. Failing to disclose to the Plans, their fiduciaries, or participants the amount of fees being charged for FX trading, that those fees were in excess of what Defendants had agreed to charge, and that other clients were charged less for the same services;

70. These actions during the Class Period were breaches of Defendants fiduciary duties of loyalty and prudence to the Plans under ERISA and Defendants did not execute their fiduciary responsibilities for the exclusive benefit of the Plans. § 404(a)(1)(A), (B), 29 U.S.C. §§ 1104(a)(1)(A), (B).

71. Defendants committed these breaches consistently from 2001 to 2009, during each FX transaction involving assets of the Plans.

72. As a direct and proximate result of these breaches of duty, the Plans, and indirectly Plaintiff and the Plans' other participants and beneficiaries, realized losses.

73. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) and 29 U.S.C. § 1109(a), The Defendants are liable to restore all losses suffered by the Plans caused by the Defendants' breaches of fiduciary duty.

COUNT III

Liability for Breach of Co-fiduciary

(Violation of § 405 of ERISA, 29 U.S.C. § 1105)

74. All previous averments are incorporated herein.

75. SSGM violated ERISA, 29 U.S.C. §1105(a)(1), by knowingly undertaking to conceal SSBT's fiduciary breaches. It did so through the actions and omissions of its employees and agents by concealing and failing to provide complete and accurate information to the Plans regarding the cost of FX transactions.

76. SSGM violated ERISA, 29 U.S.C. §1105(a)(3), because it knew that SSBT had breached its fiduciary duties of prudence and loyalty, but failed to take reasonable steps under the circumstances to remedy the breach.

77. On account of SSGM's violations of these provisions, SSGM is liable for the breach of its co-fiduciary, SSBT.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

78. Declare that the Defendants have violated ERISA's prohibited transactions provisions;

79. Declare that the Defendants breached their fiduciary duties under ERISA;

80. Issue an order compelling a proper accounting of the foreign exchange transactions in which the Plans have engaged;

81. Issue an order compelling Defendants to restore all losses caused to the Plans;

82. Issue an order compelling the Defendants to disgorge all fees paid and incurred, Defendants, including disgorgement of profits thereon;

83. Order equitable restitution and other appropriate equitable monetary relief against the Defendants;

84. Award such other equitable or remedial relief as may be appropriate, including the permanent removal of the Defendants from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to serve as custodian to the Plans;

85. That this action be certified as a class action and that each Class be designated to receive the amounts restored to the Plans by Defendants and a constructive trust be established for distribution to the extent required by law;

86. Enjoin Defendants collectively, and each of them individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

87. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g) and/or the Common Fund doctrine; and

88. Award such other and further relief as the Court deems equitable and just.

October 12, 2011

Respectfully Submitted,

By /s/ Jonathan Axelrod

Jonathan G. Axelrod, Esq.
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(202) 328-7222
jaxelrod@bakgg.com

J. Brian McTigue (*Pro Hac Vice to be filed*)
MCTIGUE & VEIS LLP
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Suite 300
Washington, DC 20016
Tel: (202) 364-6900
Fax: (202) 364-9960
bmctigue@mctiguelaw.com

Counsel for Plaintiff

EX. 31

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Arnold Henriquez, on behalf of the Waste Management Retirement Savings Plan, and all other similarly situated plans,

Plaintiffs,

v.

State Street Bank and Trust Company, State Street Global Markets, LLC and Does 1-20,

Defendants.

Case No.: 1:11-cv-02920-WDQ

Notice of Voluntary Dismissal

"APPROVED"
11/25/11
Date
William D. Quarles, Jr.
United States District Judge

NOTICE OF VOLUNTARY DISMISSAL

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiff Arnold Enriquez voluntarily dismisses this action. In connection with this voluntary dismissal, Plaintiff states the following:

1. No defendant has filed an answer or motion for summary judgment herein.
2. Plaintiff has not sought certification of the class herein, and no class has been certified. Accordingly, Plaintiff's voluntary dismissal of this action does not require the Court's approval pursuant to Federal Rule of Civil Procedure 23(e).
3. Plaintiff has not previously dismissed any federal- or state-court action based on or including the claims asserted in the Complaint herein.

November 17, 2011

Respectfully Submitted,

By /s/ Jonathan Axelrod
Jonathan G. Axelrod, Esq. (Bar No. 22247)
BEINS, AXELROD, PC

EX. 32

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - - - - - - - - - - - -x

ARKANSAS TEACHER :
RETIREMENT SYSTEM, :
et al., :
Plaintiffs, : CA No. 11-10230-MLW
v. :
STATE STREET BANK :
AND TRUST COMPANY, :
Defendant. :

- - - - - - - - - - - - - - -x

July 7, 2017
Washington, D.C.

Deposition of:
ARNOLD HENRIQUEZ,
called for oral examination by Counsel to the Special Master, pursuant to notice, at JAMS, 1155 F Street, Northwest, Suite 1150, Washington, D.C. 20004, before Christina S. Hotsko, RPR, of Veritext, a Notary Public in and for the District of Columbia, beginning at 1:01 p.m., when were present on behalf of the respective parties:

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telephone line?
(No response.)
MR. SINNOTT: All right. And hearing none, we'll proceed.
EXAMINATION BY COUNSEL TO THE SPECIAL MASTER
BY MR. SINNOTT:
Q. Good afternoon, sir.
A. Good afternoon.
Q. Mr. Henriquez, could you tell us where -- what town and state you live in?
A. I live in Maryland. The state of -- I mean, Maryland. City of Frederick. [redacted]. That's my address.
Q. Okay. And for whom do you work, sir?
A. I work for Waste Management.
Q. And how long have you worked for Waste Management Company?
A. Approximately 24, 25 years.
Q. Okay. And what did you do before you worked for Waste Management?
A. I used to work for a recycle company.
Q. Okay. And what was the name of that company?
A. SNS Linmart.
Q. Okay. And when did you stop working for

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them?
A. Approximately 1990, 1991.
Q. And do you have any military service, sir?
A. No.
Q. All right. And how long have you lived in the Frederick, Maryland, area?
A. About 25 years.
Q. So right around the time --
A. Yes, around the time --
Q. -- you started working for Waste Management?
A. Yes.
Q. And does Waste Management have a 401(k) plan that you participate in?
A. Yes.
Q. And could you tell us how long you participated in that?
A. Since I started, I probably -- six months after I started working for Waste Management, I started investing in 401(k).
Q. And are you aware as to how the funds in that 401(k) are invested?
A. No.
Q. And have you ever been involved

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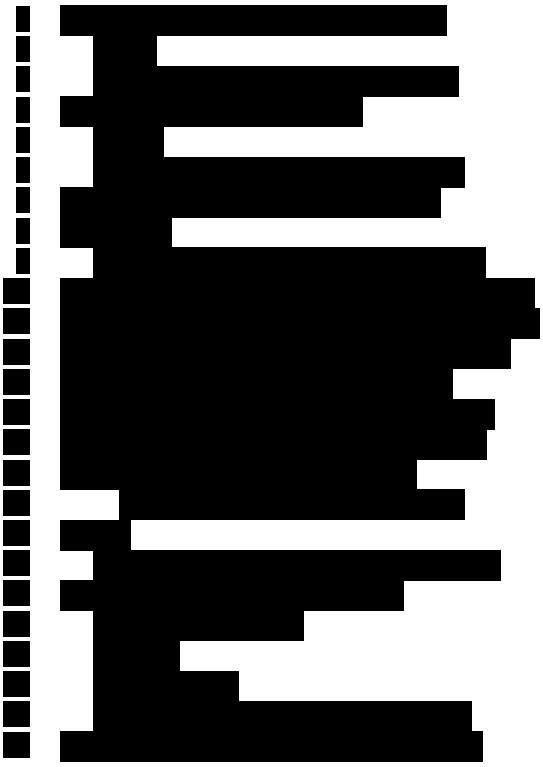

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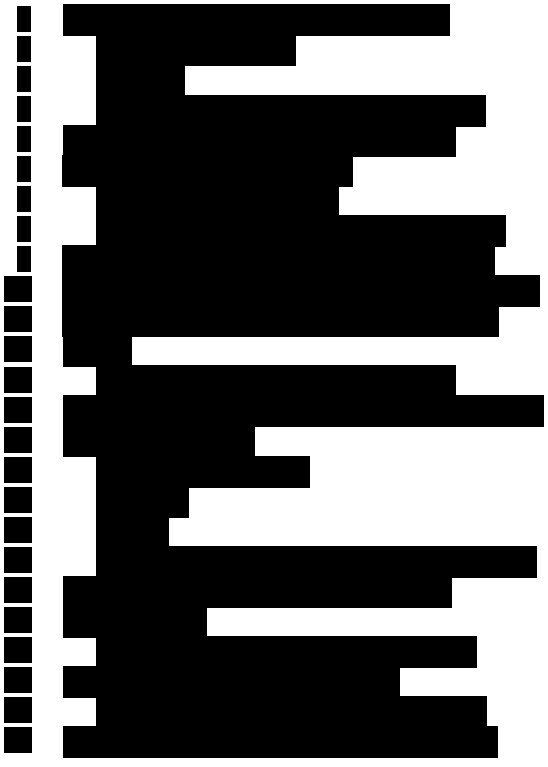

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class and not necessarily yourself?
A. Yes.
Q. Were you aware that you needed to stay in contact with Brian and with his firm and be responsive to any requests for information?
A. Yes. I did sign a document that he sent me.
Q. Okay. And that document laid out some of your requirements, correct?
A. Exactly. Exactly.
Q. At some point did you see a complaint or an amended complaint, a legal document that made claims against State Street?
A. Not really. I mean, maybe because I didn't read the whole document. Don't remember.
Q. All right. And did Brian or other lawyers at his firm make any promises to you at the beginning as far as what you might receive in the case or as far as the amount of the settlement in the case or anything along those lines?
A. No, never discussed that.
Q. Okay. What were the documents that Brian asked you for in the beginning that you referred to a moment ago?
A. Oh, it was all my documents for 401(k),

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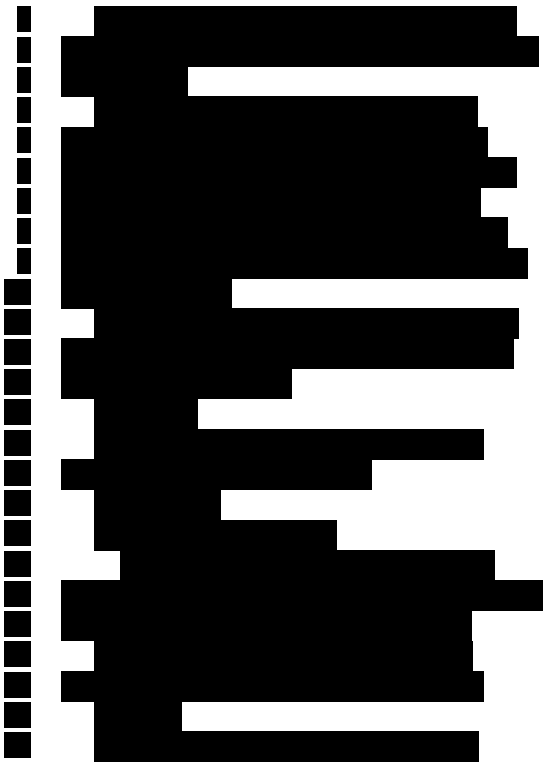

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all the statements that I was receiving, letters that I was getting from the company that I was investing. Anything, you know, that I had that I kept.
Q. So you provided all of those documents to Brian?
A. Yes.
Q. And to the best of your recollection -- and I understand it's been a while --
A. Yeah.
Q. -- what were the claims that were being made against State Street? What did they do wrong?
A. Well, right now I understand, you know, exactly what happened. Back then, I had an idea but there wasn't -- I wasn't too sure.
Q. What's your understanding now?
A. About what -- they were using some of our money and buying currencies outside of the United States.
Q. Foreign currency?
A. Foreign currency. Exactly.
Q. And they weren't doing that appropriately?
A. Exactly.

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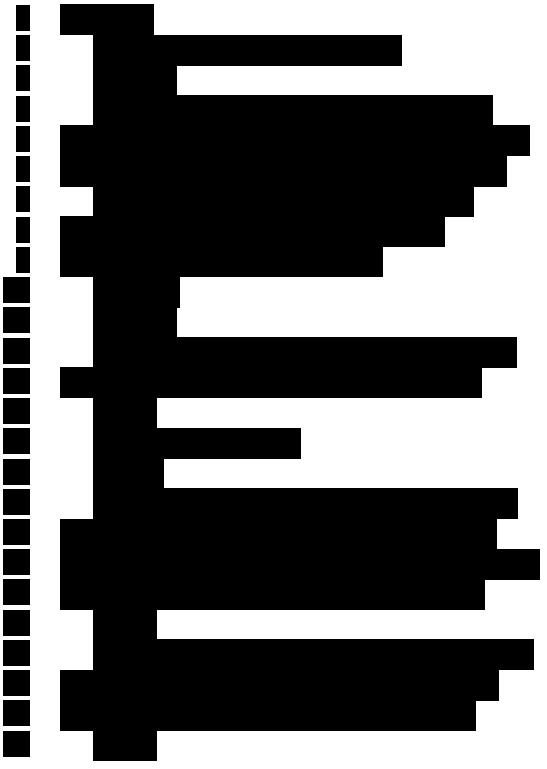

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Q. Were you aware that at a certain point the case was involved in mediation?
A. Yes.
Q. Did you go to any of those sessions?
A. No.
Q. Did Brian or others keep you aware of what was going on?
A. Back to that last question.
Q. Sure.
A. Are we talking about when I went to court? That was a part of that mediation?
Q. No.
A. No? Okay. No.
Q. You mean in March --
A. Yes.
Q. No. I'm going back to several years before the settlement.
A. No.
SPECIAL MASTER ROSEN: When the settlement was being discussed.
THE WITNESS: No. I never went to any of those.
BY MR. SINNOTT:
Q. Other than the one you attended in March of this year, did you, in the past, attend

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any court hearings?
A. No.
Q. And did you attend any meetings with firms other than Brian's firm?
A. No.
Q. And did you and Brian and others at the firm stay in contact with respect to the progress of the case --
A. Yes.
Q. -- while you were class representative?
A. Yes.
Q. And how did you stay in touch? What communications --
A. E-mails, phone calls, and texts.
Q. Okay.
A. Yes.
Q. And you felt like you were being adequately updated?
A. Oh, yes. Definitely.
Q. At some point did Brian or others seek your approval for a settlement or talk about a range of settlement that might happen?
A. Yes.
Q. And do you remember approximately when that was?

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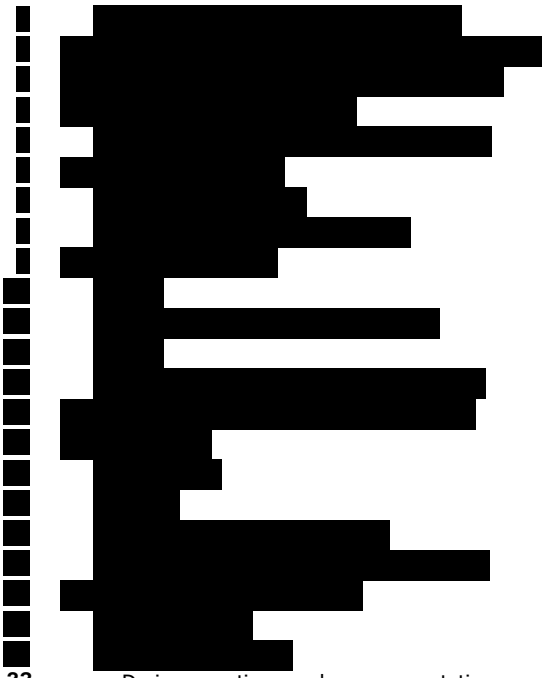

During your time as class representative before the settlement, can you estimate how many hours of your time you spent on the case?

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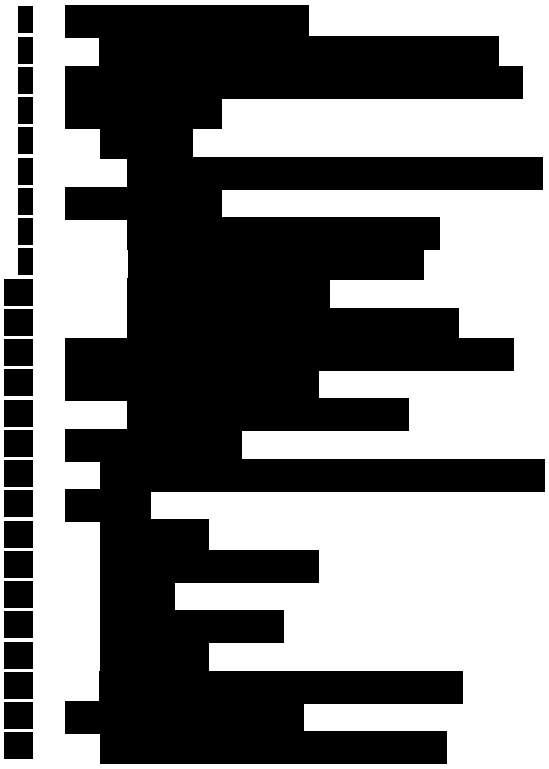
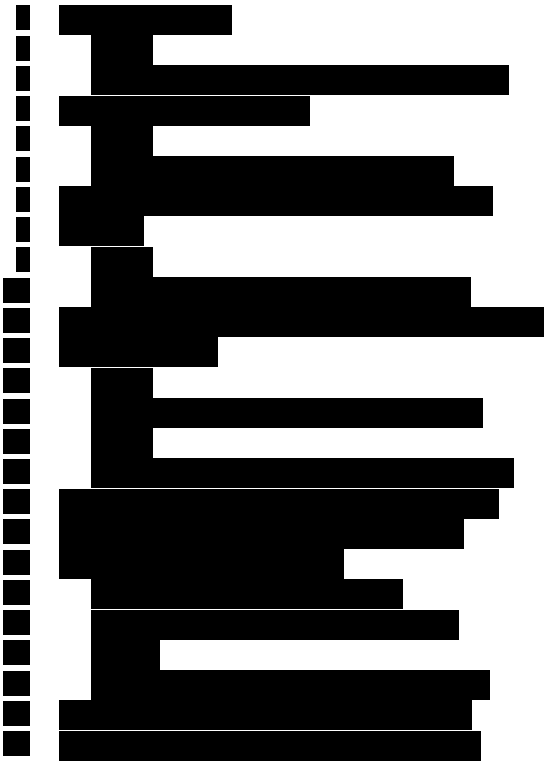
A. It's kind of hard because, you know, e-mails and phone calls. I don't know.
Q. Do you think it was 40 hours or more? Or less than 40 hours?
A. I said -- I don't know, it's kind of hard.
Q. Okay.
A. Because, you know, phone calls, sometimes we talk for half an hour, sometimes 15 minutes. Sometimes I would look at the e-mails or text, you know. So I don't know, 25, 30 hours.
Q. Okay.
A. Yeah.
Q. And while you were class representative, were you aware of any tensions or differences of opinion between your law firm and other law firms involved in the case?
A. Yes. One time.
Q. What did you hear?
A. It's just about the other firm, that they were -- actually, there wasn't -- there was not -- I mean, that was it. Nothing else.
Q. Okay.
A. Yeah. Something like that.
Q. Well, do you remember what that item that



documents that Mr. -- Brian sent me.
Q. So he let you know that there was a settlement being proposed?
A. Yes.
Q. And at some point did you learn that you were entitled to a service award?
A. No.
Q. Did --
A. Later on.
Q. Later on? When did you learn that you were entitled to a service award?
A. A few occasions I remember Brian saying that he was going to ask. But it was not for him, it was for the judge.
Q. Do you remember how much it was that you would receive as a service award?
A. $10,000.
Q. Okay. And do you think that that was an adequate amount of money to compensate you for the work that you had put into the case?
A. To be perfectly honest, it was not so much about the money.
Q. Okay.
A. It was not so much about the money. Like I said last time, you know, it was about these

companies, you know, that -- like I worked so hard. And when they -- you know, they use somebody else's money to do something else, you know, that's what -- I just disagree with that.
Q. And you wanted to do something about it?
A. Exactly. That's it.
SPECIAL MASTER ROSEN: So it wasn't about the service award, the $10,000, for you?
THE WITNESS: No:
SPECIAL MASTER ROSEN: It was about righting what you believed was a wrong --
THE WITNESS: Exactly.
SPECIAL MASTER ROSEN: -- by the managers of your pension money?
THE WITNESS: Exactly. That's right.
BY MR. SINNOTT:
Q. And Mr. Henriquez, let me ask you some specific questions that -- you know, if you weren't aware of these things, just let me know.
A. Uh-huh.
Q. Were you aware that document reviews were being conducted by some of the law firms?
A. No.
Q. And were you aware that some of the law firms were using staff attorneys to conduct



EX. 33

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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ARKANSAS TEACHER :
RETIREMENT SYSTEM, :
et al., :
Plaintiffs, : CA No. 11-10230-MLW
v. :
STATE STREET BANK :
AND TRUST COMPANY, :
Defendant. :

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July 7, 2017
Washington, D.C.

Deposition of:
MICHAEL COHN,
called for oral examination by Counsel to the Special Master, pursuant to notice, at JAMS, 1155 F Street, Northwest, Suite 1150, Washington, D.C. 20004, before Christina S. Hotsko, RPR, of Veritext, a Notary Public in and for the District of Columbia, beginning at 11:43 a.m., when were present on behalf of the respective parties:

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of your background? What city and town you live in, what your education is, and briefly your work history, please.

A. Sure. Michael Cohn. My name is Michael Cohn. I live in Highland Park, Illinois, which is about 25 miles north of Chicago. I currently -- I went to Indiana University. I graduated in 1988 with a degree in management.

After college I went to work at the Chicago Board Options Exchange as a clerk for a couple of years learning how to become a trader. And I traded on the Options Exchange floor for approximately 18 years until [redacted]

Q. And when did you retire, Michael?

A. I retired in 2006. So I've been retired [redacted] for 11 years.

Q. And Michael, during your time with the Chicago Stock Exchange, did you have any experience or familiarity with foreign exchange trades?

A. I never traded foreign currencies, but they do trade similar to -- they were traded as a future, and they also had options on those futures

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started in 1987 for the summer as a summer internship, and then started full time in the spring of 1988. And I clerked for approximately a year and a half to two years before I started trading.

Q. All right. And while at your trading position, did you participate in a 401(k) plan?

A. I did. Not at first. For many years I traded for myself. It wasn't until I'd say either 1999 or 2000 that I joined a group that was forming that was a bunch of local traders or independent traders that were forming to work together to trade a common position.

As that firm grew, benefits were offered and a 401(k) was offered. That firm was subsequently bought out by a firm called Knight Trading. And that -- it started -- that first firm where those benefits were offered where I joined a 401(k), when we were bought out by Knight Trading, things transferred over to Knight Trading. And then our division at Knight Trading was sold eventually to Citigroup, where my 401(k) continued.

Q. All right. Thank you, sir.

Had you, prior to the State Street case,

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[redacted]

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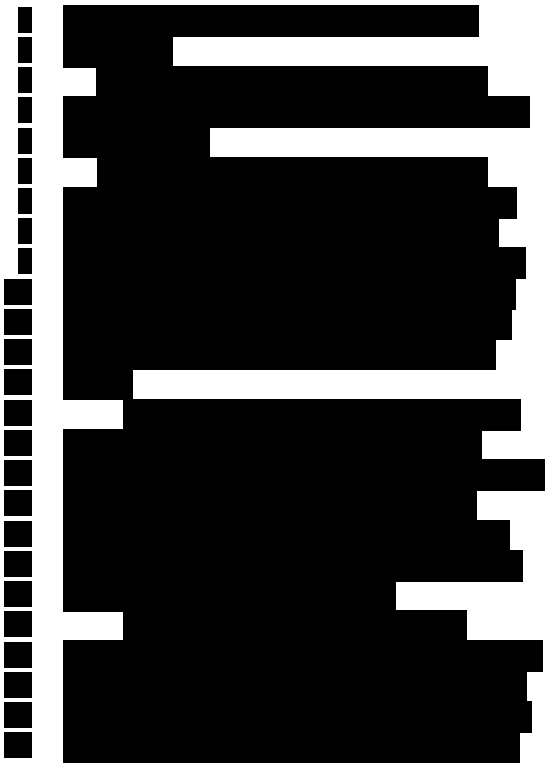
[redacted]



you know, I don't know how those funds are distributed. But ultimately, that was the reason why I did this and there's a lot of money to be distributed.

Q. All right, sir. And during your time as class representative, can you estimate how many hours you spent on this case?

A. That's a difficult question because I honestly don't know. As I said, I had dozens and dozens of boxes of records in my basement that required me go through all of those. And it's not like I sat down in one sitting. But it certainly was numerous hours. You know, more so for me [redacted] than it probably would be for someone who doesn't [redacted]. But it was hours and hours of going through those documents.

And then I'm not a lawyer, so all of the documents that Mr. McTigue sent me. You know, I don't know how many pages there were, but I definitely remember at least one of the files or documents was over a hundred pages. So I'm guessing there were, you know, a few hundred pages of documents for me to read through. And again, not being a lawyer, I probably spent a lot more

time reading through those.

So I don't know if I could give you, you know, even a reasonable guess of how many hours but, you know, it was a lot. It's -- you know, a lot.

Q. Was it more than 50, do you imagine?

A. You know, I suppose if I included -- I'll say maybe. Maybe. Maybe that's a good guess. And, you know, now when you add what's transpired this year of having to come to a hearing and come to D.C. to talk and this, you know, it's certainly, you know, a lot more than 50 hours if you include all that time that I spent traveling and all of those things. So yeah, it's definitely over 50.

Q. And I know you testified earlier that a service award or money was not the motivating factor in your service, your participation as a class representative.

But do you think that $10,000 is adequate supervision for a class representative who put in the number of hours that you did?

A. You know, if money were the motivating factor, the answer would be no. If looking back on this case and if I were doing it for the money

with the expectation of $10,000, in my personal case, no, I wouldn't do it. It's not worth it to me. To somebody who has a different background and different financial resources, the answer is probably yes.

I mean, so I think there's a wide range to that answer. But for me in particular, the answer is definitely not. I wouldn't do it again for $10,000. It was too much work for me.

And if I had tried to equate it to some of the issues going on in this case, I'd look at -- you know, the only thing I can do is compare it to what I did when I was working. And the amount of time I put into this compared to the type of money I made, it's pale in comparison and I definitely wouldn't do it.

Q. All right. Thank you, sir.

Now, during your service as class representative, were you aware of any tensions among any of the law firms and attorneys involved in the case?

A. Not at all. Not until I think it was the very end of last year or the beginning of this year after the article came out in the Boston Globe.

EX. 34

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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ARKANSAS TEACHER :
RETIREMENT SYSTEM, :
et al., :
Plaintiffs, : CA No. 11-10230-MLW
v. :
STATE STREET BANK :
AND TRUST COMPANY, :
Defendant. :

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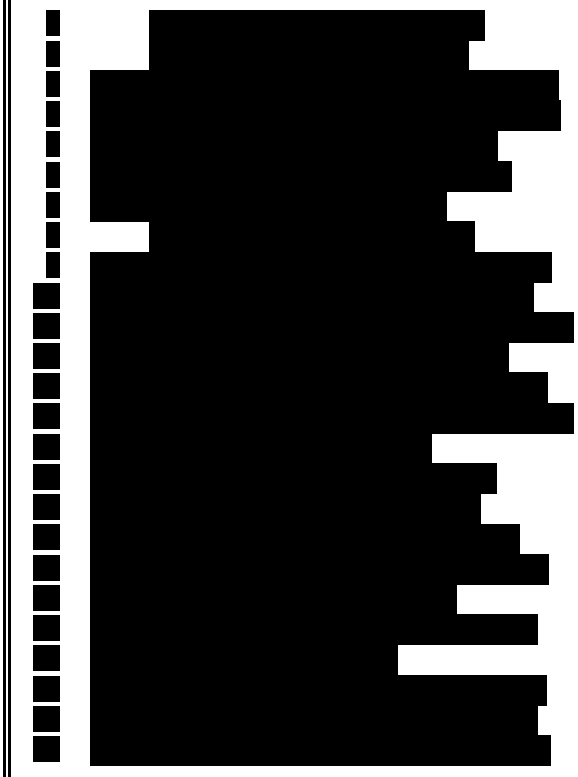
July 7, 2017
Washington, D.C.

Deposition of:
WILLIAM R. TAYLOR,
called for oral examination by Counsel to the Special Master, pursuant to notice, at JAMS, 1155 F Street, Northwest, Suite 1150, Washington, D.C. 20004, before Christina S. Hotsko, RPR, of Veritext, a Notary Public in and for the District of Columbia, beginning at 11:07 a.m., when were present on behalf of the respective parties:



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Johnson, what did you do for a living?
A. I was a chemical operator. Like 25 years, off and on different companies.
Q. All right. And when did you begin work for Johnson & Johnson?
A. I think it was '97.
Q. And are you now retired from Johnson & Johnson?
A. Yes.
Q. And was that a [redacted], sir?
A. Yes.
Q. Okay.
A. 2007 I retired.
Q. And was that [redacted] Johnson & Johnson?
A. It was part. Part was another company.
[redacted]
Q. All right, sir. But you were a chemical operator for Johnson & Johnson?
A. Yes.
Q. And could you tell us something about the pension plan at Johnson & Johnson? Do you know if it was a defined benefit plan or a defined

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contribution or 401(k) plan?
(Interruption in the proceedings.)
MR. SINNOTT: Welcome, Justin. We just got started with Mr. Taylor.
BY MR. SINNOTT:
Q. Go ahead, Mr. Taylor.
A. I actually don't even remember. I don't think it was 401(k). It might have been. I don't remember, to be honest. I know they took deductions, you know, for a savings plan or something we had. You're talking ten years ago. I can't even remember last week, let alone ten years ago.
Q. All right, sir. And had you ever before this case been involved in a class action case?
A. No. [redacted]
Q. Okay. And was that part of a class action case or was it --
A. No, no --
Q. -- an individual suit.
A. -- I don't think it was. Both parties just settled.
Q. And to your knowledge you've never served

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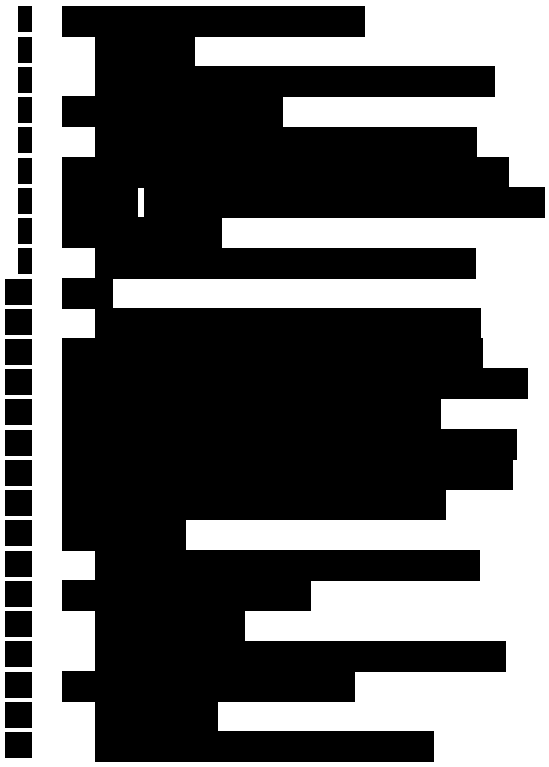

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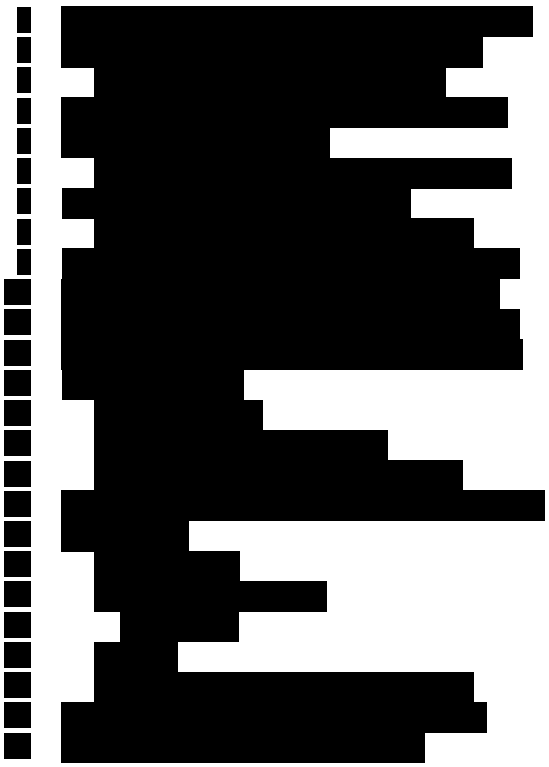
interest of the class above your own?
A. Yes. That's what I was told, I guess.
Q. And did Brian or anyone else at his firm make any promises to you about recovery or what you or the class would get out of the case?
A. No, no.
Q. Were you promised a service award when you joined the case?
A. No. I didn't hear about the award until after the settlement. He said me might -- the Judge could award us a service award. That was after it was settled. That you might get it, you might not.
Q. All right, sir.
And when you did get it, how much was that service award for?
A. 10,000.
Q. And when Brian asked you to get involved in the case, did he ask you for any documents, or did you provide any documents?
A. Yeah. I -- he asked me for some. Whatever I had, I don't think it was much, I just mailed it to him.
Q. All right, sir.
And did you ever read the complaint



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against State Street or the amended complaint against State Street?
A. I read some of it. I didn't understand it. I mean, yeah, I read a little bit of it.
Q. Did you talk to Brian or anybody else at McTigue about it?
A. I'm sure I did. I mean...
Q. And was it your understanding that the information that you had provided to Brian might have had some role in the drafting of the complaint?
A. I would imagine, yeah. I'm sure the other participants had some, too.
Q. Did you have any concerns as to downsides that might come about as a result of your participation in the case?
A. What do you mean "downside"?
Q. For example, were you concerned that Johnson & Johnson might look badly on it or that others might criticize you for it?
A. No, no.
Q. And did you and Brian or other members of McTigue Law have discussions about other complaints against State Street that had been filed on behalf of other classes?

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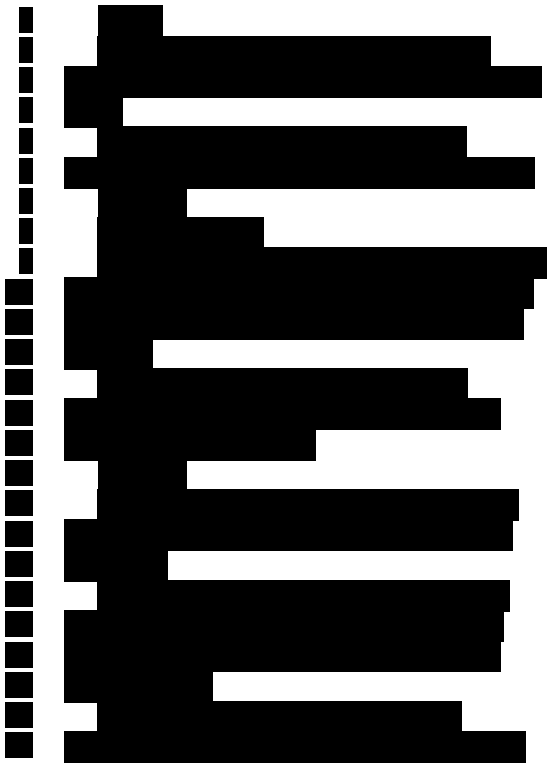
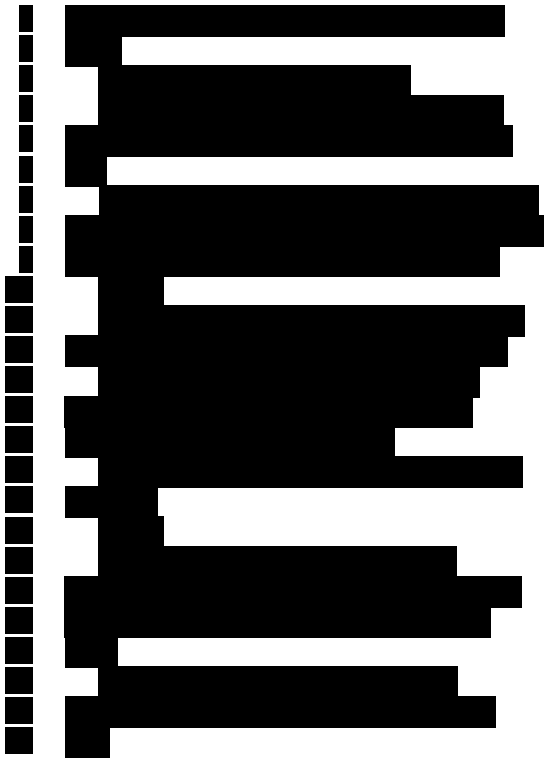


16

Q. Okay. Was that reading it in the Globe story or was that during your time as class representative?
A. Yeah, I think it was when I was class representative -- I might have gotten a paper I was reading on it. I think he sent me something like that. I think. Don't quote me on it. I don't know.
Q. Sure. Was there anything in there as far as attorneys' rates that you remember?
A. No, no.
Q. And did you ever attend any mediation sessions?
A. No.
Q. Any court hearings?
A. No. Only on the phone.
Q. Did you attend any meetings with other law firms besides Brian's?
A. No.
Q. And you said you were in frequent contact with Brian during the case. Did Brian keep you posted as far as the progress of the mediation and other matters in the case?
A. Yeah. He sent me letters. I met him one time and we talked on the phone. You know, I got

15



17

letters in the mail about what was going on. Basically he called me.
Q. Okay.
A. I talked to him on the phone a lot.
Q. No e-mails, as far as you remember?
A. Maybe there might have been some. I don't know.
Q. And did Brian at some point seek your approval for a settlement or for a range of settlements before the actual settlement?
A. No, no. Like I said, I didn't hear -- I didn't know about it till the case was settled.
Q. All right. Is it fair to say you trusted Brian to do the right thing?
A. Yes. Yes.
Q. And I know this calls for great speculation, but Mr. Taylor, can you estimate the number of hours that you spent on this case before the settlement?
A. I have no idea. I'm going to be honest with you. I have no idea.
Q. Do you think it was more than 20?
A. Probably.
Q. Do you think it was more than 50?
A. A lot of phone calls, I can tell you

18

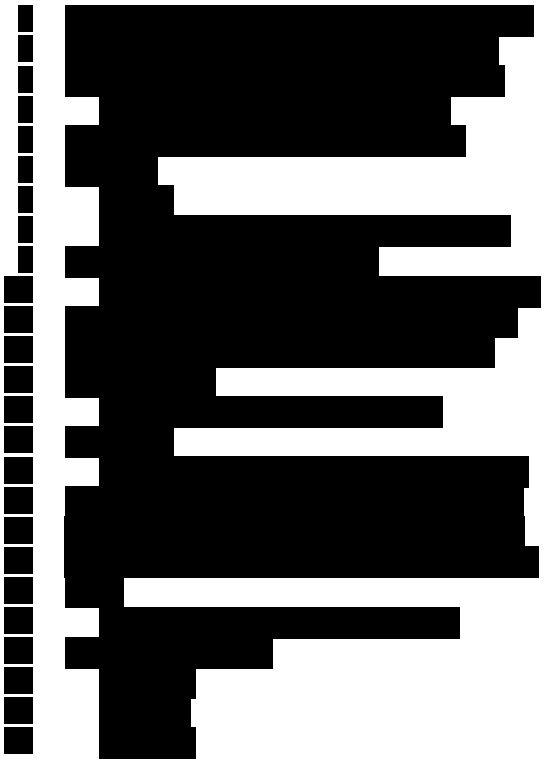
that.
Q. Okay. Do you think it was more than 50 hours, or do you think it was somewhere between 20 and 50?
A. Yeah, I guess. Yeah. I mean, I guess.
Q. Okay. Were you aware, based on your conversations with Brian or with others, about any disagreements on strategy or tensions of any kind between the ERISA attorneys that included Brian and the three big firms in the case?
A. No.
Q. And how did you learn about the final settlement in this case?
A. I think he sent me a letter and he called me and said it's getting near the end or something like that.
Q. Okay. And do you remember anything else that he said?
A. No.
Q. Do you remember what the amount was, Mr. Taylor?
A. Of what?
Q. The total settlement.
A. I think he told me it could be, like, 300 million.

20

19

Q. Okay. Did that seem fair and reasonable to you?
A. I guess. I wish I had it.
Q. Don't we all.
A. Yeah.
Q. Were you satisfied with McTigue Law Firm's work in the case?
A. Yes. Very much.
Q. And you indicated that you found out about the service award late in the case. How much was that service award for?
A. 10,000. I already told you that.
Q. Okay. And did you think that 10,000 was fair compensation for the work that you'd put into the case?
A. Yeah, I guess. Yeah. I mean, everybody wants more but, you know, like I said, like I told the Judge, I think after all this we should get more. You know? For all this aggravation we've been going through.
Q. All right. And were you ever shown any documents that State Street had produced in the case?
A. No. I don't remember.
Q. All right. And you weren't aware of, you

21



EX. 35

From: Sucharow, Lawrence <LSucharow@labaton.com>
Sent: Friday, August 28, 2015 12:04 PM
To: Lynn Sarko
Cc: Daniel P. Chiplock; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Goldsmith, David
Subject: Re: SSBT: Draft STIPULATION AND AGREEMENT OF SETTLEMENT

I didn't get the email from Brian. So I don't intend to respond.
Others who receive the email Caroline should respond. I am only seeking the same powers but all of the lead counsel in all other cases I've been in received.

Of course I intend to honor all commitments, contracts, obligations, agreements, understandings buy what ever name or title. But especially those that are in writing like Brian's.

Sent from my iPhone

> On Aug 28, 2015, at 1:02 PM, Lynn Sarko <lsarko@KellerRohrback.com> wrote:
>
> We need to be careful about this as the DOL had asked if there were any agreements on fees between counsel. I would never answer their question. And then they seem to forget about it.
> But I'd rather not highlight it and have the DOL go sideways on us.
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 9:35 AM, Brian McTigue <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>> wrote:
>
> I don’t agree with lead settlement counsel distributing attorney’s fees and expenses in its sole discretion. Attorney’s fees and expenses should be distributed pursuant to the existing, written agreements of counsel.
>
> _____
> J. Brian McTigue
> McTigue Law LLP
> 4530 Wisconsin Ave. N.W.
> Suite 300
> Washington, DC 20016
> (202) 364-6900 ext. 300
> (202) 364-9960 fax
> bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>
> www.mctiguelaw.com<http://www.mctiguelaw.com/>
> Member of the District of Columbia and California Bars
>
>
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>
> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
> Sent: Friday, August 28, 2015 9:29 AM
> To: 'Sucharow, Lawrence' <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>
> Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Lynn Sarko <lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>>; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; Evan Hoffman <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; Kravitz, Carl S. <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; Brian McTigue <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> OK, sounds good. I will also get you whatever edits I have to the settlement docs by noon.
>
> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> Sent: Friday, August 28, 2015 9:28 AM
> To: Chiplock, Daniel P.
> Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
> Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
>
> I am speaking to Paine today at around 10 AM to both report to him and get his update.
> I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
> This looks OK to me, thanks. I'm happy to send it (after you've done the other redline) to Paine, if you like. Or someone else can, no matter.
>
> From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
> Sent: Thursday, August 27, 2015 3:27 PM
> To: Lynn Sarko; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Dear all,
>
> We've had some additional exchanges about the term sheet and, specifically, para 8(n). I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal. If you disagree, please let us know asap.
>
> When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.
>
> Thanks
>

>
>
>
>
>
>
> <image001.jpg><http://labaton.com/>
> Nicole M. Zeiss | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 | F: (212) 883-7067
> E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> <image002.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.jpg><https://twitter.com/LabatonSucharow> <image004.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
> From: Zeiss, Nicole
> Sent: Wednesday, August 26, 2015 5:09 PM
> To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.
>
> Thanks
>
>
>
>
>
>
>
> <image005.jpg><http://labaton.com/>
> Nicole M. Zeiss | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 | F: (212) 883-7067
> E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> <image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image007.jpg><https://twitter.com/LabatonSucharow> <image008.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
> From: Sucharow, Lawrence
> Sent: Wednesday, August 26, 2015 4:34 PM
> To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Then we can probably forget my proposed changes.

>
> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
> Sent: Wednesday, August 26, 2015 4:26 PM
> To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Sure. If it works for them – its fine with me
>
> Lynn Lincoln Sarko
> Managing Partner
>
> Keller Rohrback L.L.P.
> 1201 Third Avenue, Suite 3200
> Seattle, WA 98101
>
> Phone: (206) 623-1900
> Fax: (206) 623-3384
> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>
> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> Sent: Wednesday, August 26, 2015 1:25 PM
> To: Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>; 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
> Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Can we leave para 8(n) the general way it is and protect the DOL through the express provision of para 12 limiting fees charged to ERISA allocation to $10.9 million?
>
> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
> Sent: Wednesday, August 26, 2015 3:42 PM
> To: Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> David
> Thanks for sending this. Sorry, I had misunderstood what you were saying on our call earlier today.
>
> Two things:
>

> 1. I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
> 2. On paragraph 8(n)- the problem is the word "fees"—since the DOL has given us a hard number for ERISA fees—that won't be going up or down. So—question—can we get rid of the word "fees" in this paragraph—does it still work?
>
> What do you think??
>
> Lynn
>
> Lynn Lincoln Sarko
> Managing Partner
>
> Keller Rohrback L.L.P.
> 1201 Third Avenue, Suite 3200
> Seattle, WA 98101
>
> Phone: (206) 623-1900
> Fax: (206) 623-3384
> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>
> From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
> Sent: Wednesday, August 19, 2015 2:59 PM
> To: 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
> Cc: Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>; Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
> Subject: SST--Proposed Revision to Term Sheet for DOL Deal
>
> All: The below reflects our proposed revisions to the Term Sheet (in red boldface) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet). Please comment. Thanks.
>
>
> 8(n). Plan of Allocation. . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court. However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.
>
> 12. Plaintiffs' Counsel's Attorneys' Fees and Expenses. Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of

the Settlement or the fee and expense award. Plaintiffs' Counsel shall may apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above. In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days. The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees. Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.

>
>
>
>
>
>
> [http://www.labaton.com/images/email-logo.jpg]<http://www.labaton.com/>
> David J. Goldsmith | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0879 | F: (212) 883-7079
> E: dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> [http://www.labaton.com/images/email-linkedin.gif]<http://www.linkedin.com/company/labaton-sucharow-llp> [http://www.labaton.com/images/email-twitter.gif] <https://twitter.com/LabatonSucharow> [http://www.labaton.com/images/email-facebook.gif] <https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
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EX. 36

From: Garrett Bradley
Sent: Wednesday, September 2, 2015 11:05 AM
To: Sucharow; Lawrence
Subject: Re: State Street FX - revised term sheet

My gut tells me they will press for a fee agreement deal or withhold signature at some point in the process. They may threaten their own fee app. State street may want us all on the dotted line but I wanted to raise it and have you think about it. It may be too late.

Garrett

> On Sep 2, 2015, at 12:02 PM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>
> Never thought of it.
> Why, is there a problem?
>
> -----Original Message-----
> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
> Sent: Wednesday, September 02, 2015 11:59 AM
> To: Sucharow, Lawrence
> Subject: Re: State Street FX - revised term sheet
>
> aren't you lead and Lieff Liason? no way around everyone signing?
>
> Garrett
>
>> On Sep 2, 2015, at 11:28 AM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>>
>> All Plaintiffs' Counsel for both Term Sheet and Stip.
>>
>> -----Original Message-----
>> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
>> Sent: Wednesday, September 02, 2015 11:25 AM
>> To: Sucharow, Lawrence
>> Subject: Re: State Street FX - revised term sheet
>>
>> Larry,
>>
>> Does any other counsel need to sign off besides you for the consumer side?
>>
>> Garrett
>>
>>> On Sep 2, 2015, at 11:16 AM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>>>
>>> I don't necessarily disagree, but would want it under my designation as Interim Lead Class Counsel, such as Interim Lead ERISA Sub-Class Counsel.
>>> That having been said, only the Court can make that designation, it is NOT a self-appointed title.
>>>

>>> -----Original Message-----
>>> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
>>> Sent: Wednesday, September 02, 2015 11:14 AM
>>> To: Robert L. Lieff; Sucharow, Lawrence; Michael Thornton
>>> Subject: FW: State Street FX - revised term sheet
>>>
>>> I'm going to respectfully suggest that we give Lynn this designation, if there needs to be one, in order to head this off.
>>>
>>> -----Original Message-----
>>> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
>>> Sent: Wednesday, September 02, 2015 11:10 AM
>>> To: Sucharow, Lawrence
>>> Cc: Chiplock, Daniel P.; Lieff, Robert L.; Garrett J. Bradley; Michael Thornton; Zeiss, Nicole
>>> Subject: Re: State Street FX - revised term sheet
>>>
>>> I will call him
>>>
>>> Sent from my iPhone
>>>
>>> On Sep 2, 2015, at 8:09 AM, Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>> wrote:
>>>
>>> Lynn this is getting crazy. We don't believe there is a need for such a designation, but if so, he should move before the Court so we can oppose.
>>> If I talk to him there may be a schism created. I suggest you ask him what the heck he's doing.
>>>
>>> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
>>> Sent: Wednesday, September 02, 2015 10:57 AM
>>> To: Sucharow, Lawrence; Lynn Sarko; Robert L. Lieff
>>> Subject: RE: State Street FX - revised term sheet
>>>
>>> I'm sure you guys noticed that Brian has appointed himself Interim Lead ERISA Counsel in the signature block?
>>>
>>> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
>>> Sent: Tuesday, September 01, 2015 11:07 PM
>>> To: Lynn Sarko
>>> Cc: Zeiss, Nicole; Chiplock, Daniel P.; Rogers, Michael H.; Goldsmith, David
>>> Subject: Re: State Street FX - revised term sheet
>>>
>>> Lynn, you and I should discuss how best to handle Brian, I completely agree with you.
>>>
>>> Perhaps a side letter from me as lead counsel saying I intend to abide by the agreement entered into between class counsel and ERISA counsel, dated, whatever, would satisfy him?
>>>
>>> Lawrence Sucharow
>>> Labaton Sucharow, LLP
>>> Sent from my iPad
>>>
>>> On Sep 1, 2015, at 10:43 PM, Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>> wrote:
>>> This is what went to the DOL as a draft.

>>>
>>> Lynn
>>>
>>> Lynn Lincoln Sarko
>>> Managing Partner
>>>
>>> Keller Rohrback L.L.P.
>>> 1201 Third Avenue, Suite 3200
>>> Seattle, WA 98101
>>>
>>> Phone: (206) 623-1900
>>> Fax: (206) 623-3384
>>> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>>>
>>>
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>>>
>>>
>>> <#1397344v11_Active_ - State Street - Term Sheet.DOCX> <State Street - Term Sheet - State Street - Term Sheet.pdf>
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EX. 37

Volume: 1

Pages: 1-136

JAMS

Reference No. 1345000011/C.A. No. 11-10230-MLW

In Re: STATE STREET ATTORNEYS FEES

BEFORE: Special Master Honorable Gerald Rosen,
United States District Court, Retired

DEPOSITION of LYNN LINCOLN SARKO

September 8, 2017, 9:11 a.m.-12:29 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

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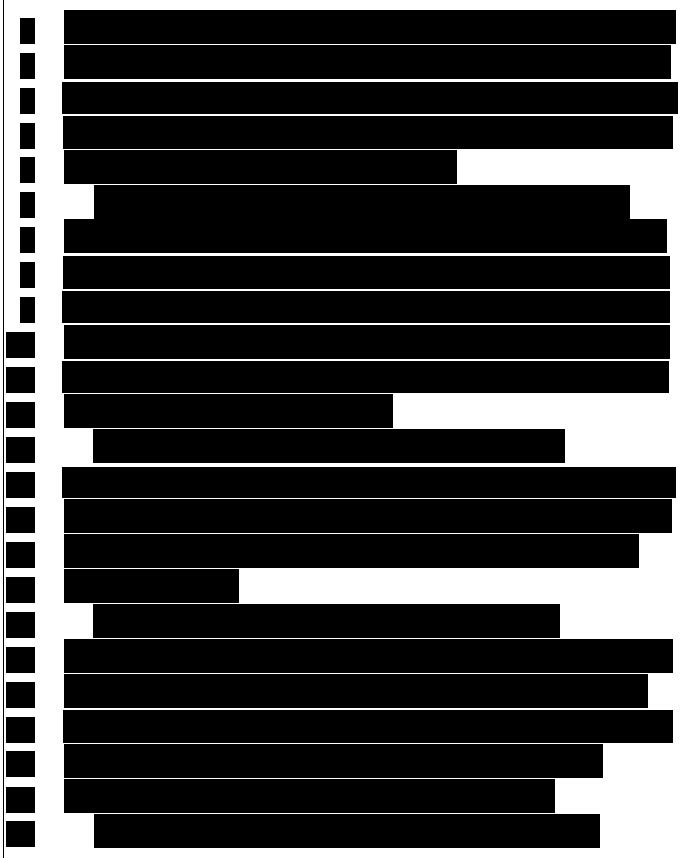

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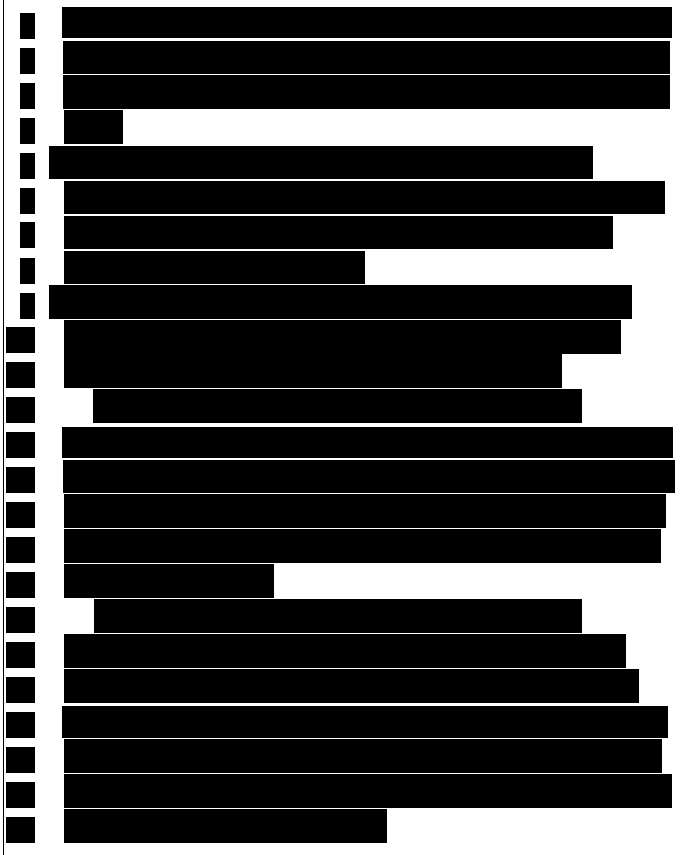

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case progressed?
A. Um, yes. But I will say in every case there are tensions. There were -- you know, we came into this case after it had already started, and I was aware of some tensions when we first got in between Mr. McTigue and the Labaton firm.
And I don't say that casting dispersions towards anyone, but they were both representing at that time different classes.
Q. And beyond the occasional tension among counsel, could you characterize for us the level of scrutiny that federal regulators presented in this case?
A. I'm most familiar with the Department of Labor, and I think, as I had explained before, under the ERISA statute there is authority on three people to bring these types of cases.
One are the plan participants. The second one are the fiduciaries of the plan. And the third one is the Department of Labor.
The Department of Labor monitors these very clearly, and they have a -- they're not only interested in the defendants and what the release issues are if you try to settle a case, they're

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interested in the recovery and how much of that recovery is going to class members.

And part of that is the attorneys' fees. And they -- their view is that they have a obligation to scrutinize those fees on the sense that the more that goes to the attorneys, the less goes to the plan participants.

However, there's a tension because they do not have the resources to bring all the cases in the world. They value private plaintiffs bringing cases. They also, at least in the past, had believed that counsel should be compensated. So they -- they want to make sure that the fees are fair and that, you know, they're proper.

They also believe in transparency. So they want to know, you know, just as a Court does, what the fees are and whether they're justified.

THE SPECIAL MASTER: Lynn, so that we're clear, in a case such as this in which there are two classes or sets of classes --

THE WITNESS: Right.

THE SPECIAL MASTER: -- an ERISA class and a non-ERISA class, customer class, is the Department of Labor's focus on the ERISA class, or

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is it looking at both classes? Does it view itself as a protector of both classes?

THE WITNESS: I'm not speaking on the Department of Labor, but in my experience --

THE SPECIAL MASTER: Just based on your experience --

THE WITNESS: -- they're focused with laser-like intensity on the ERISA case and the ERISA class. And they will, you know -- I don't think they really pay attention to what the non-ERISA part of the case the fee award is.

I think their view is that's the purview of the federal judge, and it's not their business.

THE SPECIAL MASTER: Is that because of the department's jurisdictional mandate --

THE WITNESS: Yes.

THE SPECIAL MASTER: -- under the statute?

THE WITNESS: Yes. And I also think that, you know, their view is in many of these cases there are lots of different interests.

There is the department of the SEC, the Department of Justice, etcetera, and they -- they pretty much, as you say, stay in their lane, and

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Page 22

[redacted]

Page 23

[redacted]

: So the DOL -- in realistic terms DOL had to be satisfied [redacted] in almost every case I've been in where there is an ERISA -- large ERISA exposure, the defendants will want to make sure they [redacted] I mean in this case, bluntly, you have State Street, and you never know, but it seemed clear that they wanted a global settlement. They were free to have settled the customer case separate and the ERISA case separate.

It was pretty clear that they weren't

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going to settle -- if they were going to settle the ERISA case, they were going to settle the Department of Labor and the plaintiffs' class case at the same time

And as a background, you know, we have a history of litigating with alongside the Department of Labor. I mean I mentioned Enron. We were -- during the time of this case had a case in Alabama where we were jointly going to trial with the Department of Labor as co-counsel.

So in the ERISA portions of the case they view themselves as active participants.

BY MR. SINNOTT:

Q. And the top paragraph I found a bit intriguing, counsel.

Attorney Bob Lieff addresses the concerns that have been and the course of action that have been raised by Attorney Sucharow and Thornton and says, [redacted]

What's going on here? Why is that the proper tact as far as -- to the extent your

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[redacted]

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THE WITNESS: That was a negotiated point with the Department of Labor, and it was having discussions with them about this case, other case -- other similar-type cases, how large this case is, how much work the ERISA folks did, etcetera.

As I say, they're very focused on the ERISA portion.

THE SPECIAL MASTER: I can't remember. What's the term of that 10.9 -- ERISA settlement? There's a term --

THE WITNESS: 10.9 million dollars in attorneys' fees shall be paid out of the ERISA settlement allocation.

THE SPECIAL MASTER: ERISA settlement allocation.

THE WITNESS: Right. So that means 60 million, the maximum that can be deducted, and that is because they were focused with laser-like intensity on [redacted]

THE SPECIAL MASTER: -- to the class.

THE WITNESS: -- to the class.

THE SPECIAL MASTER: So the ERISA attorneys did not get 10.9 million dollars.

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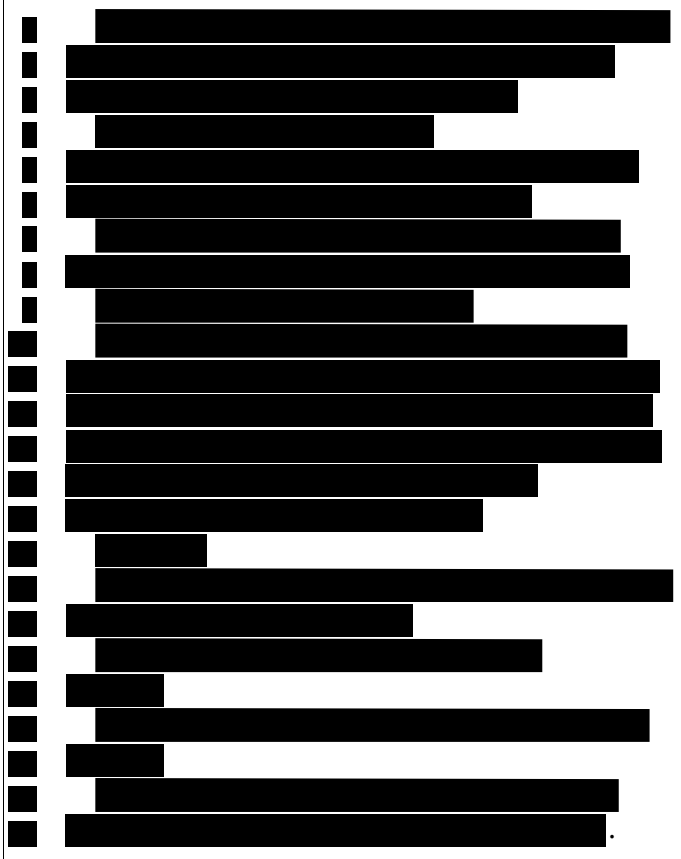

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counsel and its discretion in distributing attorneys' fees and was looking for some transparency, or at least to use the documents that had previously been entered in the case?

A. Yeah, I think as Ronald Regan would say, trust but verify. So I think Brian was being careful.

Q. But you respond to Brian's e-mail. Could you tell us what you were telling him there?

A. One of the issues that the Department of Labor was very interested in was was

Page 53

Q. So you felt the Department of Labor might sense a problem and may respond negatively or at least in a way that counsel did not want it to respond?

A.

Q. So the trust issue can I infer is that Attorney McTigue didn't necessarily trust lead

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[redacted] **And I would just be clear. I was unaware of any agreements or any participation of anyone who was not a class counsel in this case.**

So, you know, looking at that phrase, I knew that there were some discussions between customer class counsel amongst themselves of how they were going to divide any fee. At the time, you know, I knew that, you know, the case was in Boston, and Labaton was acting as, you know, what I thought was local counsel in addition to their other duties.

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[redacted] **n**

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"Charlets" which is a type of a cow on a farm but...

I don't know who he is or had any dealings with him.

THE SPECIAL MASTER: But the firm -- your firm had at least appeared in cases that he had appeared in apparently.

THE WITNESS: Yeah. There is -- there is a airline -- domestic airline case that when we did a search in our database, it turns out he was counsel in a case that was filed in California I think or New York -- I guess we had filed one in California, and he had filed one in New York, but there are hundreds of cases that were MDL in that case. And he showed up as a -- on the service list.

But no one in my firm -- I asked. No one has -- knows who he is or has had any dealings with him.

Q. And in that response you indicate that you did not know -- the firm did not know that Mr. Chargois had any relationship with or involvement in the State Street litigation, and you were not made aware of this involvement prior to the time that the special master and counsel inquired about Mr. Chargois in August.

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Can we also infer that you did not know about any other person that might be considered to be a referring attorney for Labaton or for customer class counsel?

A. I did not. And, in fact, my understanding was that the Arkansas Teachers Association, Mr. Hopkins, contacted Labaton about the case. So I didn't know that there was a referring attorney at all.

THE SPECIAL MASTER: Which brings us to this question I'd like your thoughts about as a veteran practitioner in this area, particularly on the plaintiffs side.

What is your understanding of a referral fee and a referring attorney?

THE WITNESS: Um, well, the term "referral fee" has a meaning -- a specific meaning in the ethical rules. And, you know, the ABA has a model rule. I think it's 1.5. Most states have rules as to referral fees.

There also used to be long ago I think in the nineties a term called "forwarding counsel," and certain states allowed forwarding counsel.

But, you know, the ABA was active, and

Page 54

[redacted]

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[redacted]

18 Q. And in that response you indicate that you
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9 **all.**

[redacted]

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specify very clearly who gets what, and others, you know, describe more generally, but that's a second requirement.

MR. KELLY: Excuse me. Object -- it's being suggested people are having a hard time hearing the witness, not the questioners.

THE SPECIAL MASTER: Can you speak up, Lynn?

THE WITNESS: Yeah. There are three issues I think that are involved.

One is the settlement agreement has certain obligations sometimes as to who can share in a distribution. There is class notice, and certain class notice makes representations.

There is the order that the Court issues approving the settlement that may specify what it is, you know, and -- I mean generally in a class action only class counsel may share in the award of fees. Or shall you say authorize counsel?

You know, and I guess the issue of referral fees are in class actions, in my experience, typically if there is a referral counsel, that referral counsel might receive an extra bump so-to-speak, but usually they appear on

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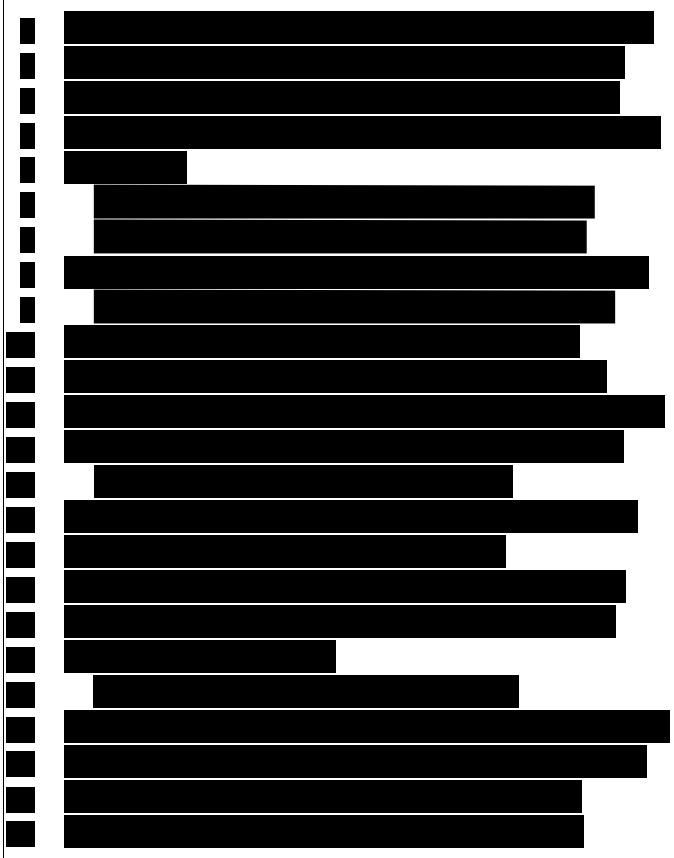

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divided up.
But in every case no judge wants to be surprised. So the answer is if you think it might be relevant, you should tell the Court.
THE SPECIAL MASTER: Err on the side of transparency and disclosure?
THE WITNESS: Yes. As I said yesterday in a lead counsel appointment hearing in Kansas City, I told Judge Crabtree that one of the issues in appointing lead counsel, he wants to make sure at the end of the case you're not surprised, and you're not embarrassed. And I promise you that I will not do either.
THE SPECIAL MASTER: When did you first find out about the arrangement with Mr. Chargois in this case?
THE WITNESS: I'm still finding out about the arrangement.
The first time I heard about Mr. Chargois was in August when your counsel asked me about it, and I've listened in on some depositions, to parts of them, you know, usually from airports. So I have pieces.
And I think the issue that -- maybe it'd

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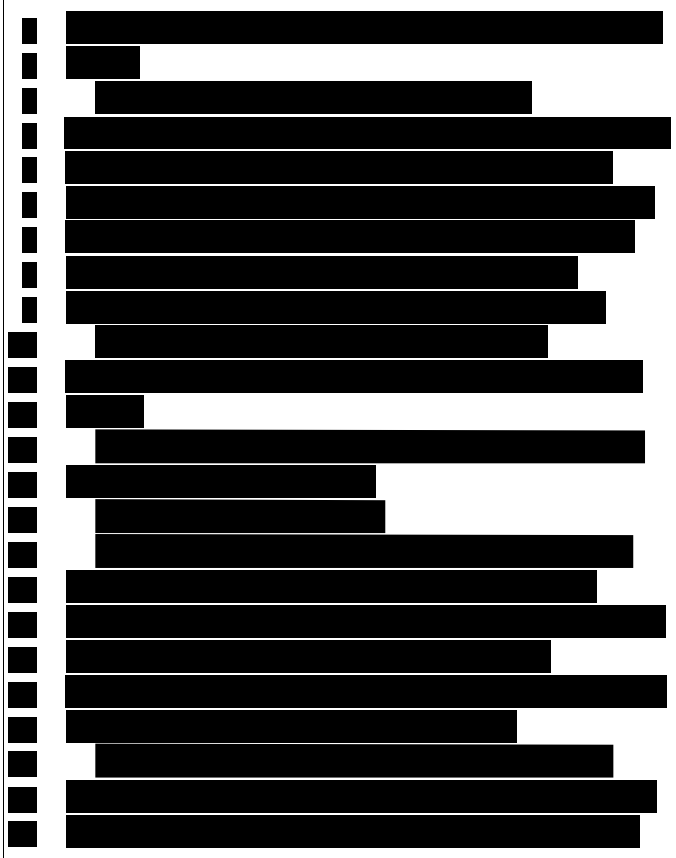

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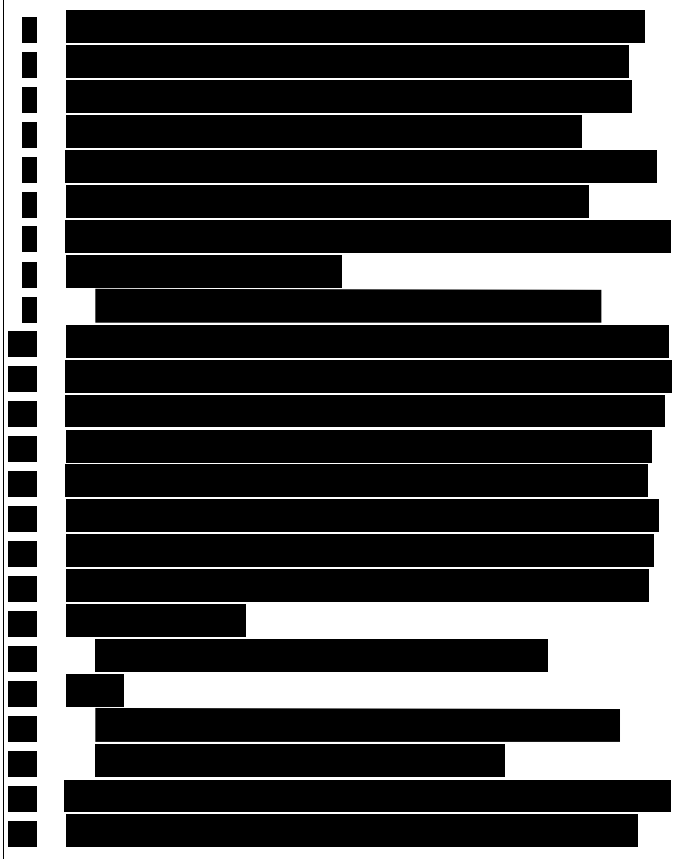

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I'm willing to guess that not all the customer class counsel knew the details.
And I only say that because in cases I've had somebody might say, oh, so and so is a local counsel or so and so is a referring counsel.
You know, I in those cases if I'm lead counsel will ask to see -- you know, I want to see the backup so-to-speak.
THE SPECIAL MASTER: The referral --
THE WITNESS: But if I'm not the lead counsel, you know, I would assume that if somebody says they're the referring counsel or they're the local counsel, that that is a term of art. And therefore I'm assuming it's legit.
THE SPECIAL MASTER: And Department of Labor was not aware -- it was not disclosed --
THE WITNESS: Correct.
THE SPECIAL MASTER: -- to the Department of Labor. Not disclosed to the SEC.
THE WITNESS: I have no knowledge of that. I'm guessing not but...
BY MR. SINNOTT:
Q. What would you have done, counsel, if during the course of this case you had learned about

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Mr. Chargois?
A. Well, I think in my answer -- if we go back to the original time, the 9 percent deal, I would not have agreed to that. I guess I would not have agreed to file a joint fee petition if some money was going to Mr. Chargois now that all this information has come out.
I mean the first thing is I would have asked some questions, but I think that's -- you know, that's 20/20 hindsight.
I think the real issue is if I would have known this information, I would have not agreed to file a joint fee petition. Because I would not have wanted -- I mean bluntly in order to do that, I would have had -- I would have first had to talk to the other ERISA counsel, and they would not have agreed.
I would have had to get approval from the named plaintiffs who would not have agreed. I mean you've met our named plaintiffs. They're straight shooters. They would say this doesn't sound right.
I would have insisted that if we were going to do it, that he would have had to file a

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notice of appearance, you know, would have been disclosed. I guess there'd be issues as to why he's getting paid, etcetera.
But that's easy. I would have -- later if I would have found out at the time before we filed the fee petition, I would have not agreed to be part of this. And I suspect if you ask -- you know, I'm channeling -- but some of even the other customer class counsel, they would say they wouldn't have either, you know. It isn't -- wasn't their deal.
And on the claw-back agreement, I would have never signed the claw-back agreement.
THE SPECIAL MASTER: Would you have felt an obligation -- had you known about this agreement with Mr. Chargois that Labaton had and that ultimately the other two firms agreed to participate in the distribution, would you have felt an obligation to disclose that in your depositions with the Department of Labor?
THE WITNESS: If it was a joint fee petition, yeah. And I just want to say this last thing -- and you're going to be asking the people. I don't believe that the other customer class

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counsel knew about the details of this arrangement.
THE SPECIAL MASTER: By the "other customer class," you mean --
THE WITNESS: Lieff Cabraser or even the Thornton firm. I mean I listened to part of Mike Thornton's deposition. That's not to say somebody in the firm didn't know, but I mean he seemed to be generally surprised.
And I've dealt with the Lieff Cabraser firm for, you know, many years, and I've never heard of -- of them participating in anything like this.
THE SPECIAL MASTER: They may not have known the details of the arrangement with Mr. Chargois, but they certainly knew that he was going to get a percentage of the total fee based upon an agreement that Chargois had with Labaton.
THE WITNESS: I -- I saw an e-mail, but other than that, I have no knowledge.
THE SPECIAL MASTER: Okay.
THE WITNESS: I saw an e-mail recently.
THE SPECIAL MASTER: So what would you have done? You said you would have filed a separate fee petition.
What would you have done had you know of

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this agreement with Mr. Chargois or to pay -- I should say pay -- Mr. Chargois 5.5 percent of the total fee?

THE WITNESS: I guess the question is when. Again --

THE SPECIAL MASTER: Well, had you known -- at the time of the negotiation. Let's go back to the time --

THE WITNESS: Yeah.

THE SPECIAL MASTER: -- you negotiated the 9 percent which became 10 percent.

THE WITNESS: Right.

THE SPECIAL MASTER: Now it wasn't 5.5 percent at that time, but what would you have done if you had known that Mr. Chargois was in a position to receive a significant fee in this case?

I don't want to call it even a fee -- a significant payment.

THE WITNESS: Yeah. I would not have signed the agreement, but I just want to be clear so that no one misunderstands. I'm not quibbling with our agreement over the 9 percent.

You know, the reason why I say I wouldn't have signed it was not because of that. I

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would not have signed it because I would not have wanted to file a joint fee petition in which Mr. Chargois was going to be receiving money, directly or indirectly, from.

BY MR. SINNOTT:

Q. That's an interesting response, Lynn.

Do you think that reallocation is appropriate?

A. You know, I'm being very careful because I don't want anyone to think that, oh, Lynn, is trying to have the ERISA lawyers receive more money. That's not -- to me this is -- I'm not -- that's not where I'm going at all.

I don't think Mr. Chargois received -- deserves the money. I also don't believe that the other two firms -- I mean you can break it down -- the other two firms don't deserve to be charged part of it.

Now whether you want to, you know, deal with other issues in the case, you can. But the real issue that we start with is I don't understand why Mr. Chargois should be getting money out of the fee pool. Or whether any, you know -- anyone should have been charged any of that.

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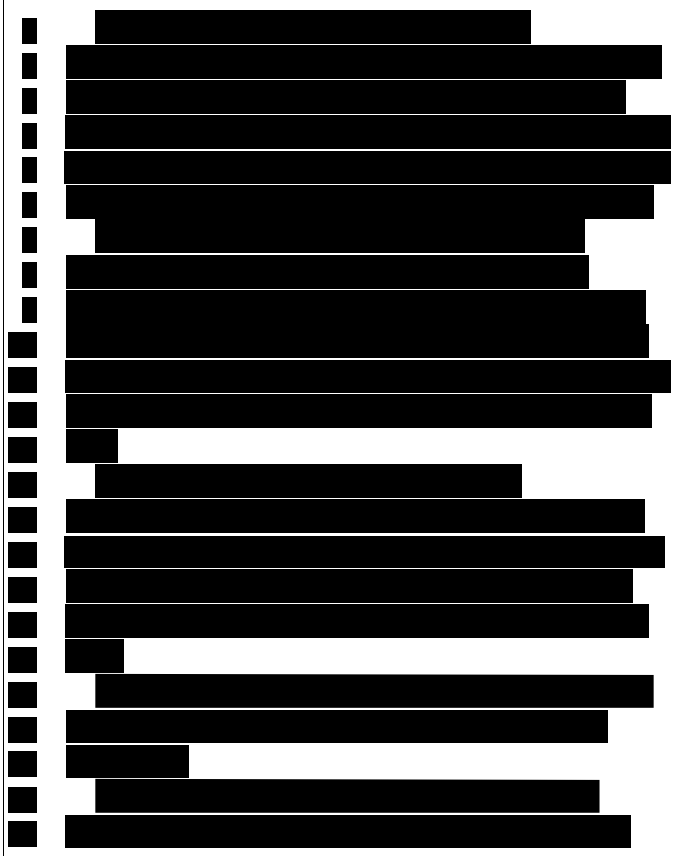

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is, at least clear to me, that the issue here is between the Labaton firm and Chargois. At least that's the way I look at it.

I listened to everything --

THE SPECIAL MASTER: Do you think -- look, from everything we've been able to see and hear in depositions, the contract that was entered into between the Labaton -- between Lieff Cabraser rather and Labaton and Thornton on the one hand, the customer class lawyers, and the ERISA lawyers on the other hand was a negotiated contract made early on --

THE WITNESS: Hm hm.

THE SPECIAL MASTER: -- based on the knowledge that everybody had at the time.

Assuming that on the ERISA side no lawyers knew about the agreement with Mr. Chargois, is your testimony here today that it would not have affected the ERISA lawyers' negotiating position in agreeing to some percentage?

THE WITNESS: Not at all. It would have --

THE SPECIAL MASTER: I want to be clear on that.

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THE WITNESS: Yeah, it would have.
It would have because we wouldn't have agreed to file a joint fee application. We would not have agreed to -- well, you know, part of any agreement is that you want there to be full disclosure of anything affecting it at the front end.
I guess, to start with, was that 9 percent deal when Bob Lieff and I discussed it was for the purpose of putting the people onto the same team so-to-speak, and part of that, to get the people trusting each other because there was some distrust between certain ERISA lawyers and certain customer class lawyers.
So I guess the answer is it seems pretty obvious to me step one is if in that negotiation I called the other ERISA lawyers up and say, hey, let's work together with the customer class lawyers and don't worry about bury your issues with the Thornton -- or with the Labaton firm on, oh, by the way, there is this lawyer in Texas that is getting a share of the fee but you can't tell anyone about the person, the deal would have never happened.
[redacted]

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[redacted]

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entities, to the goal line. And so that was -- that was this piece of it.
And I guess all I'm saying is if you would have dropped this piece of information into the mix, it would have blown that up. But I do believe that that information should have come out at day one. And I'm guessing if it came out at day one, maybe it would have gone away.
You know, I still don't understand why -- why Damon Chargois should have gotten paid money when the witness for the Arkansas Teachers Fund said they didn't know about it.
And if that would have been cleared up at the beginning and you would have taken that away, then maybe we wouldn't have this issue.
THE SPECIAL MASTER: So --
THE WITNESS: But it would have been --
THE SPECIAL MASTER: I think you answered my question, but there was a lot of answers in it.
THE WITNESS: Yeah -- no, let me go forward. I guess I'd also say that if you would have said -- if as part of that you say, okay, get past that, would it have affected your negotiation

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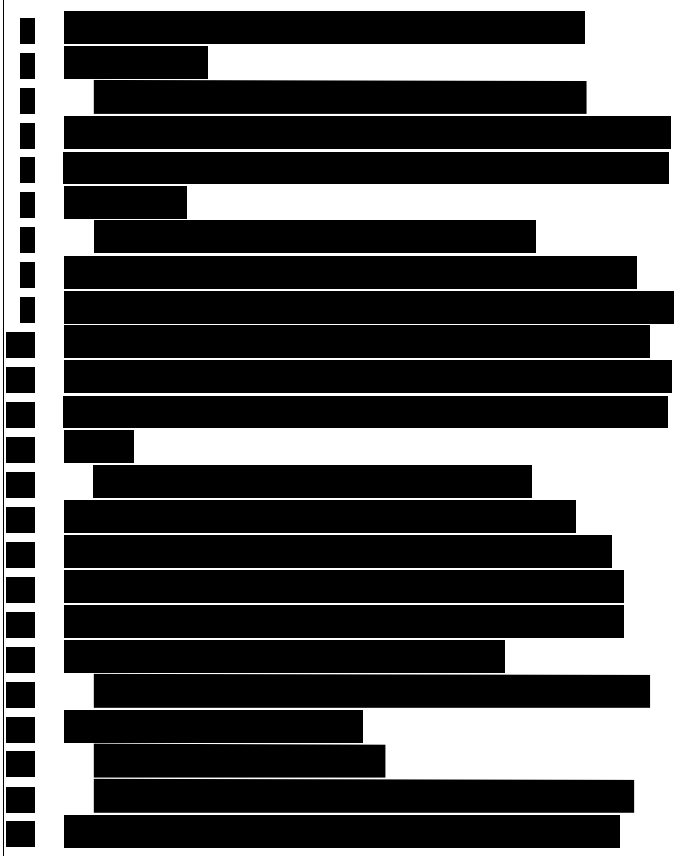

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million, or was it coincidental, ended up becoming a 7.5 million dollar settlement or allocation?

Did -- you know, who drove that diminution in value? I mean is that just something DOL laid out there as an upper marker that had nothing to do with the number that was originally arrived at?

A. The discussions with the Department of Labor and the determination of the 8.1 percent was -- did not, as far as I felt, was not connected to any other agreement in the case.

It was purely an issue of in a 300-million-dollar settlement, of which we had 60 million dollars for the ERISA class, and we started with the thought of would 25 percent of a fee be proper for -- for everyone, and the issue was what would the Department of Labor feel comfortable of.

You know, there were people at the time saying that, you know, this is a hold-up because we've done all the work, and the Department of Labor is waltzing in at the last moment and, you know, trying to take credit. And there's -- you know, it depends on which way you look through the window, but I could see that view.

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And do I think that the -- I think the ERISA class members got a great deal; and if they would have been charged 25 percent, that would have been proper. But what we ended up getting done was an 18.1 percent cap.

BY MR. SINNOTT:

Q. Do you think the role and payments to Chargois were material enough to have warranted notification to the class?

A. Um, well, I don't think -- let me answer I think no -- I mean I think the class should have been notified as to what attorneys' fees were being paid. I think the class needs to know who is, in essence, getting the money.

I think that's actually an issue for the judge to do. I mean the judge should decide who can share in the fee. And if the judge decides that Mr. Chargois should not be getting the money, then he shouldn't get the money.

THE SPECIAL MASTER: He's got to know about it first though.

THE WITNESS: He's got to know about it. I guess I'd say the class -- the class was notified and got charged what they charged or paid.

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THE SPECIAL MASTER: Let me put it a little more directly, please.
THE WITNESS: Right.
THE SPECIAL MASTER: If you had known about the Chargois arrangement --
THE WITNESS: Right.
THE SPECIAL MASTER: -- would you have felt an obligation to disclose that to the class representatives, to the folks at Andover?
THE WITNESS: Oh, absolutely, and I would have said it can't be done without their approval.
I guess if it's going to be done out of any monies from the ERISA class. I mean they had authority only over monies from the ERISA class.
BY MR. SINNOTT:
Q. What about the regulators, DOL, SEC? Would this have been material to them?
And based on your experience, what do you think they would have done?
A. Um, I think that -- I think that State Street would have thought -- not State Street.
I think the Department of Labor would have thought this was the responsibility of Judge

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Wolf, and they would have expected that Judge Wolf was controlling the class attorneys' fees and that he was over it.
I think they would have --
THE SPECIAL MASTER: Inherent in that though is that it would have been disclosed to Judge Wolf.
THE WITNESS: Right. Right. And I think if it was disclosed to them, the Department of Labor, they would have called me up and said what's going on here, and, you know, what do you think should happen.
And I think the answer is that if money is to be paid to class counsel -- if money is to be paid to anyone, it has to be by authority of the Court and abide by ethics rules.
And if -- and if those two things happened, the Department of Labor would be happy.
BY MR. SINNOTT:
Q. Do you think that the revelation of an obligation like this, ultimately 4.1 million dollars, would make a district court judge a little bit more scrutinizing of lodestar, of numbers that are submitted as part of the case on the premise

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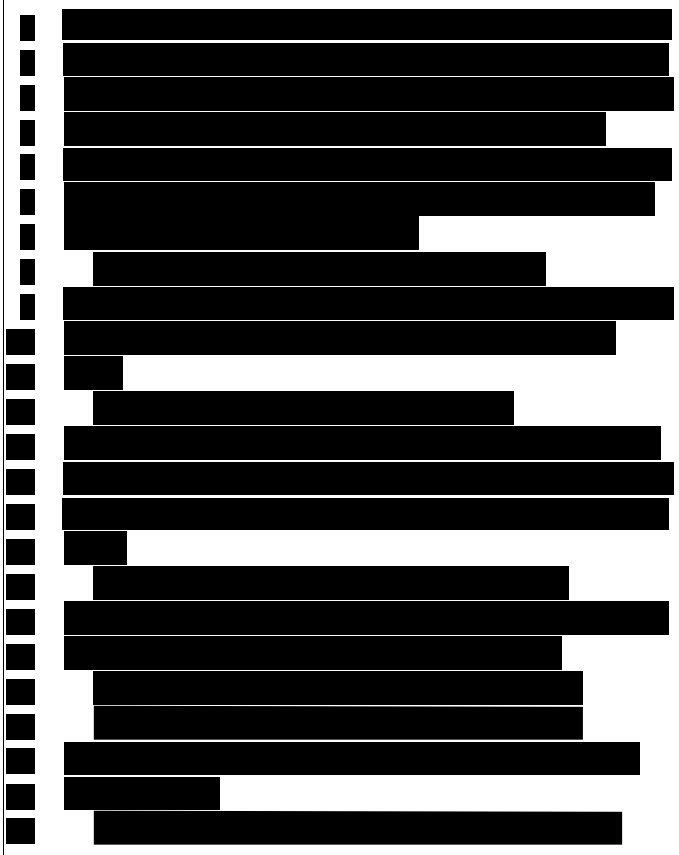

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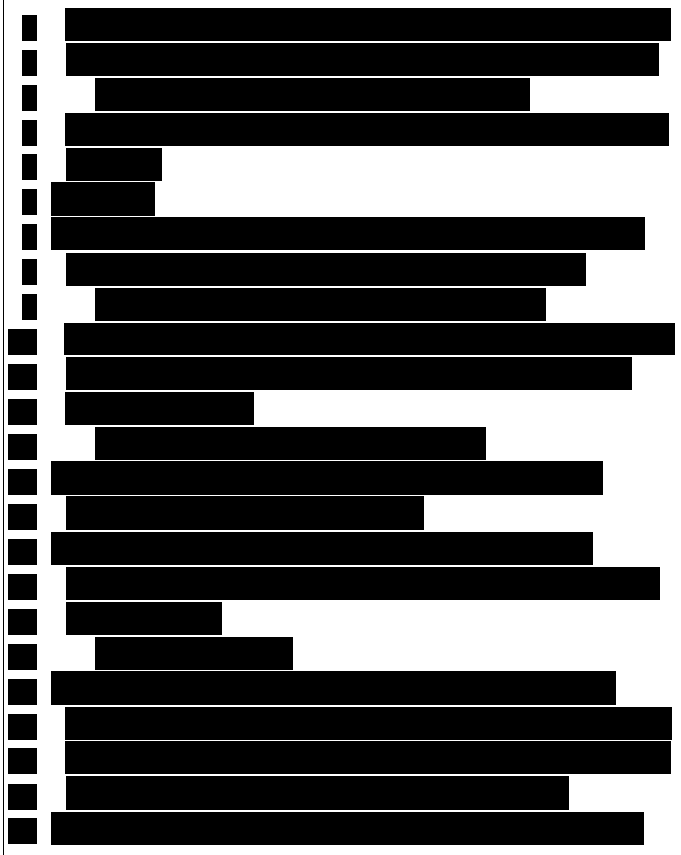

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writes: "Lynn, you and I should discuss how best to handle Brian. I completely agree with you. Perhaps a side letter from me as lead counsel saying I intend to abide by the agreement entered into between class counsel and ERISA counsel dated whatever would satisfy him."

Do you see that?

A. I do.

Q. What was the issue that was with Brian? Was it the same one as we referenced earlier?

A.

Q. Okay. And it appears that it might have gone a step further. If you look at Dan Chiplock's e-mail above that, he says,

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JAMS

Reference No. 1345000011/C.A. No. 11-10230-MLW

In Re: STATE STREET ATTORNEYS' FEES

BEFORE: Special Master Honorable Gerald Rosen,
United States District Court, Retired

DEPOSITION of LAWRENCE A. SUCHAROW

September 1, 2017, 1:31-3:59 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

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PROCEEDINGS

(Witness sworn.)

MR. SINNOTT: Good afternoon, everyone. Welcome back. It's approximately 1:33, and our witness is Attorney Lawrence Sucharow. This is the case of Arkansas Teacher Retirement System, District of Massachusetts C.A. No. 11-10230-MLW also known as the State Street Bank & Trust Company case.

My name is William Sinnott, S-I-N-N-O-T-T. I'm an attorney with the law firm of Donoghue, Barrett & Singal. I am counsel to the special master.

The special master is The Honorable Gerald Rosen, retired, formerly of the Eastern District of Michigan, and he's been appointed by Judge Mark L. Wolf as special master in this matter pursuant to rule federal procedure.

Also assisting --

TELECON VOICE MESSAGE: The following participants have entered the conference. The following participants have entered the conference. No names available.

MR. SINNOTT: Also assisting the special master to my right is Attorney Elizabeth McEvoy, M-C-E-V-O-Y, and to her right is Justice Mary Beth Kelly who's also part of the special master's team.

On the telephone is Attorney John Toothman, and we'll get everyone else's identity on the phone in a moment just to see who's called back.

But at this time I would respectfully ask that counsel identify themselves beginning with Joan.

MS. LUKEY: Joan Lukey, Choate Hall & Stewart here as outside counsel to Labaton Sucharow, and the witness.

MR. SINNOTT: Thank you. Justin.

MR. WOLOSZ: Justin Wolosz from Choate Hall & Stewart also on behalf of Labaton Sucharow and the witness.

MR. STOCKER: Mike Stocker, general counsel to Labaton.

MR. SINNOTT: Brian.

MR. KELLY: Brian Kelly and James Vallee of Nixon Peabody, outside counsel for the Thornton Law Firm.

MR. SINNOTT: Thank you. Jim.

MR. VALLEE: He announced me. Thank you.

MR. SINNOTT: I thought you might want to do it for yourself.

MR. VALLEE: Brian Kelly can --

MR. SINNOTT: More reason if he tried to speak for me. All right.

And on the line let me -- just to save talk-overs, if I could see here, John Toothman, are you on the line?

MR. TOOTHMAN: Yes.

MR. SINNOTT: Richard, are you on the line?

MR. HEIMANN: Yes. Richard Heimann of Lieff Cabraser. Thank you.

MR. SINNOTT: Thank you, Richard. Lynn, are you on the line?

MR. SARKO: I am briefly, but David Coakley is going to get on shortly.

MR. COAKLEY: Yes. David Coakley is on the line. I'm with Lynn's firm.

MR. SINNOTT: Okay, thanks, David. Brian? Brian McTigue, are you on the line?

(No response.)

MR. SINNOTT: Okay. Emily?

MS. HARLAN: Yes. Emily Harlan of Nixon

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A. I do know of the name. I know the name Damon more than Chargois.
Q. All right. Tell us about the individual you know as Damon or Damon Chargois.
A. I don't understand the question. I'm sorry.
Q. Sure. When did you first meet him? How do you know him? What's his relationship with Labaton?
A. I knew the name before I met him. I had understood that my partner, Eric Belfi, was working with him in trying to develop business relationships in the south. So I saw e-mails that had the name and things like that.
I think I met him on one, possibly two, occasions when he might have come to the office in New York, and Eric brought him by to say hello 'cause I was the chairman of the firm.
I smiled, shook his hand, said good to be working with you.
Q. Okay. And when was that approximately?
A. The visits to the office? I -- I -- I can't -- two years ago, four years ago would be a best guess.
Q. And describe if you would, Larry, what Chargois' relationship -- other than his, you know,

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being brought to meet you by Eric, what was his relationship to your firm?
A. Joint venturer.
Q. What do you mean by that?
A. That he was working with Eric to try to secure opportunities to speak with pension funds, union funds in the area in which he had some what I call credibility. He had been working.
He had a Little Rock office, for example, and we were seeking to get an interview by Arkansas Teachers, for example, but I do know that he's also acted as co-counsel and local counsel in cases where he's qualified to do so. I think his office is somewhere in Texas.
Q. And what --
A. I think I need you to understand in context this is just one relationship of Eric trying to develop business, and we're trying to develop business through multiple relationships.
So it's nothing that -- there was nothing special about that.
Q. Okay. So this was a typical type of relationship that Eric or one of your relationship people would develop with someone.

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But this one took on some significance, didn't it?
A. I don't know what you mean by the question. I'm sorry.
Q. Let me -- let me try to be specific.
A. This is always significant. I mean that's --
Q. In the State Street case what was Damon's role or connection to the case?
A. I'm not sure I ever knew in the sense that I didn't hear 'til later on that there was an obligation to him. So I don't know -- again, I was not at the commencement of the case.
I was brought in, effectively, after we succeeded on defeating the motion to dismiss in an effort -- a long effort to see if there's a way to take a non- -- in my view, take a non-traditional path towards resolution.
Q. And was that your first contact with the State Street case was after the motion to dismiss?
A. I might have been involved in some discussions with the Lieff Cabraser firm and the Thornton firm about the nature of the claim.
Q. When did you first learn that Mr. Chargois

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was a referring attorney in this case?
A. Closer to the time that we approached settlement. It may have been that I should have known because I know we had some ongoing relationship with him, but it was nothing that was in the forefront of my mind.
In fact, I remember Mr. Bradley saying I'm talking with Chargois, and I -- I had to say who. I -- and he said Damon. I said oh, oh, Damon. At least I knew where to place him. So it was -- my relationship was relatively remote.
Q. How did Bradley meet Damon Chargois? Do you know?
A. I do not know.
Q. Do you know how long he'd known him for?
A. No.
Q. And when did you become aware that Damon Chargois had as a referring attorney a significant stake in this case?
A. At some point -- I'm trying to think what year; 2015 -- I happen to be speaking with Garrett, and he mentioned that there was an obligation that had to be dealt with, and Eric confirmed that to me.
So I knew there was an obligation. It

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was not described to me in any further detail.
Q. And by obligation you mean that he was owed a piece of any settlement or --
A. No.
Q. -- judgment?
A. A piece of our attorneys' fees.
Q. Of the attorneys' fees?
A. Yeah.
Q. And when did you become aware of specifically how much of an obligation he was owed?
A. I'm trying to answer the question in my mind. I became aware of an amount when I was told by Garrett and Eric what the amount was. I don't know where it started. I only know where it ended.
Q. Okay. And it ended at 5-and-a-half percent?
A. That's correct.
Q. Did you have any discussions that you recall with your fellow customer class counsel as far as whether Damon Chargois' role in the case should be made known to the Court?
A. I was never broached by anybody that I recall to me or, you know...
Q. Was it broached in the context of informing ERISA counsel about Damon Chargois' role in the

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case?
A. No. I had my own opinions about that, but nobody spoke to me about that.
Q. And you weren't part of any conversations that involved whether his identity or his role as a referring attorney should be revealed to the ERISA attorneys?
A. To the best of my recollection, there were no such discussions in which I was either informed or participated.
MR. SINNOTT: Larry, Joan, let me just give each of you a copy of an e-mail thread.
THE WITNESS: Not the most efficient setup.
MR. SINNOTT: No. I'm thinking of making them into paper airplanes.
BY MR. SINNOTT:
Q. If you'd just take a moment and take a look at that document.
(Pause.)
A. Yes.
Q. All right. You know, just quickly scanning it from the earliest -- by the way, this is Bates stamped as TLF SST 012272, 2273 and 2274.

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And going to 2273 in review, there's a message from David Goldsmith to a number of parties. You are a CC on this. And it indicates that there's a draft letter setting out our plan with regard to the November 10th letter we filed. Let us know if you have comments and concerns.
And then followed by a message from Bob Lieff to the same parties and a couple of additional parties it appears where he says he has no concerns.
There's then a change in distribution on the first page of the message where Garrett Bradley -- I'm sorry -- where after a message from Lynn Sarko to the same parties about signing off on that letter, Garrett Bradley sends a letter to you and others saying -- an e-mail, and it's dated November 22, 2016 at 11:48, and Mr. Bradley says I think you should put Damon on this letter. And David Goldsmith responds with we thought we'd do a separate letter to him.
And then there's an e-mail from you as part of that thread and that same limited distribution where you say need two letters with breakdown. ERISA just gets sent to ERISA counsel with 10 percent off the top and then one third each.

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Class co-counsel gets one with ERISA 10 percent off top, Damon's percentage also off the top. Then each of class co-counsel split with percentages agreed to. In short, no reason for ERISA to see Damon's split. They only need to see their 10 percent and then split three ways.

By the way, I want to asterisk the 10 percent to ERISA with a footnote saying although our fee agreement with ERISA counsel only provides for a 9 percent allocation, class co-counsel had determined to increase that to 10 percent in light of the excellent work and contribution of ERISA counsel.

Now do you remember that message, Larry?

A. I do.

Q. And that message refreshes your memory that there was a discussion as to whether to give ERISA information as -- the ERISA counsel information as to Damon Chargois, correct?

THE WITNESS: Can I get that read back, please? There's a word that --

MS. LUKEY: I thought there was a word drop, too.

THE SPECIAL MASTER: In the question or

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the answer?

MS. LUKEY: In the question.

THE WITNESS: The question.

MS. LUKEY: I think there was a "not" maybe dropped.

MR. SINNOTT: Why don't you...

(Reporter read back.)

A. So the problem I had with the question was the word "discussion." I don't recall ever having a discussion. This was my decision to do it this way. And if you want, I'll explain why.

Q. So you don't think it was a discussion that you initiated?

A. No. I made a -- I made decision as to how the letter should be sent out.

Q. Okay. Well, why don't you go ahead and tell us --

A. I mean other people may have been expressing -- well, none of it really deals with the issue that I address at the top which is who should get what in the letter.

When Mr. Bradley was negotiating on behalf of the three law firms as to what -- and I'll insert "if anything" 'cause it's a negotiation --

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Damon should get, he was offering as I understood it -- I had extended conversations, but he was offering two different percentages, and the words are going to get mixed up. We're going to have to use numbers at some point.

But he was offering him a certain -- a lower percentage, quote, off the top which doesn't really mean off the top, except for purposes of calculation or a lower -- or a higher percentage after ERISA.

I believe Mr. Bradley may have expressed to Damon that the amount that ERISA might get could be changed by the Court, and therefore it's a moving target whereas the number off the top everyone would know. So you choose your poison, this one or that one.

I was then informed that he was choosing the one that Garrett had described as off the top. Some of my synapses weren't working, and I said, oh, my God, if that's off the top and we promised ERISA off the top, doesn't that affect the calculation, and therefore we're going to have to send a letter describing everything as to how we reached the numbers to everybody.

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And that's kind of the impression I gave out to both David and probably Nicole. I later came to my senses to realize that, no, that's not true; you can two off the tops if you use them just as mathematical calculations.

So using an example of $100,000, and I promise you, Bill, 10 percent off the top and you, judge, 10 percent off the top, someone's going to say, oh, that's two "off the tops;" you can't do that. Well, I can. On the hundred thousand I put in your column 10, I put in the judge's column 10, and what's left over is the money that's left to be distributed to the class counsel.

So I realized that doesn't affect the ERISA thing. Nicole was under the misimpression that it would and actually did some calculations that way, and there's other documents which show wait -- well, wait a second, these are wrong, and it says I checked with Larry; I'll make the corrections.

The checking with Larry is where Larry realized that he had made a mistake in his thinking, which in law is okay, but I get very upset with myself if I make a mistake in math.

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Q. Well, aside from the "synapse" aspect of your explanation, Larry, let me direct your attention to the second half of that non-discussion decision that you laid out.

In short, no reason for ERISA to see Damon's split. Now aside from any allocation concerns here, you're keeping Damon's identity secret from the ERISA counsel, correct?

A. I saw no reason for them to know that or need that. We're talking about a distribution of fees, and what they wanted to see was what they were going to get and what we promised them.

And, in fact, what they were going to get was more than what was promised them, and they were the ones assisting in receiving the breakdown before they would execute the letter. And the numbers would be the same as to them regardless.

Q. But aren't you presuming what you think they needed to see?

A. No. I see no rational explanation as to why they would need it. I don't know what argument they could make to me that would say, hey, we need to know what you're getting. They didn't even know how we were splitting the fees among ourselves.

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Q. Don't you think --

A. Wouldn't that be of more interest? I'm sorry. I'm not -- I'm not supposed to be asking questions.

THE SPECIAL MASTER: There is a difference, Larry. Let me tell you what it is.

Your fees, Lieff's fees and Thornton's fees were going to be before the Court, disclosed to the Court, and the allocation was going to be disclosed to the Court.

The fees of the ERISA counsel were going to be before the Court, and the allocation disclosed to the Court.

By not bringing it to the ERISA counsel's attention that a lawyer who is not before the Court is going to get 5.5 percent of the total award is depriving the ERISA counsel of having the opportunity to weigh in not only as to their own distribution but as to whether or not it's appropriate in the larger context of the class distribution and the larger context of the allocation to the other lawyers. You don't see that?

[redacted]

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THE SPECIAL MASTER: Okay.

THE WITNESS: I do not because -- sorry.

THE SPECIAL MASTER: Is your belief that the allocation to the -- to Mr. Chargois is unrelated entirely to the larger allocation of fees amongst the other lawyers and the larger issues of the class allocation, the award to the class?

THE WITNESS: Yes. I believe the numbers work out identically. It was a charge. Mr. Chargois was a charge to the three class counsel. The three class counsel were going to get the same dollars, even if they didn't have an obligation to Damon.

If Damon didn't exist --

THE SPECIAL MASTER: But if the ERISA lawyers had known 5.5 percent of the total award was going to go to a lawyer who was not even before the Court and had done no work on the case, they may well have objected to the entire allocation scheme, right?

THE WITNESS: I -- I don't know why that would lead them to that conclusion. We reached an agreement early on as to what percentage the ERISA counsel would get. We -- we stuck with that

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agreement.

It's the same dollar amount except that I, in fact, was the one that recommended to the class counsel that we increase it to 10 percent in recognition of the -- well, what's described here as the great work they did.

The calculation of Mr. Chargois's fee -- the off the top is a method at arriving at a dollar amount that would be charged solely to the three class counsel. There was no disclosure to the Court as to what class counsel individually were getting.

I don't believe there was any disclosure to the Court as to what each of the ERISA counsel were getting. I believe there was a gross disclosure that it would be -- I think actually it was 9 percent at the time to them, and that the class counsel would get the balance.

THE SPECIAL MASTER: So let's talk about what the judge's role is in the context of a fairness hearing and approving attorneys fees.

A judge's role in accordance with first circuit law in this case, the judge has to look at the totality of the result, the percentage of fees that are awarded and important to some judges --

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maybe not all but some judges -- how that fee award is going to be distributed among counsel based --
THE WITNESS: Sorry.
MS. LUKEY: I think he wants to take notes on what you're saying so that he can respond.
THE SPECIAL MASTER: Okay.
(Pause.)
THE SPECIAL MASTER: How that fee award is to be allocated and distributed among class counsel so that the Court can make a determination if the amount it is considering is fair both to the class and to the work done by their respective law firms on the case. That's what --
THE WITNESS: I'm sorry.
THE SPECIAL MASTER: That's what the judge's role is.
Now it's true some judges are not as interested in how fees are allocated but many other judges are. And isn't it really up to the judge to make that determination when he or she has all of those fee awards in front of him or her so that he can make a determination?
THE WITNESS: You're asking for my opinion?

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THE SPECIAL MASTER: I'm just asking you if it isn't important to disclose to the Court every lawyer that is going to be getting some benefit out of a fee award in a class action case?
THE WITNESS: It has been my experience regardless of what Utopia you would like to have -- and I have no problem in helping you try to establish that transparency that we spoke about the last time I was deposed and things like that.
We practice before hundreds of federal judges, and therefore what we try to do is not guess. We try to follow the rules. That's what we're supposed to do.
It has been my experience in those years that the courts have struggled with class action fee applications with courts saying, oh, give us all the information and then saying what the hell am I going to do with all of this information; it's millions of pages of documents, and what we're really talking about is what is a fair fee to be imposed upon the class for the work and the result achieved.
And, by the way, how do I evaluate whether an hour of your time is the same as an hour of Mr. Sinnott's time?

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I mean suppose I was sitting in a negotiation room, and I came up with a brilliant idea that took ten minutes. Is that the same as the other 25 people that are sitting in the room who are looking at their e-mails and stuff like that? But the Court doesn't have a sense of that.
So the courts in my opinion have flipped over -- flip-flopped over to the we just want to know the gross information, what percentage are you looking for, how many hours did you work.
There's no way I can evaluate the quality of those hours. I could look at your billing rate. Still doesn't tell me that you're a genius that brought the case in alone to saying, uh-oh, something's wrong here; going forward now we want to have all the documents, and we're going to send it out to special masters.
And then they realize, well, that doesn't work. That delays the end of the case by nine months to a year typically. So they flip back to the other way. So we try to follow the rules.
There was a rule in the Eastern and Southern District of New York, for example, that required all agreements with counsel to be

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disclosed. Doesn't exist anymore. I don't know the reason why. It doesn't exist anymore, and no other courts really adopted it.
So what is a practitioner supposed to learn from that? That the Court wants the information or doesn't want the information? I know of no instance -- and I understand my experience is limited. I know of no instance where forwarders -- people who --
THE SPECIAL MASTER: I'm sorry? "Forwarders"?
THE WITNESS: Forwarders. That is people that you owe an obligation to because they introduced you to a client or to a matter --
THE SPECIAL MASTER: We've been looking for a term from Mr. Chargois. Can we agree that that's a good term to use?
THE WITNESS: I understand that that's a term that's been used. I don't necessarily mean it in the direct context. I believe the relationship was different and turned into that without anybody realizing it, but I know we'll get into that later.
I don't know of a single instance where anyone has ever disclosed that information to a

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Court or a Court saying that is information I wish to have. Judge, I cannot know what disclose everything means.

THE SPECIAL MASTER: Courts only know what is put in front of them. They don't know and they can't know what's not brought to their attention.

Isn't the better part of practice to give the Court everything and let the Court decide? As you say, many judges are going to say --

THE WITNESS: I say --

THE SPECIAL MASTER: Many judges are going to say, okay, that's more than I need. Other judges -- and you've been before some of them -- are going to want to know every dollar that went out in the settlement and to the attorneys.

THE WITNESS: In the vast majority of cases that I've been involved in and know about, the judge signs off on an order. And -- let me just leave it like that.

The judge signs off an order that says lead counsel shall allocate among the counsel entitled to fees in such manner that they believe reflects their contribution to the case and the

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hours worked.

And I don't want to call that abdication because, obviously, the lead counsel knows the best of those other issues that the Court cannot be sensitized to, whether somebody made a particularly genius contribution.

I had -- I was co-counsel with somebody who, unfortunately, put in his declaration I've worked this many hours, and sometimes I have some of my best ideas while I'm showering. Needless to say, that made it into the judge's opinion.

But I have -- I have found that if counsel can agree, courts are more than -- the courts believe that they are actually better. If the judge passes upon the total amount of the fee which is the impact on the class that they're intending to protect, the rest of it they leave, unless somebody wants to bring an objection whether it's a class member or counsel.

Nothing prevents counsel from coming in and saying, oh, I was allocated an insufficient amount. Here we had a contract that we agreed to, and we paid more than the contract. So forgive me if I just don't see it. And, I'm sorry, one more

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part of the answer --

THE SPECIAL MASTER: Let me stop you right there.

THE WITNESS: Okay.

THE SPECIAL MASTER: You had a contract with the ERISA counsel, but they had no idea that 5.5 percent of the entire fee was going to be paid to a lawyer who was not involved in the case; and, in fact, that that amount was more than any of the ERISA counsel received and 55 percent of the total amount that all of the ERISA got.

And you yourself said counsel -- other counsel have a right to know how that distribution is going to go, and they would have a right to object.

So with that background -- let me just finish.

With that background, how could ERISA counsel have objected to either the contract amount that they were given or to the larger distribution at the end of the case when they simply didn't know?

And beyond that, they had obligations to their attorneys -- to their clients rather. And it may have affected how they believed their

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obligations were impacted to their clients.

So it may have had impacts all the way down the line. Whether or not they had a contract -- they had a contract, but it was a contract based on imperfect and incomplete knowledge of where the money was going. And therefore, they had not imperfect knowledge about whether they should object, about what to say to their clients and, not just their clients, to government agencies.

The Department of Labor was involved. The SEC was involved. The Department of Justice was involved. None of these -- none of these parties in interest had any indication that Mr. Chargois was going to get 4.1 million dollars, 5.5 percent of the total fee award.

So how could anybody have made a reasoned estimation and decision?

THE WITNESS: Your Honor, I guess you and I see it differently.

All of those parties have the very basic information upon which they made their decision. This money was paid by the three class counsel from fees that were approved by the Court.

It had -- nobody -- no one other than

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those three counsel got less than they thought they were going to get or that --
THE SPECIAL MASTER: Is that the test; that they didn't get less than they thought they were going to get based on imperfect information?
THE WITNESS: I don't think it's imperfect information.
THE SPECIAL MASTER: Not knowing that 5.5 percent was going to a lawyer that had not appeared before the Court, played no role in the case whatsoever and was hidden from everybody else in the case --
THE WITNESS: The money was only paid by the three class counsel. It did not impact any of the ERISA counsel. We didn't --
THE SPECIAL MASTER: Well, we'll get to how the money was paid. We'll get to how it was paid and whether or not it really had no impact on the class. We'll get to that.
BY MR. SINNOTT:
Q. But, Larry, this wasn't a case where nobody asked. This was a case you would agree, would you not, where a conscious effort was made to keep this information -- the role of Damon Chargois in the

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case -- away from the ERISA attorneys?
A. Because I believed it was irrelevant.
Q. So your answer is, yes, it was, but your justification is because you believed it was irrelevant.
A. Well, my reasoning -- I don't call it a justification. My reasoning was it was irrelevant to them.
Q. Well, don't you --
THE SPECIAL MASTER: Whose decision is that? Is that yours? The ERISA lawyers or the Court's?
THE WITNESS: That it's irrelevant?
THE SPECIAL MASTER: Yes.
THE WITNESS: I made the decision. We already discussed that it wasn't disclosed to the Court 'cause we didn't believe it was necessary to disclose to the Court; that there's no rule that requires it to be disclosed to the Court and that it wouldn't -- we didn't believe it would assist the Court in rendering its decision as to what a fair fee was.
THE SPECIAL MASTER: Let me ask you this: The fee structure in this case was that the

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ERISA -- ultimately the ERISA class would get 20 percent, 60 million dollars, right?
THE WITNESS: The ERISA class?
THE SPECIAL MASTER: The ERISA class --
THE WITNESS: The ERISA class, yes. I'm sorry.
THE SPECIAL MASTER: -- would get 60 million dollars. Twenty percent, right?
THE WITNESS: There's -- yeah, I don't remember the figures. I'll accept that. I was focusing on the fee, and you were still talking on the settlement. I apologize.
THE SPECIAL MASTER: We'll get to the fee. Twenty percent, right?
THE WITNESS: Correct.
THE SPECIAL MASTER: Further to the agreement, the ERISA attorneys' fees were agreed to be no more than 10.8 million dollars. That was the hard cap. And ultimately they got 7-and-a-half million dollars or 10 percent of the total fee, correct?
THE WITNESS: ERISA counsel got 10 percent of the total fee, that's correct.
THE SPECIAL MASTER: Seven-and-a-half

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million dollars.
THE WITNESS: Right.
THE SPECIAL MASTER: And in the agreement the hard cap on the ERISA fees was 10.8 million. Right?
THE WITNESS: Right.
THE SPECIAL MASTER: Okay.
THE WITNESS: I'll accept your representation. I just don't have the figure at hand.
THE SPECIAL MASTER: If anybody disagrees with it or wants to correct me --
MS. McEVOY: It might be 10.9.
THE SPECIAL MASTER: 10.9 percent? I thought it was 10.8 but --
MS. LUKEY: I honestly don't know --
THE SPECIAL MASTER: -- either 10.8 or 10.9 percent.
THE WITNESS: Million.
THE SPECIAL MASTER: 10.8 -- 10.9 million.
MR. SINNOTT: Million.
THE SPECIAL MASTER: 10.8 is what we thought. 10.8. 10.9.

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The differential between the 7-and-a-half million and 10.8 or 10.9 -- 3.3 or 3.4 million dollars -- was therefore going to go back to class -- the consumer class counsel, correct?
THE WITNESS: No.
THE SPECIAL MASTER: No? Where did it go?
THE WITNESS: You're doing a breakdown that didn't exist. The fees were all pushed together.
THE SPECIAL MASTER: Well, wasn't that in the agreement? The differential, whatever the delta was between the hard --
THE WITNESS: But the fees -- I'm sorry.
The fees that the DOL agreed we could apply for were not allocated in any way -- in anyone's mind to ERISA counsel.
Class counsel throughout contended that they had ERISA claims but would allow ERISA counsel to prosecute those claims, but it was a blended fee that we were getting. It was the 10 point -- it was the 75. It wasn't, oh, here's 10.8, and you're going to get 7-and-a-half of that or three-quarters, and we're going to get the balance.

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That's not the way it was. That's why the calculation -- 'cause if -- if DOL had decided --
TELECON VOICE MESSAGE: The following participant has entered the conference: Linda Hylenski.
THE WITNESS: If the DOL had decided all you could take is five million, I'm sure ERISA counsel would not agree under our agreement that that's what they were going to get then. It had nothing to do with what the DOL did.
MS. LUKEY: Your Honor, at one point you were using percentage, and he was using dollars.
THE SPECIAL MASTER: Yeah, I think we ought to speak the same language here. 10.9 million dollars. And what they ultimately got was 7-and-a-half million.
If you look at the stipulation and agreement of settlement --
(Panel confers.)
THE SPECIAL MASTER: Joan, do you have a copy of this?
MS. LUKEY: I don't but we'll --
THE SPECIAL MASTER: Do we have an extra copy? I'll give you an extra copy.

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MS. LUKEY: Thank you.
MR. SINNOTT: You've got one here, judge.
THE SPECIAL MASTER: Page 30, footnote 1.
THE WITNESS: Thirty, footnote 1?
THE SPECIAL MASTER: The settlement -- it's the settlement agreement.
(Pause.)
THE WITNESS: Yes, sir?
THE SPECIAL MASTER: This is paragraph 22. Let's all take a moment and read not just the footnote but the paragraph.
THE WITNESS: Here, let me take this off.
(Pause.)
THE SPECIAL MASTER: You should read the whole paragraph.
THE WITNESS: Which number?
THE SPECIAL MASTER: Paragraph 22 --
MS. LUKEY: That's what we're doing, yep.
THE WITNESS: Yes.

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(Pause.)
THE WITNESS: More than paragraph 22?
MR. SINNOTT: Paragraph 24.
THE SPECIAL MASTER: I'm sorry, paragraph 24. Yeah, I knew that wasn't tracking.
(Pause.)
THE SPECIAL MASTER: Then it goes to footnote note 1.
MS. LUKEY: Wait. You got to read footnote 1.
THE WITNESS: I did.
THE SPECIAL MASTER: It looks from the settlement agreement that there was a hard cap of 10.9 million dollars on the ERISA attorney fee award.
THE WITNESS: No, sir.
THE SPECIAL MASTER: No?
THE WITNESS: No. There was a hard cap of 10.9 million dollars of fees that could be charged to the ERISA allocation amount fund.
There were other funds from which fees were being paid, and there was never a discussion -- in fact, I think, you know, when the -- when the -- I can't get counsel on the phone to agree with me,

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but there was never any discussion or limitation on where the 10 percent, then 9 percent of the ERISA counsels' fees would come from. It wasn't limited to the ERISA fund.

It was -- I think we described this in our brief -- that the Department of Labor after they had negotiated the 60 million then came back and said, oh -- and because we were involved in doing this, we don't think you -- all counsel -- should be entitled to March than 10.8, 10.9 million dollars from the fund as an additional benefit to the ERISA funds, but as to counsel fees, this doesn't relate to counsel fees at all.

The footnote, for example --

THE SPECIAL MASTER: Well, then help me understand --

THE WITNESS: Sure.

THE SPECIAL MASTER: -- what the top sentence on page 30 means.

No more than ten hundred thousand -- $10,900,000 in attorneys' fees shall be paid out of the ERISA settlement allocation.

THE WITNESS: We could not take -- there were allocations, like you said, 60 million.

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THE SPECIAL MASTER: Hm hm?

THE WITNESS: From that 60 million that the Department of Labor and ERISA counsel wanted distributed out, we were allowed to take out attorneys' fees limited to 10.9 million dollars.

There were then --

THE SPECIAL MASTER: And then there was the footnote?

THE WITNESS: Correct. This basically says in broad terms that if the Court only decides to award 15 percent, a percentage less than what we're allowing you, which I think was 18 percent, we get the benefit of that lower percentage. We meaning the Department of Labor and the ERISA settlement allocation.

There was also then the SEC allocation. And, I'm sorry, I just don't remember how much it was. I think it was 120 million. And then the everybody else allocation.

THE SPECIAL MASTER: So who got the differential here between the 10.9 million out of the ERISA settlement allocation and the 7-and-a-half million that the ERISA lawyers were ultimately paid?

THE WITNESS: I don't think you can look

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at it like that. There were not separate parts for the allocation of money.

Like I said, if they had agreed -- we had agreed with the Department of Labor that we'd only take three million dollars out, there was never an intention and no agreement or understanding to limit ERISA counsel to three million. Their agreement was 9 percent off the top meaning of the total fee.

So it's -- judge, I'm sorry, but it's apples and oranges. That's what we were allowed to take out of -- and it was described in the notice and the briefs before the Court -- because of the Department of Labor's participation, you can't take out more than 10.8.

The judge decided to award 75 million which meant that the 10.8 came out, the balance came out of the other two funds.

THE SPECIAL MASTER: And where did that balance go?

THE WITNESS: Well, there was then a pot -- I mean it's a lot of money. So calling it a pot I'm not being flipping, but there was a pot of 75 -- in round numbers 75 million dollars of which the

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ERISA counsel were entitled to 9 percent of which we gave them 10 percent.

So the money is -- dollars were fungible, but it wasn't limited or -- or benefited by the fact that the ERISA pool of money -- the 20 million -- not 20 million --

THE SPECIAL MASTER: 10.9 million.

THE WITNESS: It says 60 million --

THE SPECIAL MASTER: Sixty million.

THE WITNESS: -- would only pay 10.9 towards attorneys' fees.

We didn't say to ERISA counsel, oh, my God, you guys only got Department of Labor to agree to an 18 percent fee so we're keeping all the other money. That's not the way it was. We were working together.

THE SPECIAL MASTER: My question to you is much simpler.

THE WITNESS: Okay.

THE SPECIAL MASTER: If Mr. Chargois' payment had been disclosed to ERISA -- to the ERISA attorneys, they would have obviously been required to disclose that to their clients. They probably would have been required to disclose it to the

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Department of Labor, to the SEC -- somebody would have been required to disclose it to the SEC and to the Department of Justice, and they may have objected -- even if they had agreed earlier before knowing this, they may have objected to the allocation of fees, to how that differential of money was spent, that it could have gone -- more money could have gone to the cost.

The point is this: They had no basis to know -- they had no basis to object because they didn't know. It was kept from them. Yes, they had a contract. They signed a contract. But it was a contract based on knowledge that was kept from them; that Mr. Chargois was going to get 4.1 million dollars which was 55 percent of the entire ERISA award and more than any single ERISA firm was paid, and they had no opportunity to bring that to their class representatives.

They had no opportunity to bring it to the Court to object. They had no opportunity to bring it to the Department of Labor with whom they were negotiating, and I think everybody has told us that that was an essential piece of the overall settlement to get Department of Labor to sign off.

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So what I'm struggling with here is how the payment to Mr. Chargois was not relevant to the larger class settlement issues in a fairness hearing before the Court.

THE WITNESS: I think we simply need to agree to disagree. I don't accept virtually any of your positions with respect to who needed to be notified.

It would be my position that the client representatives needed to be notified of the total amount that would be deducted from the settlement fund into which they would participate. And I don't believe any of the departments --

THE SPECIAL MASTER: Was Mr. Hopkins told of Mr. Chargois' -- of the famous Mr. Chargois?

THE WITNESS: I don't know.

THE SPECIAL MASTER: He's your client. Wouldn't he have a right to know?

THE WITNESS: I believe he -- well. I believe he would. But I don't know whether or not he was told.

THE SPECIAL MASTER: So if he had a right to know, wouldn't the ERISA class representatives also have a right to know so they

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could make a judgment on the totality of the fee award?

THE WITNESS: I think the right to know is based on his retention of counsel and the sharing of legal fees between counsel, not on what fee award would be given to the Court. It's -- it's something that's different -- it's a different -- different right to know.

CONTINUED EXAMINATION BY MR. SINNOTT:

Q. Did ARTRS have to be certified as a lead plaintiff in this case? Or appointed I should say.

THE SPECIAL MASTER: Appointed lead.

A. They were.

Q. And don't you think it might have been a factor in Judge Wolf's consideration as to whether they should be lead, as to whether their counsel was encumbered by what ended up being 4.1 million dollars to Mr. Chargois?

A. Well, I disagree with the term "encumbered," and I don't see how it relates. I mean this case -- I mean we achieved a phenomenal result here. We told the Court that we were applying for a 25 percent fee.

The Court agreed that that was a fair

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percentage. I just don't see how any of this relates to that. It's not -- I'm not trying to be a problem. I really don't --

THE SPECIAL MASTER: Okay.

THE WITNESS: -- in the real world see how any of this is relevant to the issues that you raise. Maybe -- maybe I'm a warped personality with 50 years in the business.

THE SPECIAL MASTER: I'm not implying you're a warped personality, but let me tell you from a judge's perspective how a judge might look at this.

In the context of a class settlement, it is not an adversary proceeding because the defendants and the class -- in the absence of major objections, the defendants in the class and the class attorneys have agreed, and therefore the fairness hearing is essentially the judge looking at everything before him or her and making a determination if the award to the class is fair and if the attorneys' fee award is fair and the distribution and allocation of the attorneys' fee award is fair. It's a non-adversary position.

And as to attorneys' fees in a class

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action, it's particularly non-adversary because the defendant doesn't have a horse in the race. The defendant pays its money in, and that's it. And the defendant doesn't care. So it's a non-adversary process.

In such a non-adversary process, does class counsel not have a heightened obligation of transparency and disclosure so that the Court can act in the role that Rule 23 places on it in making determinations of fairness to the class and to all of the counsel before it? Does the Court not have an obligation there to know everything?

THE WITNESS: Yes as to most of what you said. What I -- what I question is the "everything." I'd say everything that's reasonably relevant to the judge making a decision.

You are expressing a view at one extreme I believe. There are judges who feel that way, and there are judges at the other extreme who don't even hold the hearing and sign off on the papers as submitted. It's very difficult for counsel to understand.

As I expressed to you, there are judges who vest in lead counsel the very responsibilities

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that you're -- in the vast majority of cases the very responsibilities that you're describing that the Court should take seriously and have a heightened level of scrutiny.

It is difficult for class counsel --

THE SPECIAL MASTER: Let me stop you. Even in those cases let's say the judge defers that obligation to lead counsel as you suggest.

In that case would lead counsel not have an obligation to all other counsel to disclose where all of the money is going? All the money from the fee award.

THE WITNESS: You mean after the judge rules that 75 million dollars is appropriate and lead counsel is writing a check to each of the people and, what, sends a letter with everything? I mean it's after the event possibly.

What I'm saying is it's not disclosed before the event. Lead counsel will never tell anybody what they're expecting to get.

THE SPECIAL MASTER: Whether before or after, even in the context that you're referring to where a judge just throws up his hands or her hands and says, you know what, I don't care what the

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lawyers get; lead counsel you decide.

Does lead --

THE WITNESS: I don't put --

THE SPECIAL MASTER: -- doesn't that put an even higher burden on lead counsel to tell every other lawyer in the case what is being distributed and who it's going to?

THE WITNESS: To this day I don't know what some co-counsel got in the case 'cause they had additional counsel. We know what went to that counsel. We didn't find it relevant to us.

I just don't understand how it could be meaningful to counsel that my firm instead of getting -- and I'm making up numbers 'cause I don't have numbers in mind --

THE SPECIAL MASTER: In some sense --

THE WITNESS: -- instead of getting 30 million dollars got 25 million dollars, and Mr. Chargois got 4 million dollars. I don't see how that benefits them. And let me -- let me just clarify one thing.

I never said that the Court didn't care. I said it vested that responsibility, or I should have said it vested that responsibility in lead

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counsel. Most lead counsel take that responsibility very seriously.

But it's hard -- I think I was going -- just with one more sentence, if I might. It's hard to understand what "everything" is without some guidance. And you may think this writes --

THE SPECIAL MASTER: What the definition of "is" is?

THE WITNESS: Well, when you say the Court should have everything, I'd appreciate more guidance in the future if that's -- you know, we had the discussion at the last deposition of transparency, and I agree with transparency, but I got to understand what you mean by transparency and what the light is shining on.

I just don't -- I just see it the same way you do, and that may be a personality flaw in me.

THE SPECIAL MASTER: Let me come at this another way.

In thinking about the allocation and distribution of fees among the consumer class counsel, didn't the fact that Mr. Chargois was going to get some percentage -- 5 percent, 5.5 percent --

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and that that was going to be negotiated among the lawyers, did that not impact the distribution itself and allocation among all of the lawyers including the ERISA lawyers?
THE WITNESS: Mathematically I don't see how.
THE SPECIAL MASTER: Well, in how you set the math.
THE WITNESS: I agree with --
THE SPECIAL MASTER: In how you set the math to begin with.
THE WITNESS: I agree with you, and I'm willing to work with any figures you want to throw out there --
THE SPECIAL MASTER: I'm not talking about figures.
THE WITNESS: Oh.
THE SPECIAL MASTER: I'm talking about the agreement at the beginning. You say they agreed to 9 percent.
THE WITNESS: Hm hm.
THE SPECIAL MASTER: Had they known that Mr. Chargois was going to get 5.5 percent, they may well have had a different viewpoint, and the Court

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may have had a different viewpoint.
THE WITNESS: I can't answer. At the time they agreed to 9 percent they knew that 91 percent was going elsewhere. I don't know what else they needed to know.
THE SPECIAL MASTER: That some guy who had nothing to do with the case, no role in the case, never appeared before the Court --
THE WITNESS: All -- I'm sorry.
THE SPECIAL MASTER: -- at all was going to get 55 percent of the award that all of the ERISA lawyers received?
THE WITNESS: I would venture to guess that all of these lawyers had had forwarding obligations at one time or another and understand that obligation to be payable by the entity that received the benefit. And it's unrelated to what they did in the case or what they were going to get out of the case.

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others were going to get?
There are e-mails from Garrett Bradley to Damon Chargois and e-mails that you are on which seem to imply that the ERISA -- that Mr. Chargois' fee was related to the allocation, not just of the ERISA lawyers but of the entire distribution. I've got just two of 'em here, and I'd be happy to show them to you.
THE WITNESS: I'd like to see what you're referring to.
MS. LUKEY: Sir, so I can understand, are you saying that the allocation reduced the dollars of the ERISA lawyers --
THE SPECIAL MASTER: That it played a role in the total mix of the allocation and that Mr. Chargois' fee was factored into the total mix of the allocation and distribution.
MS. LUKEY: Except that's just -- I think Larry just said this, but just so we're clear, even though the computation was across the total, that dollar amount was then taken and reduced only the three consumer class firms, not the ERISA firms.
THE SPECIAL MASTER: After the agreement, but the agreement was made before --

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No. No.
MR. HEIMANN: Hi. This is Richard Heimann. Judge, you'll have to ask Chiplock that question. I'm not sure I even understand the limits of that.
Fees that Lieff Cabraser got were shared among the Lieff Cabraser partners. That falls within the ambit of what you just asked.
So I really would prefer to do this by examination under oath rather than on the fly with a lawyer -- in this case, me -- answering the questions.
THE SPECIAL MASTER: That's -- that's fair enough. We'll ask Dan when we do his deposition.
And, of course, I'm not including partners within the three firms or any of the firms.
(Pause.)
THE SPECIAL MASTER: Give a copy to Joan, too, please.
MS. LUKEY: Thank you.
(Pause.)
THE SPECIAL MASTER: For the record, we're referring to an e-mail dated July 28, 2016 at

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8:05:03 from Bob Lieff to Garrett Bradley and then an earlier -- and I should say Mike Thornton is on that, Larry Sucharow is on that, Dan Chiplock is on that, and Chris Keller is on that.
Then there's an earlier e-mail of the same day -- or maybe it's a later e-mail. Well, one is probably -- one is probably Pacific time from Bob Lieff at 8:05:03 p.m., and then there's one from Garrett Bradley at 9:06 p.m. -- presumably that's eastern time.
And it looks to be an earlier e-mail. Do you want to take a moment to read that, Larry, and Joan?
THE WITNESS: Okay.
MS. LUKEY: Okay. Thank you, your Honor. We read it.
THE SPECIAL MASTER: It reads: "As we discuss how to distribute the fee between ourselves and, of course, the ERISA attorneys, I have had discussion with Damon Chargois, the local attorney in this matter, who has played an important role. Damon and his firm are willing to accept 5.5 percent of the total fee awarded by the Court in the State Street class case now pending before Judge Wolf.

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As you know, we had a prior deal with him that his fee would be off the top. He understands that ERISA counsel is now in the same pool of money."

"He has agreed to come..." -- it says done; I believe he meant down -- "...to this number with a guarantee that it will be off the Court-awarded fee number. Please reply all if you agree."

"Given that it is off the total number their..." -- it says -- it's spelled T-H-E-I-R; it's probably supposed to be spelled T-H-E-R-E; I'll confirm all of this with Mr. Bradley -- "...there is no need to add the ERISA counsel to this chain."

Does that not indicate that the amount that Mr. Chargois was to receive is related to the amount that the ERISA counsel were going to receive --

THE WITNESS: No.

THE SPECIAL MASTER: -- and that they're very much mixed up together?

THE WITNESS: No.

THE SPECIAL MASTER: Why?

THE WITNESS: Because I think that

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Mr. Bradley may have been using loose language.

There was always an intent to honor the agreement. The only thing outstanding was getting everyone's consent for the additional 1 percent. So I don't necessarily understand some of the language that he used.

In fact, I would say the last sentence given that it is off the total number, I would say there will be a need to add ERISA counsel if in fact it was going to reduce the number from which we were going to pay the 9 or 10 percent.

In fact, that's not what was going on. That's what confused me that I said, oh, let's get them involved in this. It was always the intent to have two numbers off the top and use them as numbers, as dollars.

So I look at this in today's light and don't necessarily understand what it is he's saying. Maybe you could clarify it.

THE SPECIAL MASTER: What does the sentence he understands -- he, Damon Chargois -- understands that ERISA counsel is now in the same pool of money mean?

THE WITNESS: That the fee that's being

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applied for includes all counsel and that ERISA may separately ask for --

THE SPECIAL MASTER: Yeah, includes all counsel. So it is part -- in the larger context part of the pool of money being paid to all counsel.

THE WITNESS: But it doesn't --

THE SPECIAL MASTER: We're getting a little circular here. I know you say it doesn't affect the amount but the only reason --

THE WITNESS: But that's what matters.

THE SPECIAL MASTER: What matters is the only reason it doesn't -- the ERISA counsel made an agreement based on incomplete knowledge.

THE WITNESS: Again, I don't see how that knowledge would have affected their decision making but --

THE SPECIAL MASTER: Well, we'll -- in fairness, we'll let the ERISA counsel testify about this, and maybe they'll say it wouldn't have affected it but --

THE WITNESS: I would love to hear that but I was --

THE SPECIAL MASTER: Let me ask you a question --

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THE WITNESS: -- not involved -- okay, go ahead. I'm sorry.

THE SPECIAL MASTER: You say that this -- that Garrett Bradley's e-mail that we just read doesn't accurately state what was going on in the entire thing.

You're on the e-mail chain. Did you ever correct it?

THE WITNESS: No. In fact, I incorrectly acted upon it by giving misinformation to my people which I told you I later corrected. I didn't understand it was incorrect 'til later.

THE SPECIAL MASTER: And Mr. Lieff says he's in agreement with it. That's the top line.

THE WITNESS: Well, he's -- your Honor, it says, "We, LCHB, are in agreement with the 5.5 percent to Chargois." He understood that that was only being paid by the three consumer counsel in proportion to the ultimate allocation of fees to them.

That's what he -- well, again, you'll have Mr. Chiplock here to tell you what LCHB meant by that.

(Pause.)

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THE SPECIAL MASTER: Joan.
(Judge and counsel confer.)
MS. LUKEY: Justin, could you come here a sec?
(Pause.)
(Counsel confer.)
(Off the record.)
THE SPECIAL MASTER: We're here. We're conferring over a document. Sorry.
UNIDENTIFIED SPEAKER: Oh, okay. Sorry.
THE SPECIAL MASTER: Sorry, guys.
THE WITNESS: Trying to drag Larry back into the room.
(Pause.)
(Off the record.)
THE SPECIAL MASTER: I've just conferred with Joan and Justin about an e-mail that I had raised earlier with Mike Thornton from Garrett to Damon with nobody else copied on it.
And because Larry -- Joan has not seen it, Justin had not seen it -- he heard about it this morning, but it's probably not fair for me to just spring this on Larry without having seen it.
But we'll make sure you get a copy. The

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burden of this e-mail is that Garrett is saying to Damon in an attempt to get him to take less money that they're trying to hold the ERISA firms down to 10 percent. That's the burden of it. I know you haven't seen it but...
THE WITNESS: I would say that's -- I -- I -- I think I know what the answer is, but it's not something that I can say this is one thing that I think you'll find Garrett's answer interesting, but it's probably something you would expect in a negotiation.
THE SPECIAL MASTER: Okay.
CONTINUED EXAMINATION BY MR. SINNOTT:
Q. Larry, let me ask you about -- double back to something you said about something the Court would be interested in and why the allocation in this case with respect to Chargois, you know, would probably not be of interest to the Court, or at least it was nothing to prompt you to make it relevant to the Court.
I'm looking at the -- I'm sorry, I don't have hard copies, but I would imagine counsel has this -- the November 2, 2016 hearing before Judge Wolf that David Goldsmith presented the terms at.

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And on page 21 --
A. I don't believe I was present.
THE WITNESS: Was I?
MR. STOCKER: No.
BY MR. SINNOTT:
Q. In the context of what the Court might be interested in, on page 21, line 14 Judge Wolf says to Attorney Goldsmith: "Why don't you remind me of the terms of the allocation?" And David says "sure."
"We've discussed it before, your Honor. I don't want there to be something that was left out that your Honor wanted to hear. We discussed it briefly. There's a plan of allocation here. There's three I suppose you would call them segments. The funds will be divided among the ERISA plans and the eligible group trust. Group trusts are the class members where there are certain assets that are ERISA governed and certain aspects that are not. The ERISA portion of group trusts are part of the ERISA settlement allocation.
Then you have the registered investment companies or mutual funds. They have a portion. And then you have what we call public and other

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which is basically everybody else. That includes our client Arkansas Teacher, and they have a portion. Essentially we have a volume-based calculation to figure out how much everybody gets.
And that is largely how we will be divvying up the money from the net settlement fund after fees expenses and the like are taken out. We will be sending letters. We have sent letter to the group trust class members asking them to tell us about the proportion of ERISA and non-ERISA so that we can get intelligence from them so that we can figure all that out. We have sufficient data that State Street has provided us so that we can do the calculations. I just wanted to have that explained to your Honor."
And then Judge Wolf asks some other questions. And then on page 26 --
(Pause.)
MR. KELLY: Bill, the first quote is page 21.
MR. SINNOTT: Yes.
MR. KELLY: What's the transcript date?
MR. SINNOTT: November 2nd -- the hearing date was November 2, 2016.

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(Pause.)
BY MR. SINNOTT:
Q. Then on page 26 after discussing the Raytheon case, Judge Wolf asked: "And your fee agreement in this case provided what at the outset?"
And Mr. Goldsmith says it provided -- "Well, it's certainly consistent with the fee we're seeking here."
And the Court says, "Well, it was a contingent fee agreement, right?"
And Mr. Goldsmith says, "It was a contingent fee agreement of course. Did it have a cap? I believe it was capped at 25 percent, and we are seeking a fee that's slightly below."
Isn't it apparent from what I just read, Larry, that Judge Wolf was interested in the terms of the allocation, and he was interested in whether there was an agreement with ARTRS in this case?
A. The allocation that you're referring to is the allocation of the settlement fund having nothing to do with fees to the various components of the class which consisted of three-and-a-half -- 'cause the group trust were part ERISA, part non-ERISA, registered investment company public and other.

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That was the allocation. It had nothing to do with fees.
With respect to the fees he was asking -- as I understand it; I wasn't there to get full context -- he was asking what are you going to be applying for. Was there a fee agreement with the client. Yes. "We had a written agreement with the client I believe to allow us to apply for fees of up to 25 percent."
We said it was limited to 25 percent. Where it was going to be a little bit under, at -- I don't know, if it was 24 and a high point something.
So all of that is consistent with what the judge was interested in. I think the judge makes a comment that he was pleased with that in fact because he had been seeing some fee applications come in at a third and 30 percent. We said we're not asking for that.
Q. But you testified --
A. And then everything went to hell in a hand basket.
Q. Thank you, Larry.
You testified earlier that you didn't know if Mr. Hopkins was even told about the referral fee, correct?
A. Correct. That relates to the gross class counsel fee.
Q. Well, do you think Judge Wolf would have been happy to find out that the client was unaware of this referral fee?
MS. LUKEY: Objection.
THE SPECIAL MASTER: If he was. If he was.
A. I'm sorry, I don't -- I don't know what motivates Judge Wolf. I've never -- well, except for the one time I got beaten up by having to appear before him.
You know, I wish the judiciary was homogeneous and could set it out, but it's kind of all over the place. I can only say we thought we complied with our obligations and duties. If Judge Wolf had a higher standard than us and we didn't meet his expectations, I apologize, but this is where we thought we were at, and I -- I just disagree with some of the premises as to how important it is, even if people were to come in here and say, oh, oh, it would have been important to us to know that.

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THE SPECIAL MASTER: Let me ask you --
THE WITNESS: Where it would yield to them, they think, a higher fee, I think that may be tainted.
THE SPECIAL MASTER: Let me ask we talked the last time, and in your letter to me earlier we talked about the importance of disclosure and transparency to the Court.
THE WITNESS: And best practices.
THE SPECIAL MASTER: And best practices.
Why wouldn't this fall under the rubric of the importance of disclosure and transparency to the Court when we're talking about 5-and-a-half percent of a substantial attorney fee award?
THE WITNESS: Well, one, because I keep saying it came from counsel who assented to who otherwise would have had the money. It wouldn't have gone to other counsel.
And, two, I would not disagree with you to the extent that if we were developing a plan for transparency and best practices, certainly I would not want to go through this again. I'd much rather disclose it and find out if there's a problem that anybody has with it.

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Maybe it was a poor judgment on my part. But I certainly would sign off on your recommendation that it be included in future ones in our best practices.

One of the things that my people are saying to me is we just don't know what to do. We look at the rules.

THE SPECIAL MASTER: Err on the side of disclosure.

THE WITNESS: As I said, Eastern and Southern District of New York had a rule and then pulled it back.

What am I supposed to make of that? That they want to know? If they want to know, they would have left the rule in place. I think it's a reasonable inference that sometimes this turns into a burden to the Court, and then they switch over to, like I said, another methodology which is less of a burden, and then they find that maybe they're not getting all the information they want, and they switch over to give us everything, and that presents a different problem.

So I've been in the business long enough to know, in the profession long enough to know that

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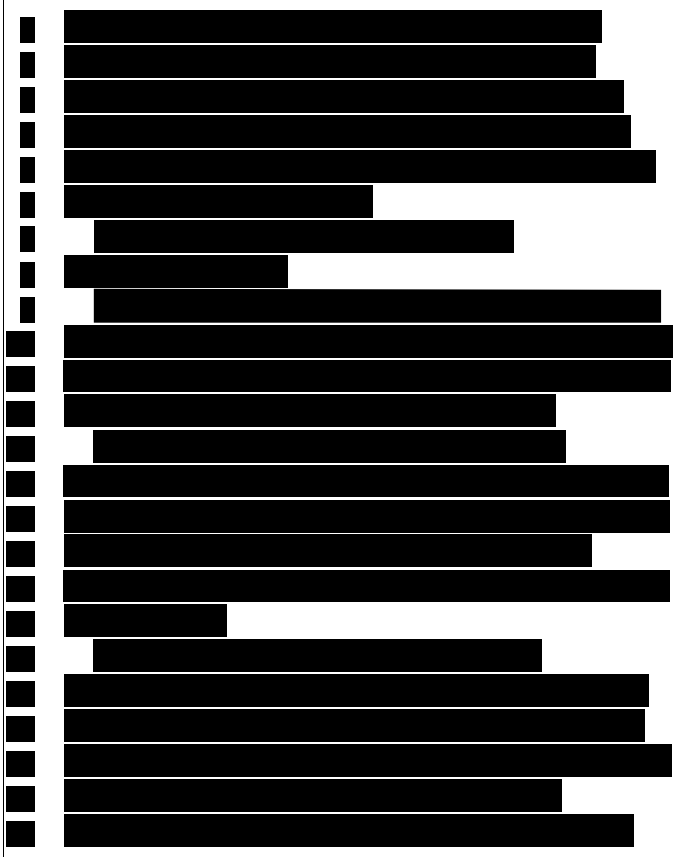

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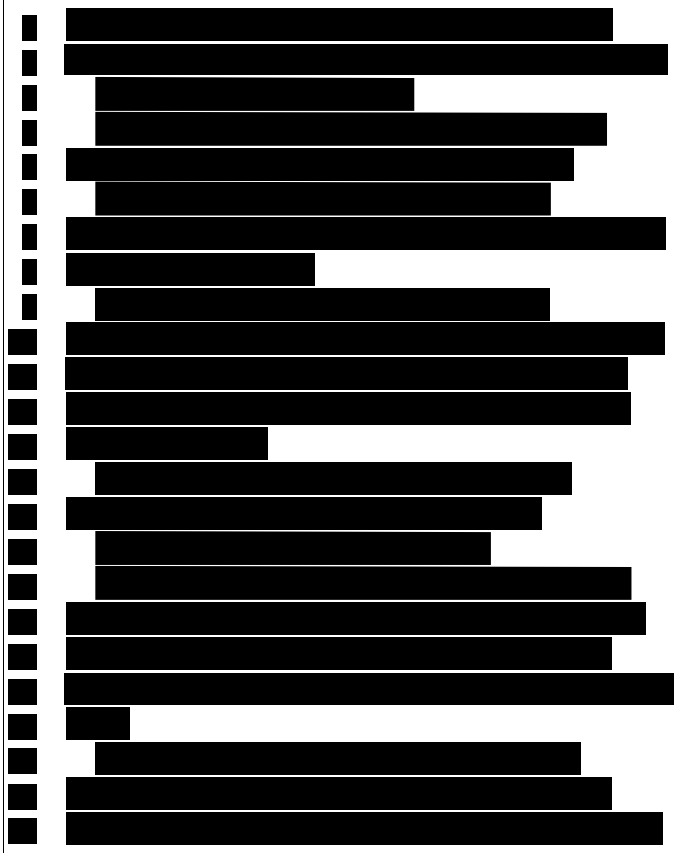

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Well, the same thing with this. So I've heard bits and pieces. And if you want my wisdom on it, which could be entirely wrong, I'll share it with you.

THE SPECIAL MASTER: Please.

THE WITNESS: And that is what was intended to be a co-counsel arrangement. We filled out the forms with him as co-counsel which Arkansas shot down

So one of the two people that was supposed to be working together to develop business with Arkansas was pushed off to the side but could be retained -- the letter says it could be retained, and our retention agreement says it could be retained

So what started off as a co-counsel relationship morphed over time with people's thinking into a referral relationship; but, yes, it related to the client, not to a particular matter There was no matter on the table

THE SPECIAL MASTER: But it's actually more than a referral relationship or less than. It's -- it's sort of Mr. Chargois has sort of a floating lien on every case that Labaton serves as

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counsel to Arkansas on and Arkansas is lead plaintiff or co-lead plaintiff. It's a floating lien irrespective of whether he plays any role whatsoever.

THE WITNESS: The obligation to Mr. Chargois originated at a time when nobody got paid anything. It was the assistance in developing the introduction so that that entity would listen to what we have available to them and to decide whether that's something they want to subscribe to, which was the monitoring, which none of the firms in the field charge for, but it could lead -- not necessarily -- it could lead some -- some entities maintain two lists, a litigation counsel and monitoring counsel. But it could lead to business.

So it was the business that originated from that joint relationship.

THE SPECIAL MASTER: This relationship which started off as a joint relationship and has continued -- we got a list of I believe ten cases in which Mr. Chargois has been paid a fee, some of which we've been able to determine he never appeared on, never did any work on

Apparently, this relationship continues

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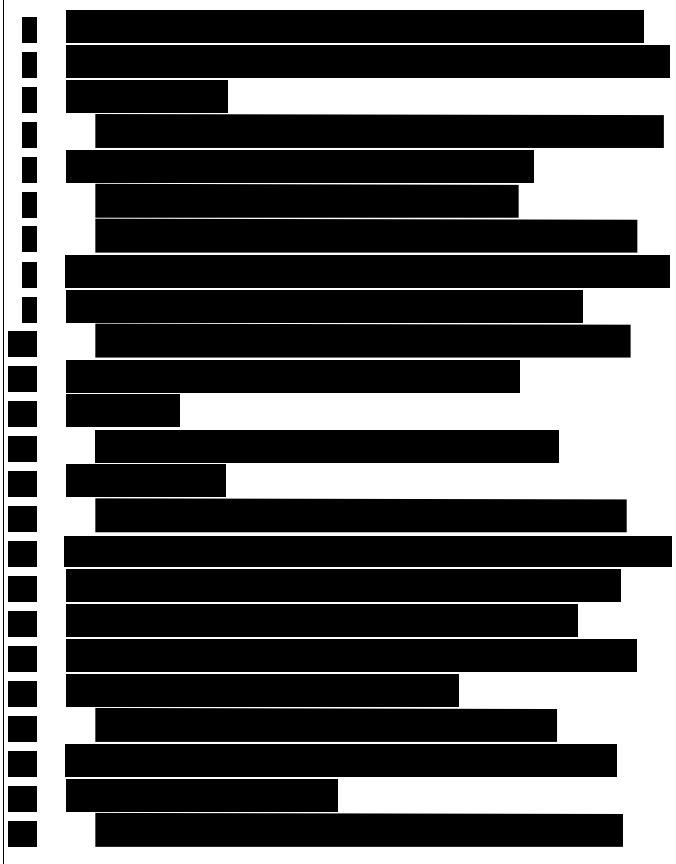

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written agreement somewhere that we have, isn't there? There's a written agreement

THE WITNESS: Then I've never seen it.

THE SPECIAL MASTER: Do you know if Labaton has paid Mr. Chargois for any cases in which Arkansas was not the lead plaintiff or co-lead plaintiff?

THE WITNESS: I know that we have co-counsel and local counsel relationships, not forwarding relationships with him, for example, I think in Texas. I only learned that recently. So he would have been a co-counsel and worked.

THE SPECIAL MASTER: Okay.

BY MR. SINNOTT:

Q. It's fair to say though, Larry, that Chargois other than that original referral played absolutely no role in this case?

A. That would be an assumption I would make. I only saw what I saw. So I came in from -- well, a couple of things. No application was submitted for time and work on the case. So you can draw a conclusion from that.

And I never called upon him to do any work when I was -- I think I described myself as the

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lead negotiator and lead strategist. I wasn't necessarily the hands-on lawyer as you saw David Goldsmith appear before the Court.

Q. He never entered an appearance in this case, correct?

A. Matter of record. I would doubt it.

Q. Okay. Let me just direct your attention to a document that we gave you earlier. It's the stipulation and agreement of settlement that was filed on July 26th. And along with other counsel, you signed it on page 48, although there were several page 48s because it's signed in parts.

But let me just direct your attention to paragraph 21 of that document.

A. Paragraph 21?

Q. Yeah, paragraph 21 on page 27. Do you see that?

(Pause.)

A. I -- I -- I do. I don't know whether I need to read the whole thing to answer your question.

Q. No. Just really the first sentence is what I want to ask you about.

A. Oh.

Q. You're welcome to read the balance, but the

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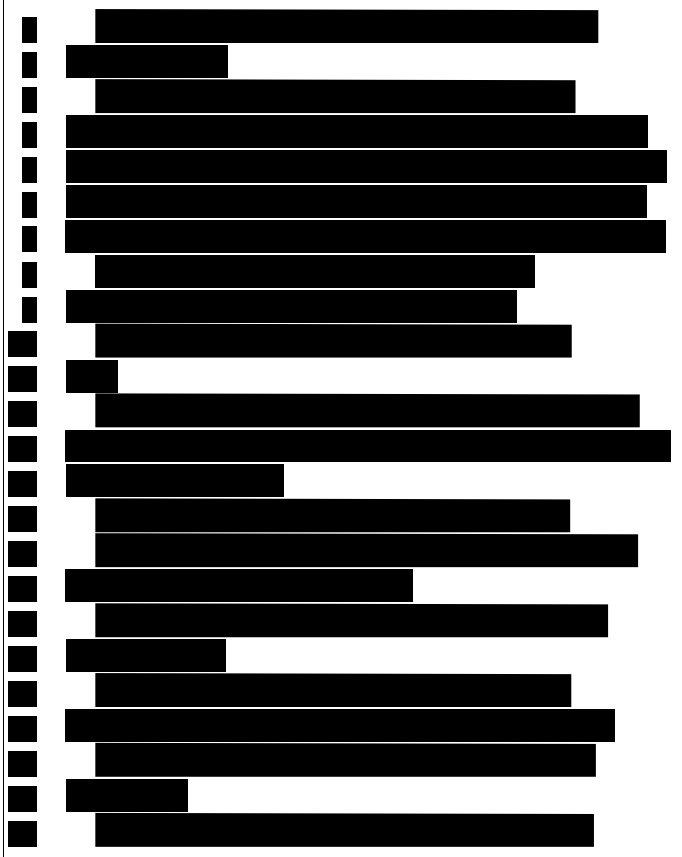

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actually find the answer in discovery that came in yesterday.
MR. SINNOTT: Okay. We'll still making our way through that.
THE SPECIAL MASTER: We're going through it.
MS. LUKEY: Going as fast as we can trying to get it to you.
THE SPECIAL MASTER: So are we.
MR. SINNOTT: Larry, take your time reading that.
THE WITNESS: Do you want me to read the whole thing?
MR. SINNOTT: No, you don't have to read the whole thing. The questions are going to be on the first page but you may want --
THE WITNESS: Yeah, I got to see how we got there. I apologize it's hard to...
(Pause.)
THE SPECIAL MASTER: Off the record.
(Off the record.)
A. Yes, sir.
Q. All right. Just in general terms, Larry, would you agree that leading up to that face page,

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the first page there, there's discussion about allocation and the process -- by the way, this is TLF SST 052975 through 52980.
And looking at 52975, the first page, you see there's an e-mail from Brian McTigue. And Brian says -- this is August 28, 2015 at 9:30 a.m. -- Brian says I don't agree with lead settlement counsel distributing attorneys' fees and expenses in its sole discretion. Attorneys' fees and expenses should be distributed pursuant to the existing written agreement of counsel.
Was that an accurate recitation of that?
A. Yes.
Q. And is it fair to say that Mr. McTigue seemed to be asking for transparency in how the fees were to be allocated?
A. No.
Q. No? How do you interpret that sentence?
A. I interpret Mr. McTigue to be concerned that somehow he's going to get screwed, and he wants to be sure that this agreement that we had was going to be honored.
Q. And transparent?
A. No.

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MS. LUKEY: Objection.
A. That he was going to get what he negotiated for.
Q. All right. Well, let me direct your attention to Lynn Sarko's followup to that at 1:02 p.m. just above it.
And Mr. Sarko says, "We need to be careful about this as the DOL had asked if there were any agreements on fees between counsel, and I would never answer their question. And then they seemed to forget about it, but I'd rather not highlight it and have the DOL go sideways on it."
Isn't it fair to say that this talked about how there was a risk of DOL not being satisfied with the disclosures on these -- on these agreements?
A. I -- I don't know. You're going to have Lynn. You can ask Lynn. He had the conversation.
I don't understand it that way. To me it doesn't look like -- it doesn't look like Lynn is supporting Brian in his position and would prefer not to disclose the agreements.
Q. Well, you respond --
A. And the agreements being the 9 percent

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agreement and --
Q. Okay.
A. -- the other.
Q. Well, speaking of agreements, you --
A. I mean you see from my -- I'm sorry.
Q. No, go ahead, Larry.
A. You can see from my response that -- I don't know what Caroline means. It's just...
MS. McEVOY: I think it's a voice command.
THE WITNESS: Can and should? Maybe it meant can.
MS. McEVOY: Yeah, I assume so.
A. And this had to do with power in my view. You have my current view there. This has to do with power and control.
Brian was not prepared even after the case was litigated to allow me to have what I had described to the judge as a typical power these days of a lead counsel.
He had negotiated and signed off on an agreement, and he wanted that to be part and parcel of both the stipulation and the notice 'cause it's the only notice I've ever seen where we've broken

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out what people are going to get.
I believe -- I'm not trying to psychoanalyze him, but I believe he was more comfortable seeing it public so there wouldn't be a way that somebody who wanted to say, oh, no, no, we're going to give you less. It was better than what he already had which was everyone's signature.
Q. It's fair to say though that notwithstanding this request, you did not inform ERISA counsel of the Damon Chargois referral factor in this case?
A. I -- I had -- I did not inform ERISA counsel -- that is correct.
Q. Let me just ask -- back up and ask this question: Why not?
A. One, it wasn't relevant. To us it was -- it was a firm -- a firm business obligation. If we had earned 2 million dollars and we owed 3 million dollars, they weren't contributing to that to help me out.
This was just a firm business obligation. What did it have to do with them? I'm still entitled to the fee that I'm entitled to. And what I then choose to do with it I consider to be my money. We told the Court what class counsel was

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going to get.
If that was fair, then I should get it. And if I have obligations, I have lighting bills to pay, I have lawyers to pay and things like that, what does it matter? This was a contractual, finger --
THE SPECIAL MASTER: -- quotes.
A. -- quotes --
MS. McEVOY: Air quotes.
A. -- air quotes --
THE WITNESS: Thank you.
A. -- contractual obligation that we had. Good, bad or indifferent, we had it. I didn't see any purpose in involving them.
Q. If I characterize your statement as a charade, you'll understand that I'm not casting any aspersions on you --
A. No, I'm not -- I'm not -- it wasn't a charade. It was a -- I use the word "contract" loosely. I'm not agreeing there was a contract. I don't know what it was.
Q. And just to press you a little bit more on that, Larry.
The reason -- even though you felt that

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it was none of their business, what would have been the downside in telling them?
A. It would just be something else I'd have to deal with. I was already dealing with something that was very -- nothing was very simple when I had to involve ERISA people. I'll just leave it at that.
This was -- even this wasn't simple. If you see -- I said in my e-mail response: "Of course, I intend to honor all commitments, contracts, obligations, agreements, understandings by whatever name or title, but especially those that are in writing like Brian's."
I mean I -- I -- I was very frustrated. I know your Honor pursued with other people was there tension. There was never ever tension on the substantive stuff with ERISA counsel. Never tension with Lynn Sarko.
But from the day -- I think you have the correspondence. Let's just say that Brian and I did not hit it off, and I didn't understand the way he wanted to approach things.
So just by way of example, we had won the motion to dismiss. I had taken weeks or months

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to set up the first mediation in a very big case without any conditions. Defendants didn't impose any conditions. I didn't impose any conditions. Brian is consolidated with our case. He hasn't had a motion to dismiss made against him yet, and I invite him to the mediation, and he gets back to me with two pages of conditions.
So I -- I just -- I wasn't going there. I mean maybe it's my personality. But I get along with most people.
THE SPECIAL MASTER: Did this background inform your decision in any way not to share the Chargois relationship with ERISA counsel?
THE WITNESS: Everything -- everything that has made Larry Larry informed the decision. It's hard to say. I don't -- I don't think it was the primary one. The primary one is why. It's irrelevant to them.
We have to pay it. We're fortunate enough that two other counsel who did know about it agreed to share it with us. That's why I laughed, and I wasn't asking anything of them, but that's the main thing but...
MR. SINNOTT: Speaking of tension.

EX. 39

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

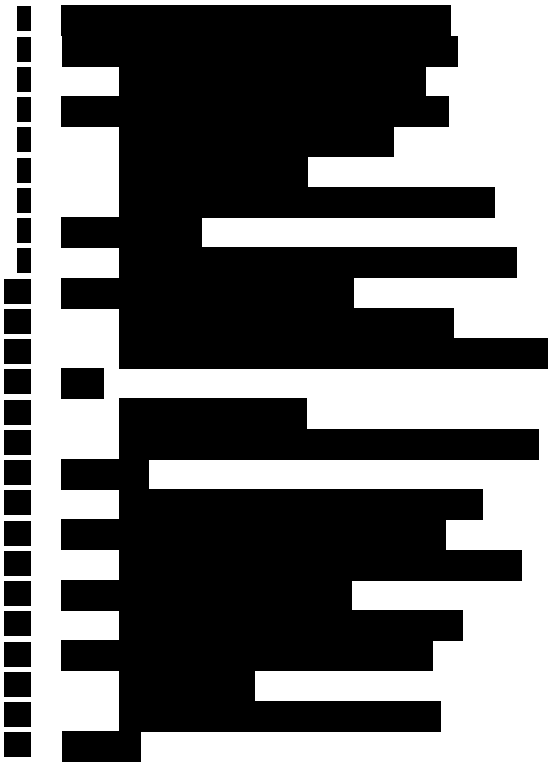
- - - - - - - - - - - - - - -x

ARKANSAS TEACHER :
RETIREMENT SYSTEM, :
et al., :
Plaintiffs, : CA No. 11-10230-MLW
v. :
STATE STREET BANK :
AND TRUST COMPANY, :
Defendant. :

- - - - - - - - - - - - - - -x

July 7, 2017
Washington, D.C.

Deposition of:
JONATHAN G. AXELROD,
called for oral examination by Counsel to the Special Master, pursuant to notice, at JAMS, 1155 F Street, Northwest, Suite 1150, Washington, D.C. 20004, before Christina S. Hotsko, RPR, of Veritext, a Notary Public in and for the District of Columbia, beginning at 1:44 p.m., when were present on behalf of the respective parties:



employed by the Eastern Conference of Teamsters in July of 1974. We represented Teamster locals from South Carolina to Maine, basically the 13 colonies plus West Virginia and Maine. And we did for them basic labor law. In a lot of those places, particularly in the Carolinas and Virginia, there were no law firms looking to represent unions. So we did a lot of work in the South. I did work in Maine and New Hampshire, Vermont, a little bit in New York for them.

And then in June of 1980, my boss said let's -- my boss at the Eastern Conference of Teamsters said let's start a law firm. And we did. And it started June 1st of 1980.

Q. What was the name of that firm, Jon?

A. At the time it was Beins Axelrod and Osborne, PC. That firm expanded and added named partners and non-named people. And then in 1996, it split into three. And Hugh Beins and I went one way, the Mooney Green part of it went another way, and Osborne went a third way.

So the firm that I'm in now started -- or became Beins Axelrod in 1996 and it's had other people in it and now it's smaller.

Q. And your current practice for Beins

Axelrod, does it involve ERISA work?

A. Yes.

Q. And what percentage of the work is ERISA?

A. Depends how you define ERISA. But I represent pension funds and health and welfare funds. That's some part of it. I'm a trustee on a retirement fund, and I'm an independent fiduciary for health and welfare and pension funds. So if you combine all of that plus the work that I do with Mr. McTigue, it's probably 30 percent, 35 percent.

Q. And prior to your forming the predecessor firm at Beins Axelrod, is it fair to say your practice was pretty much labor and employment law?

A. Yes. But in 1992, I believe, I began representing a pension and health and welfare fund. And then as it became obvious that the firm was starting to split, I started to do more.

Q. All right, sir. And prior to the State Street case, were you involved in any other class action cases?

A. Not ERISA cases. But class action employment cases, yes.

Q. All right. And just in general terms, could you describe what those were?

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A. We sued the District of Columbia Public Schools twice in class action wage cases. And those settled.

We sued a company that was not making proper contributions to its 401(k)s. It was a union 401(k) plan. And that started as an individual case for four plaintiffs and the company said we can't do this for four, it has to be for everybody, so they agreed to turn it into a class action. And that settled also.

Q. Okay. And let me ask you about the firm's involvement in the State Street case and ask you how your involvement in the case came about.

A. You mean how I met Brian or how -- or this particular case?

Q. Going back to how you met Brian, if that was your connection with the case.

A. Yeah. About 20 years ago I represented a woman who was Brian's wife at the time in an individual employment case, and we became friends. She was no longer his wife. I represented his girlfriend at the time in an individual employment case.

And then he was looking for local counsel

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to -- in the State Street to sue in Maryland. And that's what we did. The case was terminated in Maryland, and it transferred to Boston, and we stayed on as counsel of record in the Boston case.

Q. Had you had any involvement prior to the Maryland case in an action in California or in the BNY Mellon case?

A. Well, the BNY Mellon case, I believe, came afterwards. The action in California came well afterwards.

Q. All right.

A. At least the one in California that I know about that I participated in came after.

Q. After the State Street case?

A. After it started. Yes.

Q. And did you participate in the BNY Mellon case?

A. Yes. In that case I actually helped find plaintiffs.

Q. Okay. So describe how, based on your relationship with Brian, how you were brought into this particular matter.

A. I was licensed to practice in the Maryland Federal Court, and he was looking for someone to do that. And then that started as

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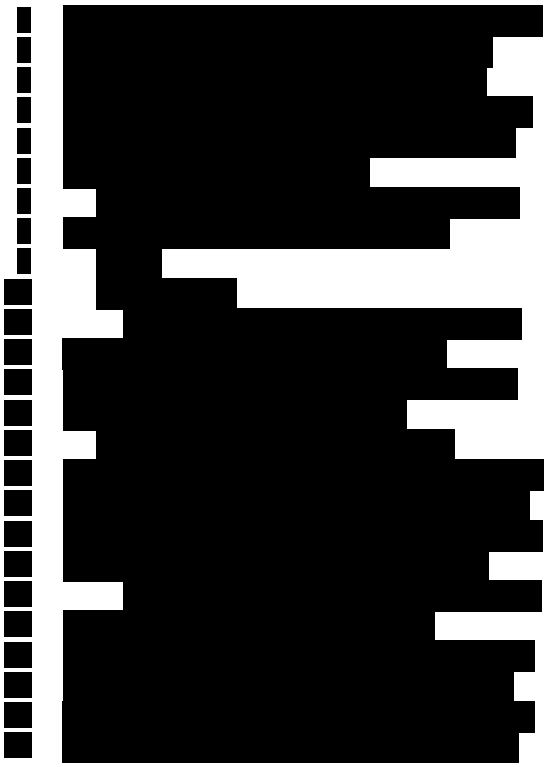

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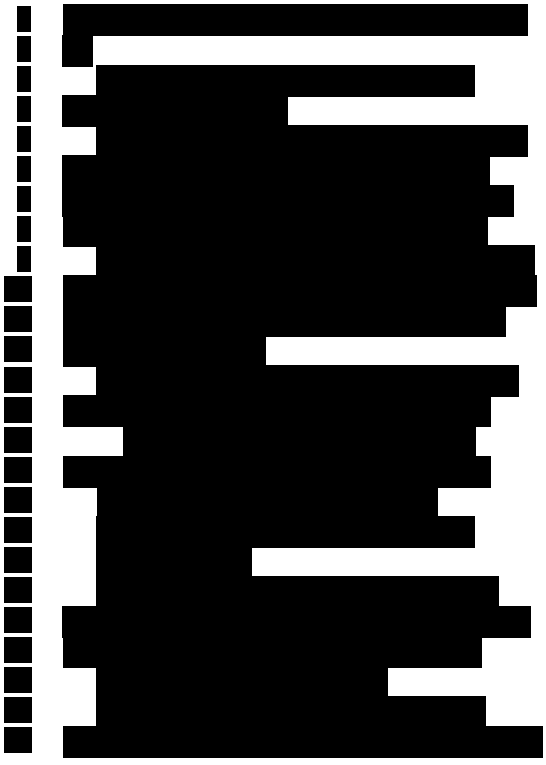

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grandmother worked for the Triangle Shirt Company until shortly before the fire. And she would break into --

SPECIAL MASTER ROSEN: 1911?

THE WITNESS: What?

SPECIAL MASTER ROSEN: 1911?

THE WITNESS: Yeah. And she would break into tears while I was growing up and say I just can't stop thinking of the friends that I lost in that fire.

And then when I was in college, I did an honor's thesis about labor union endorsements and kind of how members voted. And one of the union officers that I interviewed suggested that I go to law school. I was planning to go to law school, and he said you ought to learn labor law and represent unions. And it all sort of fell into place.

And then to see what banks are doing -- you know, it's not causing fires that kill people, but it's damaging retirement prospects of thousands or millions of people.

So it all sort of made sense to me to do this.

BY MR. SINNOTT:

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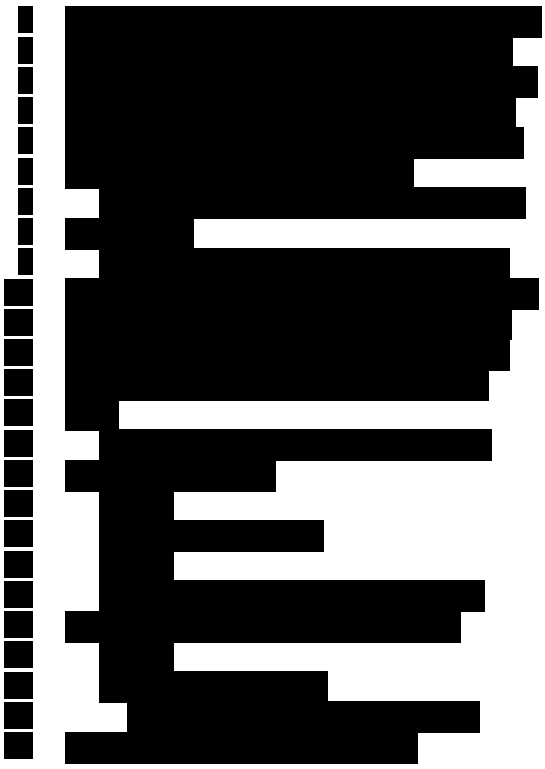

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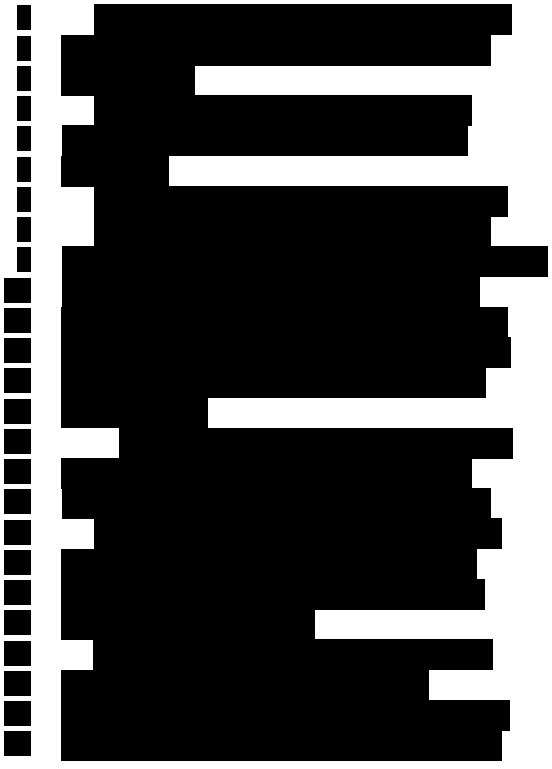

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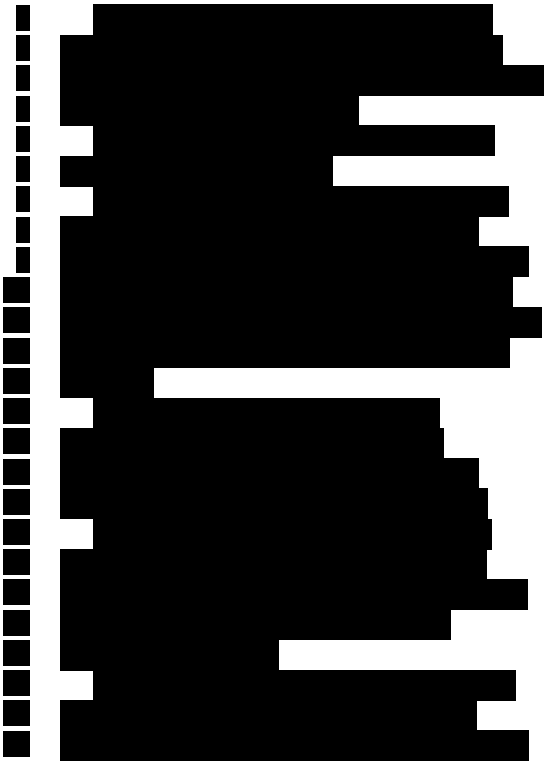

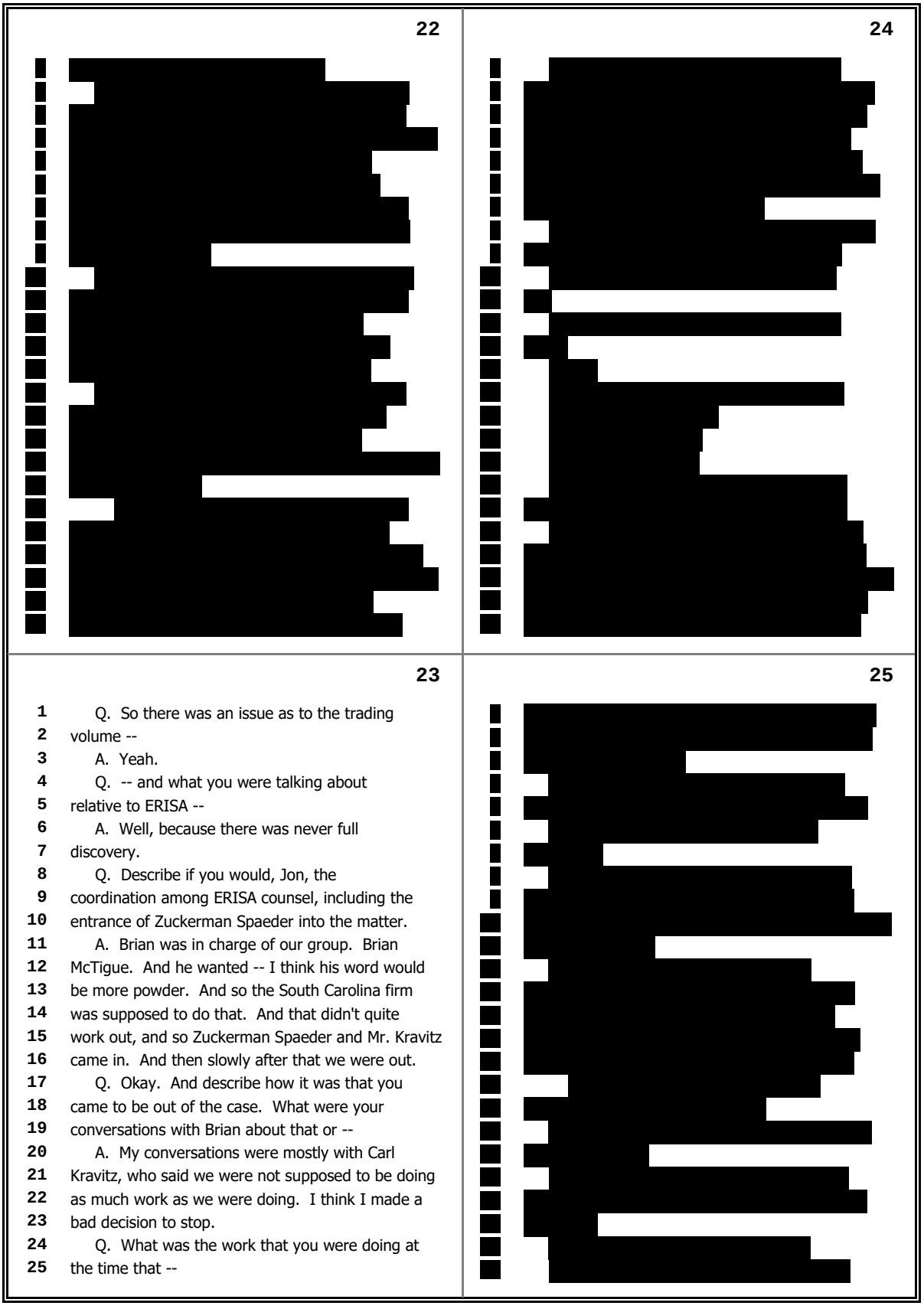

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Q. So there was an issue as to the trading volume --

A. Yeah.

Q. -- and what you were talking about relative to ERISA --

A. Well, because there was never full discovery.

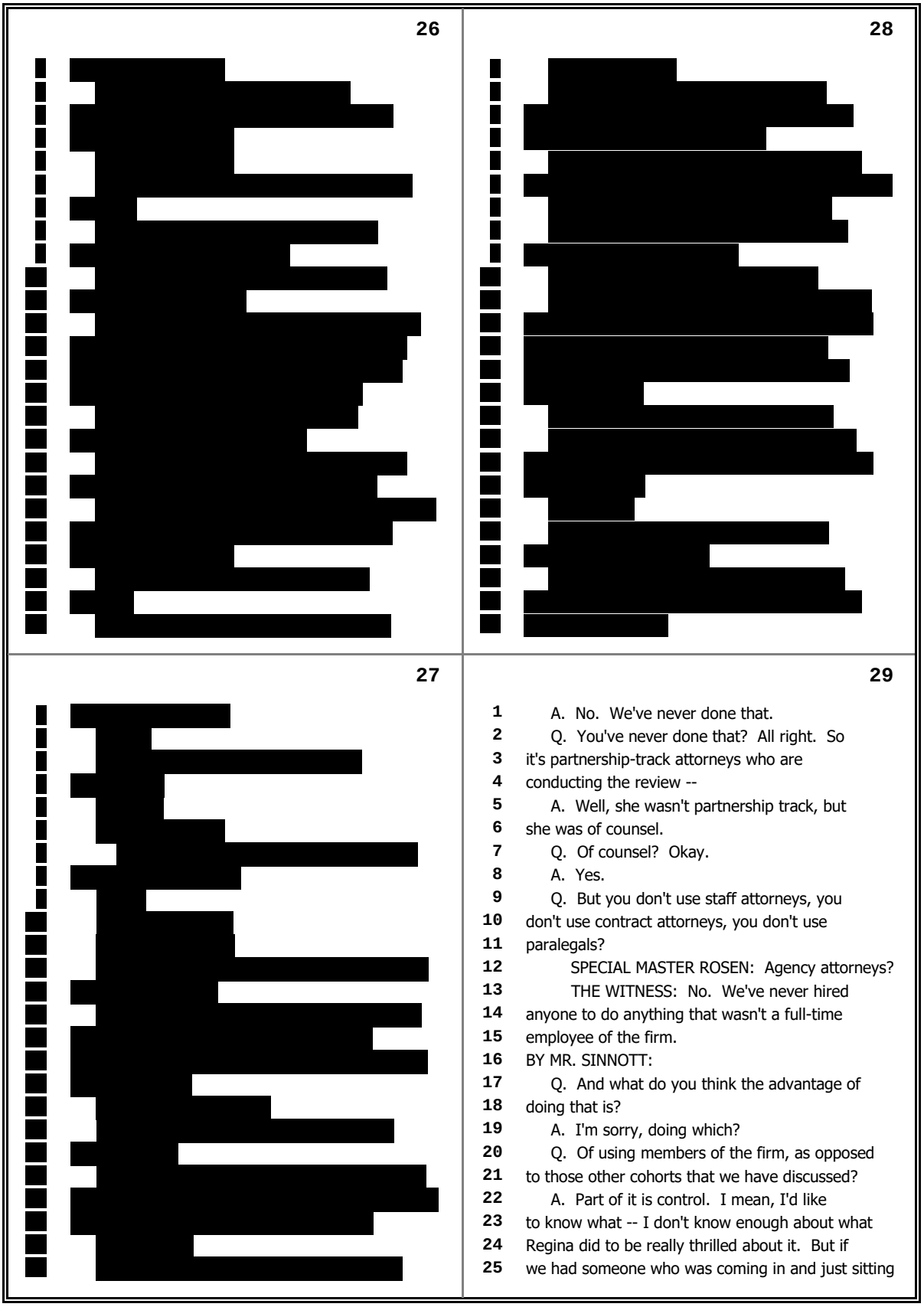
Q. Describe if you would, Jon, the coordination among ERISA counsel, including the entrance of Zuckerman Spaeder into the matter.

A. Brian was in charge of our group. Brian McTigue. And he wanted -- I think his word would be more powder. And so the South Carolina firm was supposed to do that. And that didn't quite work out, and so Zuckerman Spaeder and Mr. Kravitz came in. And then slowly after that we were out.

Q. Okay. And describe how it was that you came to be out of the case. What were your conversations with Brian about that or --

A. My conversations were mostly with Carl Kravitz, who said we were not supposed to be doing as much work as we were doing. I think I made a bad decision to stop.

Q. What was the work that you were doing at the time that --



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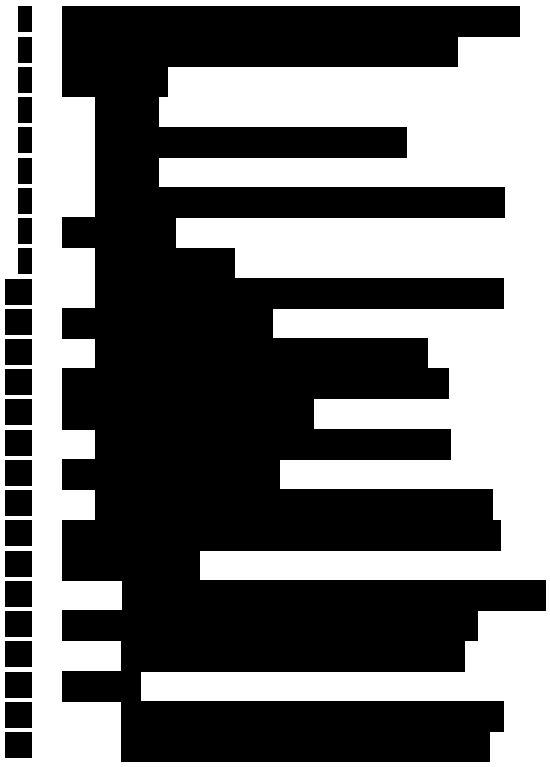
A. No. We've never done that.
Q. You've never done that? All right. So it's partnership-track attorneys who are conducting the review --
A. Well, she wasn't partnership track, but she was of counsel.
Q. Of counsel? Okay.
A. Yes.
Q. But you don't use staff attorneys, you don't use contract attorneys, you don't use paralegals?
SPECIAL MASTER ROSEN: Agency attorneys?
THE WITNESS: No. We've never hired anyone to do anything that wasn't a full-time employee of the firm.
BY MR. SINNOTT:
Q. And what do you think the advantage of doing that is?
A. I'm sorry, doing which?
Q. Of using members of the firm, as opposed to those other cohorts that we have discussed?
A. Part of it is control. I mean, I'd like to know what -- I don't know enough about what Regina did to be really thrilled about it. But if we had someone who was coming in and just sitting



reasonable. And I'm not absolutely certain of the 300 million.

SPECIAL MASTER ROSEN: Okay.

BY MR. SINNOTT:

Q. And is that because of the issue of trading volume and how much of that was ERISAs?

A. That's one issue. Yes.

Q. Did you have any knowledge as to the role of staff attorneys at Lieff and Labaton in document review?

A. You've used the term "staff attorneys." I have to say, I've never heard of that term prior to the newspaper article that led us to where we are.

Q. Were you aware that they were using attorneys to review documents?

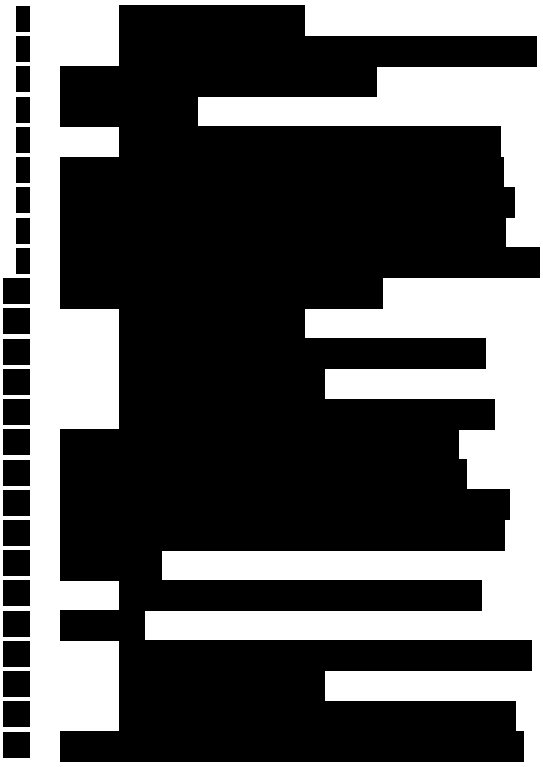
A. I mean, from the newspaper article and subsequently, yes. But at the time I had no idea.

Q. Okay.

SPECIAL MASTER ROSEN: Just so we're clear, when we refer to staff attorneys --

THE WITNESS: You mean attorneys that they're hired for a specific case like contract attorneys?

SPECIAL MASTER ROSEN: No.



THE WITNESS: I know that there are law firms, big law firms, that have attorneys that are not on the partnership track and do what you're talking about. I also know there are law firms that hire contract attorneys on an ad hoc basis to do legal research or more probably document review.

I was not aware that any of that was being done in these cases.

SPECIAL MASTER ROSEN: In any of them --

THE WITNESS: Or in any case I've been involved in.

SPECIAL MASTER ROSEN: You mean contract attorneys as you've defined them. You were not aware of that?

THE WITNESS: I was not aware of that. And I would not have known the distinction between what you're saying is a staff attorney, which I would have just said is a non-tenure track, for example.

SPECIAL MASTER ROSEN: And I think that's how people have been referring to them.

THE WITNESS: Yeah.

SPECIAL MASTER ROSEN: Although many of them are paid by the hour, they are full employees

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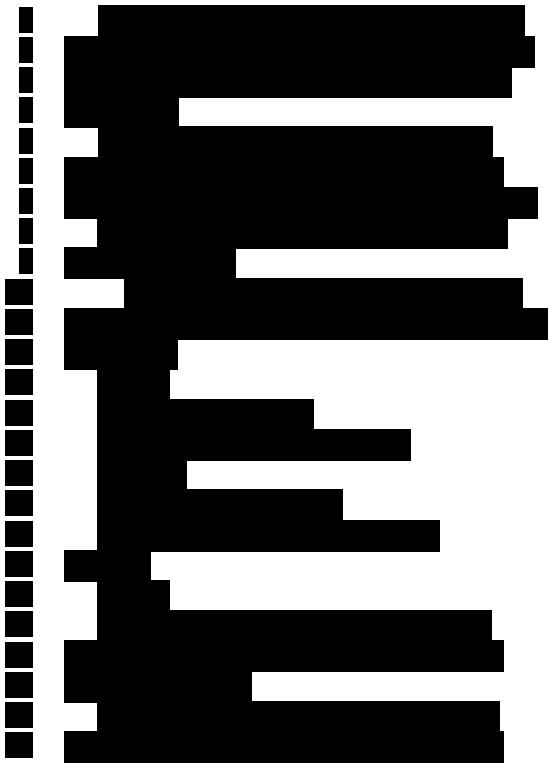

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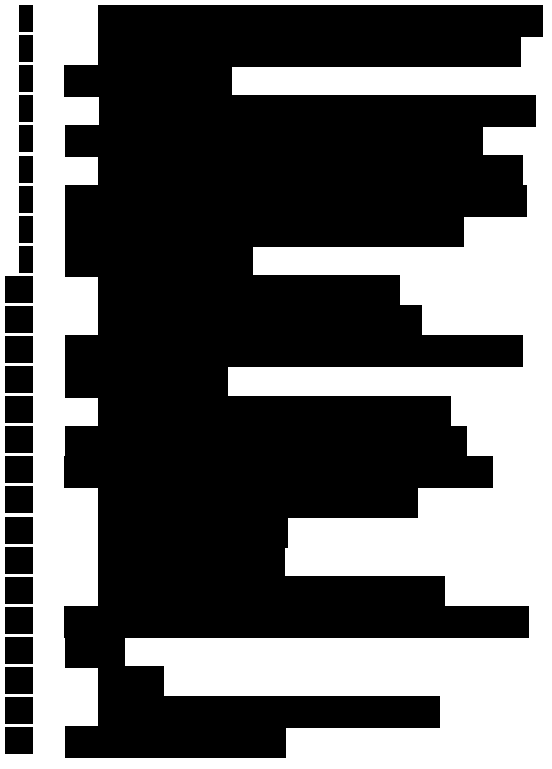

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A. Sure. Most of it.
Q. Most of it? And those are hourly clients?
A. Yes. Most of our clients are hourly. There are some that pay a flat monthly rate and -- one that pays a flat monthly rate and a couple that pay a flat annual rate in quarters.
Q. Okay. And aside from those, with respect to the hourly rates that are charged, how are those determined?
A. Most of our hourly rated clients are either individuals or unions, and so they're, in part, determined on ability to pay. Part of that is based on the fact that we -- union law firms don't have high rates because of who we represent. We had, at one time, an ERISA client that was paying $525 an hour for an ERISA fiduciary case. And that's how we set the rates in this case and in the BNY case.
I have union clients -- I'm sorry, I have fund clients that pay around $400 an hour; and I have clients that pay, depending on the number of hours, sometimes much more, sometimes much less.
Q. So the rates are all over the map?
A. Yeah. But they're lower than the one

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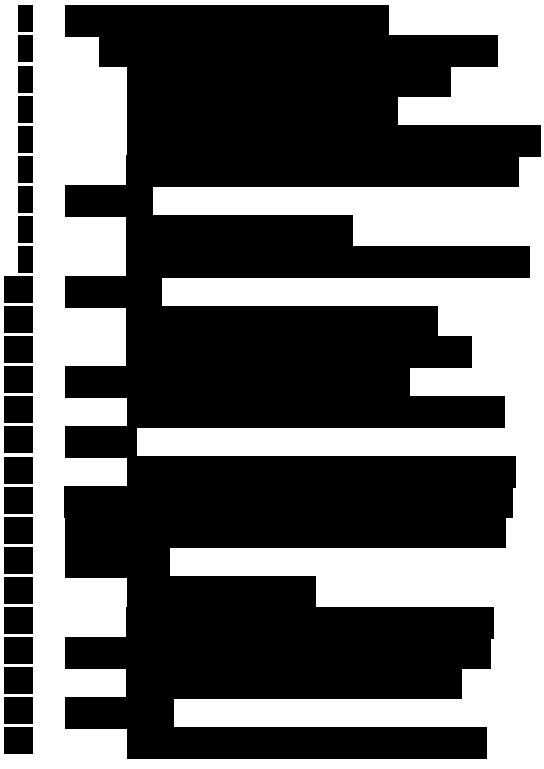

EX. 40

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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ARKANSAS TEACHER :
RETIREMENT SYSTEM, :
et al., :
Plaintiffs, : CA No. 11-10230-MLW
v. :
STATE STREET BANK :
AND TRUST COMPANY, :
Defendant. :

- - - - - - - - - - - - - - -x

July 7, 2017
Washington, D.C.

Deposition of:
MICHAEL J. BRICKMAN,
called for oral examination by Counsel to the Special Master, pursuant to notice, at JAMS, 1155 F Street, Northwest, Suite 1150, Washington, D.C. 20004, before Christina S. Hotsko, RPR, of Veritext, a Notary Public in and for the District of Columbia, beginning at 9:18 a.m., when were present on behalf of the respective parties:

interim.

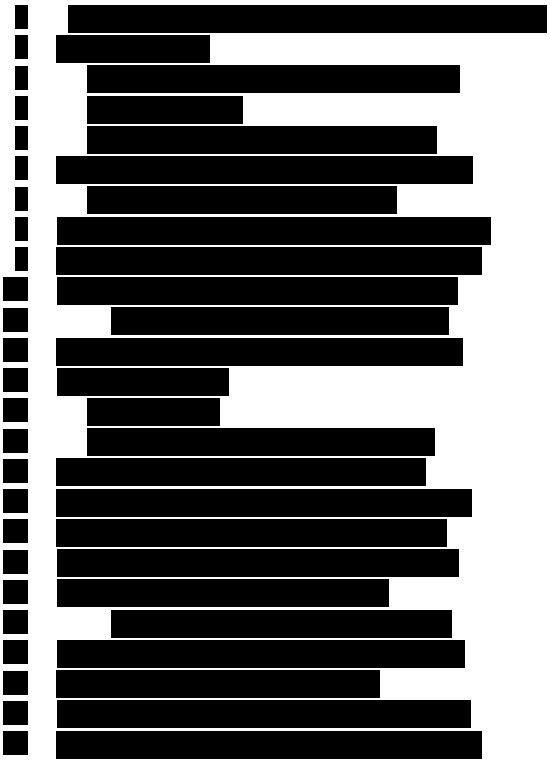
I then left there with some of the other partners and formed Richardson Patrick Westbrook & Brickman. And I've been at Richardson Patrick Westbrook & Brickman for the last approximately 15 years.

Q. And Michael, could you tell us what your areas of practice have been, both at Richardson Patrick and at your dad's firm and the other positions that you held?

A. Well, starting with my dad's firm, I only kiddingly joke that the motto of the firm when I went to work there was no case too small now that Michael is here. I went to virtually every court. I did domestic relations, I did small claims, traffic court. I did everything.

I then -- when I went over to Ness Motley, I primarily did asbestos litigation, along with some other personal injury cases. We also did some premises liability cases while I was at that firm.

We then branched out into a number of other areas, including tobacco litigation. Since that time, I've done cases against the tobacco companies. I've done environmental cases, natural



resource cases. I've done business litigation. I've done a number of what we refer to as mutual fund cases where the case revolved around whether the mutual fund is charging excessive fees to its shareholders.

I have been involved in antitrust cases. I have been involved in a number of class actions from the antitrust cases to what we refer to as the hot gas, which was the case involving whether the temperature of gasoline is impacting the value of the gas you're getting for consumers.

I've done medical malpractice cases. I've done the gamut. I still do the gamut. I consider myself a trial attorney. And I work in a number of different areas involving that.

Q. Well, that's very helpful. Thank you, Mike.

Prior to this matter, had you had experience in ERISA cases?

A. I had only been involved, I think, in one other ERISA case, to the best of my recollection. And that really dealt with whether a plan truly was an ERISA plan such that it was given certain exemptions. I don't think I've been in any others. My law firm has been involved in others,

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but I have not.
Q. Thank you. And prior to this case, did you have any past experience in matters involving foreign currency exchanges?
A. Only tangentially in the mutual fund cases. But it's really a side issue. It's not an important large part of the case.
Q. All right. Let me bring you forward, Mike, to the State Street case, and ask if you'll give us an overview as to how you became involved in the case and what your and your firm's role was in the State Street litigation.
A. Okay. We were -- I think I was contacted sometime in either February or March of 2012 by Brian McTigue, who is with you. I had, I think, one prior contact with Brian about another potential case. I do not recall how Brian got our name originally, but he contacted us about some other case. It did not work out. And he called us about this case.
Q. And what did Brian tell you about this case?
A. Well, quite frankly, I wouldn't be able to recall exactly what he said. It's been, you know, over five years ago. But my guess is that

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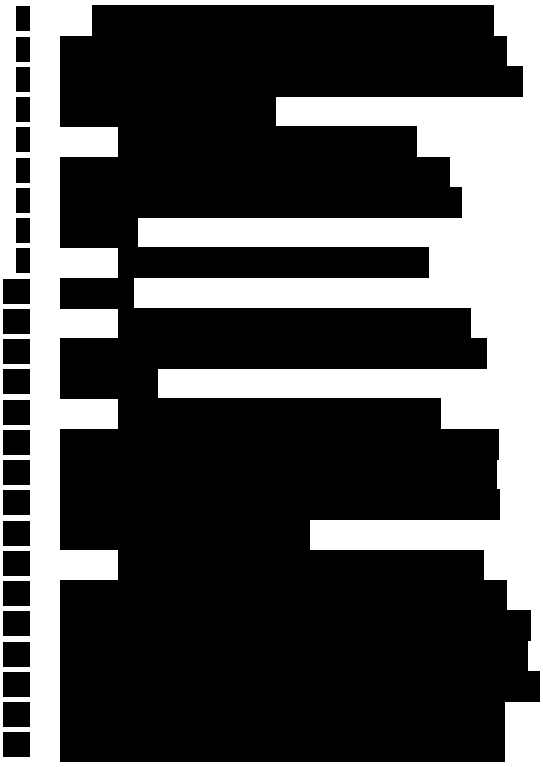

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he explained to me that he had filed a case. I'm sure he told me what the case was about. He probably showed me the complaint. And I believe he said he needed help in trying the case, getting it set for trial and trying the case.
Q. So as a result of that request by Brian, did you and your firm engage in an evaluation as to whether you should enter an appearance?
A. Yes, we did.
Q. And what were the factors that were relevant in this evaluation, if you recall?
A. I can't say I recall specifically. I have no doubt we looked at the complaint. I have no doubt that I would have brought in some of the lawyers in my firm and we would have done some preliminary research as to the law and the likelihood of success and whether, in fact, what was claimed was a violation.
And then we would have looked at how hard it would be in this case to certify a class. We would have looked at whether we could certify a class. And I'm sure we would have looked at to some extent, although it would have been very difficult for us to look at whether there would be damages that could be collected in a class format.

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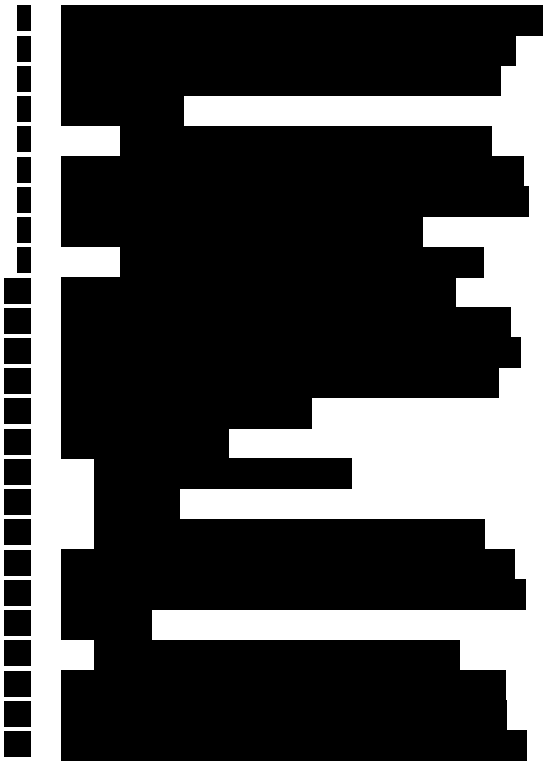

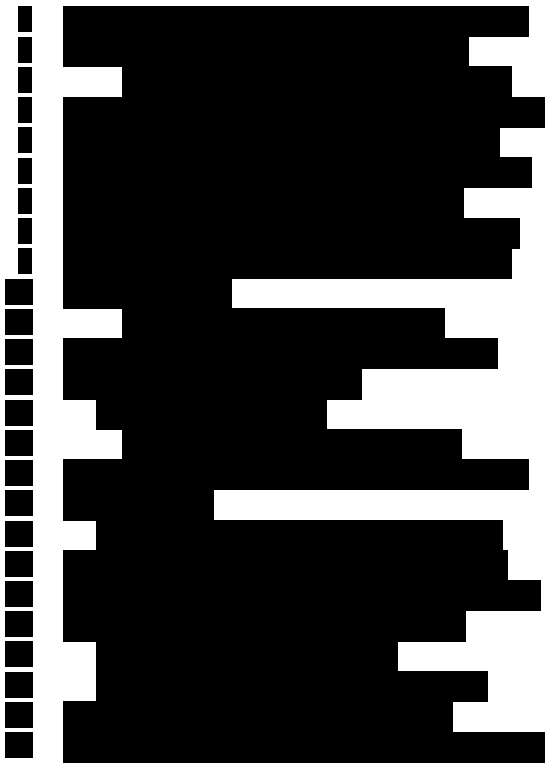

motion to dismiss that was filed early on. We wanted to do some discovery. I think we filed some briefing on getting discovery before having to respond to the motion to dismiss. There were a lot of issues dealing with that, what we needed, what we should be getting. Things of a more practical nature.

We then had some discussion as to how to deal with the mediation that we thought was going to take place in the other case and how we should handle it, whether we should intervene, whether we should object.

We also had discussions about experts, lined up experts. And I think -- I'm pretty sure Mrs. Palmer went to meet one of the experts with Brian and line up one of the experts for being a witness in the case. I don't know if we interviewed that many. I know we were looking at a number of experts, and I'm pretty sure we settled on one expert early on.

Q. So when did you join the case, as best you can remember? What month and year?

A. March of 2012.

Q. All right. And how long were you involved in the State Street litigation from that

time?

A. We were out of the case from a practical point of view in September of that year. We did not formally withdraw until approximately a year later, at Brian's request. But we were out of the case from doing anything, working on the case, providing any resources or anything, from September. So we were only in the case for six months.

Q. And during those six months, Mike, can you give us a timeline of what your firm did with respect to the State Street litigation?

A. Sure. We began gathering documents that we would need to present a case. We began coming up with a plan for discovery. I think we started working on getting discovery out, request for production, interrogatories, things of that nature.

As I mentioned, we went -- we started looking for experts. I don't know if we interviewed more than one, but I know we lined up one expert to testify in the case. And I think he was one of the experts in the...a gentleman by the name of -- last name Glass.

We were working on the motion to dismiss.

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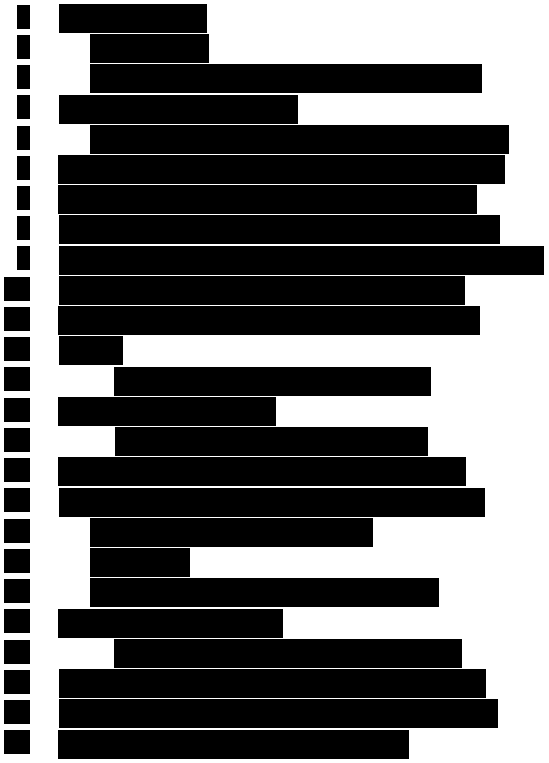

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time on it.
Q. All right. And how did your participation in this matter come to an end? You know, what prompted or precipitated your exit from the case after six months?
A. Well, I can't say for certain, but my belief was always that two things happened that caused Brian to think that he needed somebody else.
One, in September of 2012, I was about to start a large trial in Kansas City, a class action dealing with the lower temperature sales case. And I'm sure in August, I was taking the month of August to prepare for that trial. It was a big case. And I don't think I was as actively involved in the case as Brian would have wanted.
In addition, although they still worked on the case, we -- Kim and Nina, they were also helping me get ready for the trial in Kansas City. And I think -- I always had a feeling Brian was not happy about that. And we told him we had that trial coming up. We told him in advance about that issue.
But I think understandably he thought he needed somebody who could give him the time he

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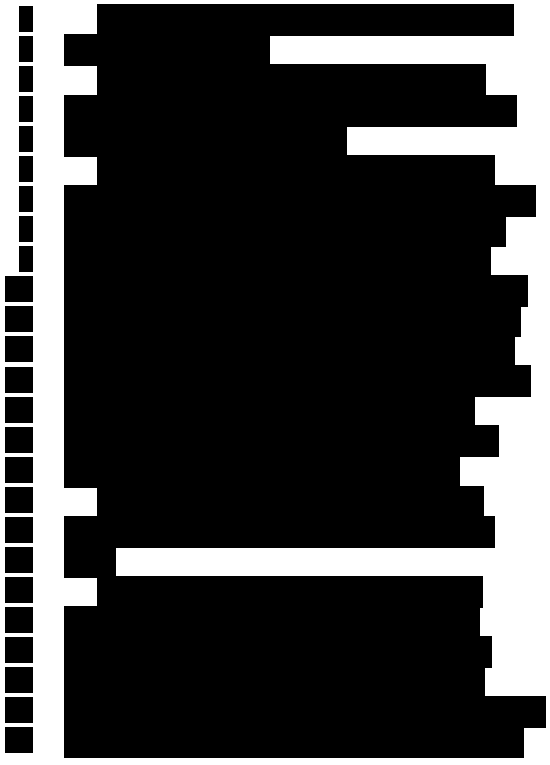

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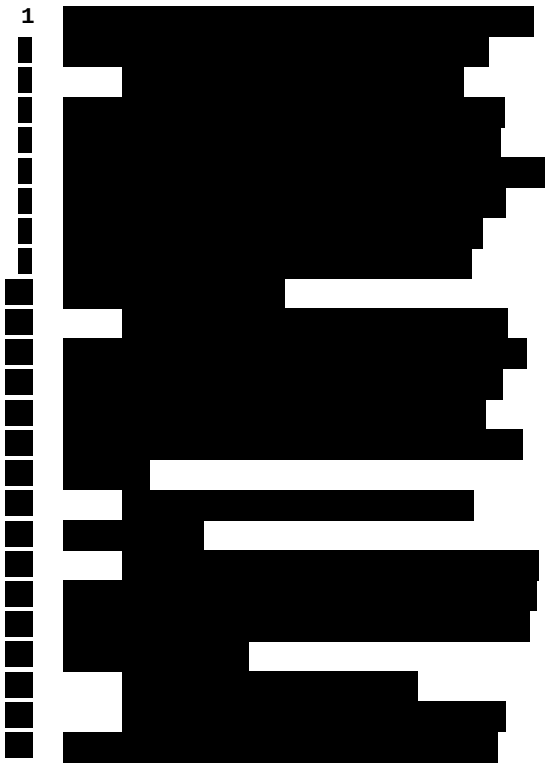

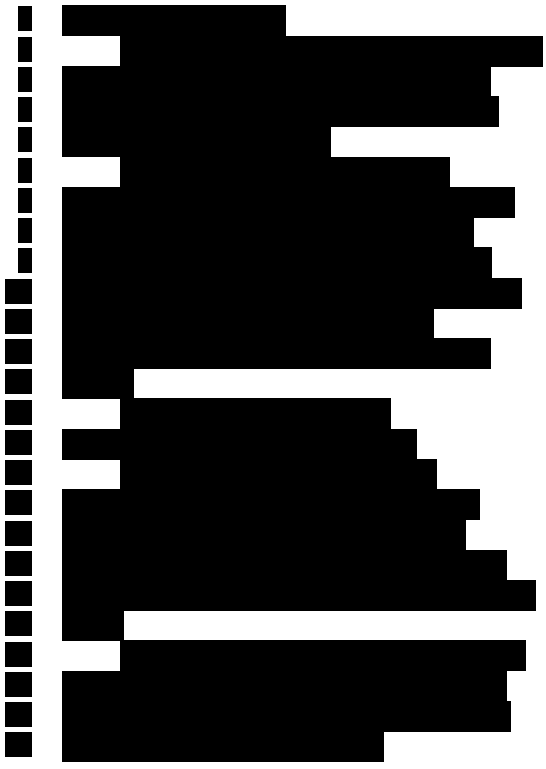

Go ahead.

THE WITNESS: Best of my recollection, I am not aware of that having taken place in cases I've worked on.

SPECIAL MASTER ROSEN: All right. Thank you.

I don't want to ask for your opinion about whether it's right or wrong. I don't want to put you on the hot seat about that. I'm simply trying to gather from as many people as I can whether this particular approach has ever been done in any other case.

THE WITNESS: I can't answer that. I can only answer in my experience. We have not engaged in it. And I am not aware in any case I've been involved in that any of the attorneys who were involved in those cases did that. I'm not sure I would necessarily have known, but I'm not aware.

SPECIAL MASTER ROSEN: Thank you.

THE WITNESS: Yes, sir.

BY MR. SINNOTT:

Q. Mike, does Richardson Patrick have clients who pay hourly rates?

A. If we do, I don't know about them.

Q. So to the best of your knowledge, your practice is strictly contingent?

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A. Yes. You know, obviously when you say "contingent," that includes, you know, working on class actions where -- or, you know, like mutual fund litigation where we have to get court approval based on some sort of lodestar or something of that nature.

It is contingent, meaning we don't have the clients paying an hourly rate. We're not guaranteed a fee, we're not guaranteed our costs will be paid. They're contingent in that nature.

Q. How does the firm determine the rates that are put in a lodestar calculation or put in a fee declaration?

A. In our firm, we have an attorney who is referred to as the business manager of the firm. And on approximately an annual basis, he looks at our rates, he talks to a number of attorneys and gets information as to what other firms are charging, best he can tell. We also collect data -- and I can't tell you where it comes from -- as to -- you know, there are a number of sources where you can find out rates firms are charging and we use that. He then compiles a list, sends it around to all the partners. I don't know that he sends it to all the attorneys.

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He sends it to all the partners. And they then review it and tweak it. And that's how we come up with our list pretty much on an annual basis.

Q. And does that process encompass or include the rates that you would charge for agency attorneys or contract attorneys?

A. No. It only deals with the attorneys in our firm and the paralegals, to the best of my recollection. I don't believe we have ever made a list of what we would charge for contract attorneys. And as I said, the only time I have used it we simply expensed it out. I don't know how others in the firm have necessarily done contract attorneys, whether they mark them up or not. I just don't know.

Q. Mike, let me get back to Kimberly's declaration and ask if you were part of that process in completing that declaration?

A. I don't have any specific recollection of that. I'm sure she would have gotten my hours. She would have probably gotten me to review my hours and, you know, I would maybe -- you know, I'm sure we knocked off, you know, as I said, one of the contract lawyers. I'm pretty sure we did not bill all of my hours. And that would have

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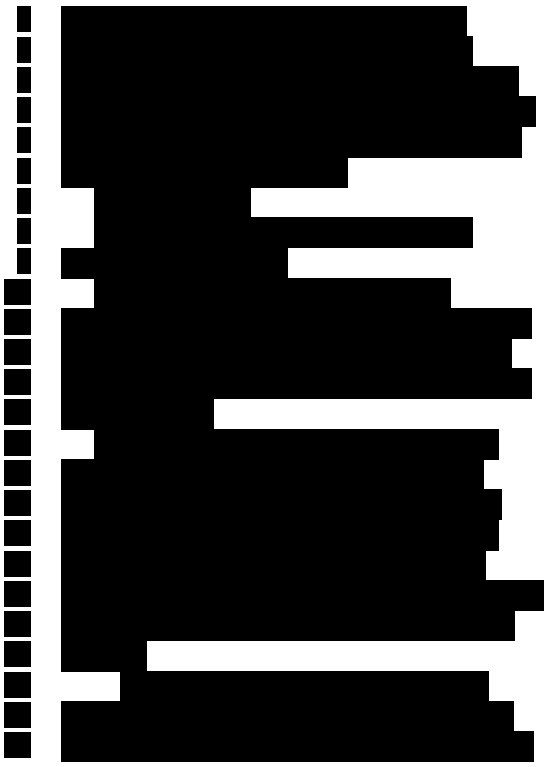

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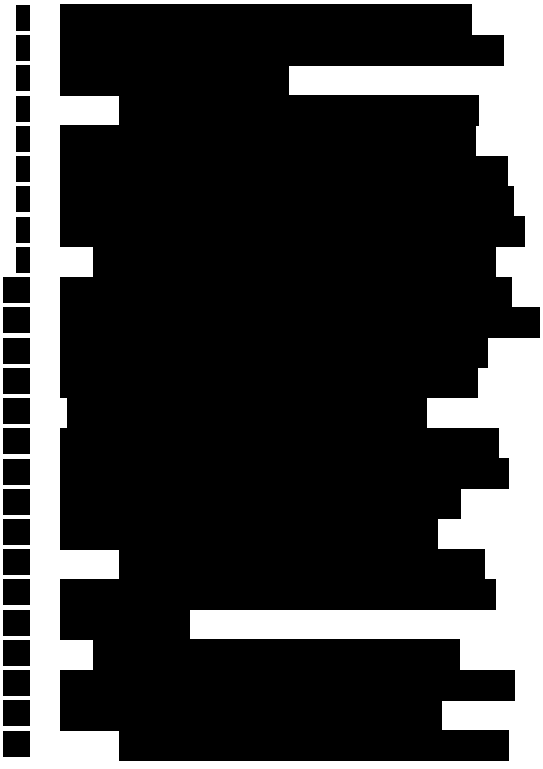

EX. 41

Volume: 1

Pages: 1-155

JAMS

Reference No. 1345000011/C.A. No. 11-10230-MLW

In Re: STATE STREET ATTORNEYS FEES

BEFORE: Special Master Honorable Gerald Rosen,
United States District Court, Retired

DEPOSITION of DANIEL P. CHIPLOCK

September 8, 2017, 1:17-4:20 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

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think about the 20 million dollars of lodestar that we put into BNY Mellon that we may never get back. That was a lie.
I don't think that thought ever left my mind.
Q. Yeah.
A. So in 2015 we have yet to hear what the result is going to be in BNY Mellon.
Garrett is pressing me for an agreement that we share some portion of Lieff Cabraser's allotment with Thornton Law Firm in recognition of the fact that Thornton had developed the initial concept --
THE SPECIAL MASTER: Hang on. Share some portion of Lieff's allotment in the BNY Mellon case?
THE WITNESS: Yes.
THE SPECIAL MASTER: And shared that with Thornton --
THE WITNESS: Yeah.
THE SPECIAL MASTER: -- in the BNY Mellon case?
THE WITNESS: Yes.
THE SPECIAL MASTER: But not share the

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allotment from BNY Mellon to whatever Lieff got in State Street?
Or didn't it matter to him? He didn't care where it came from?
THE WITNESS: Well, there was a little bit of tit for tat-ness [sic] in his e-mails --
THE SPECIAL MASTER: Yeah.
THE WITNESS: -- and you've probably seen it.
You know, there was one e-mail I think he sent to Bob where he says, you know, if you treat us right in BNY Mellon, we'll treat you right in State Street.
And, you know, I guess that stuff goes on in these cases. It's not something I've had experience with before this case as --
BY MR. SINNOTT:
Q. Is it unusual to try to meld or blend different cases?
A. I don't know if it's usual or unusual. I mean these cases were sui generis because you had two competitors, and there's really only like four actors in this space.
So you had two main competitors who are

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being sued for the same scheme at roughly the same time involving many of the same counsel.
So I'm actually willing to bet in a similar -- if you had a similar situation but against a different industry, different defendant, similar issues might come up.
Q. Okay.
A. It's not outside the realm of my imagination.
Q. Are you aware of a perception that Thornton Law Firm might have dropped the ball a little bit on their BNY Mellon submission?
A. On their BNY Mellon submission?
THE SPECIAL MASTER: Yeah, their lodestar petition.
THE WITNESS: Their petition?
In BNY Mellon? No. You mean the actual declaration that they filed?
Q. Yes.
A. I don't recall that. I think what -- I think what the rub was there was their relatively modest lodestar in that case and their -- I think they -- it seemed to me they were caught unawares perhaps; that --

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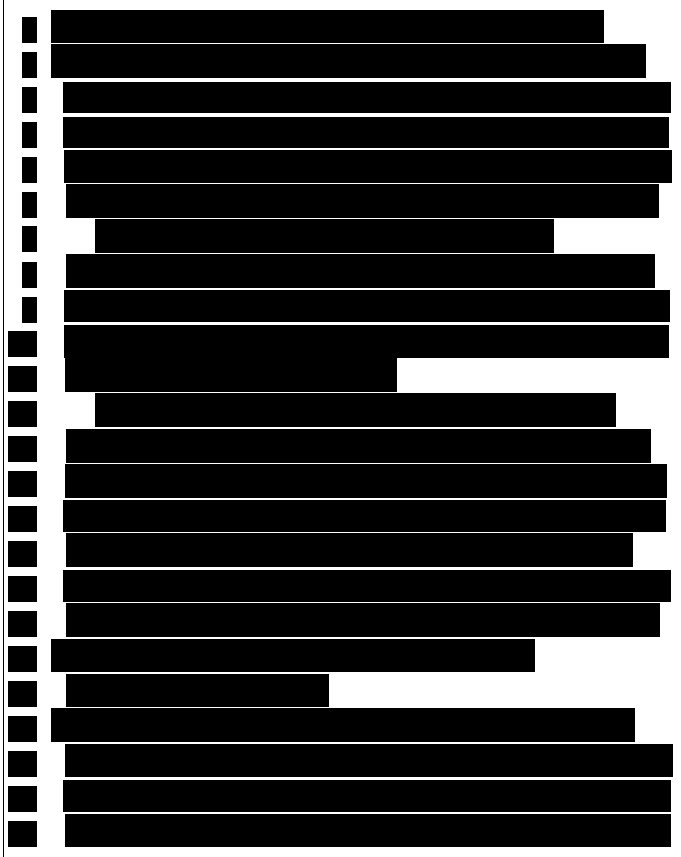

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So that was the tug of war that I was having with Garrett in this 2015 timeframe.
BY MR. SINNOTT:
Q. Okay. So on page 1 of that same e-mail, Dan, Garrett jumps in and says, "I see no need for that at this time. It can even be done after final approval."
A. Hm hm.
Q. Did that seem wise to you?
A. Well, I -- it didn't -- it didn't make sense to me. I mean maybe this has been done elsewhere, but it didn't make sense to me to wait until after final approval --
Q. And why is that?
A. -- to settle up a fee.
It just -- I mean you need to all be on the same page going into a final approval hearing. Even a preliminary approval hearing, it's helpful to be on the same page so you don't have internecine squabbles distracting you while you're trying to get the class certified and get a settlement approved for the good of the class.
Q. Hm hm.
A. And it seemed to me at this point a simple

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enough issue to address given that we were at the tail end of the case and everybody's contributions at this point should be pretty clear, including their lodestar.
We've all been keeping track of our lodestar up to this point, and the discovery effort is basically over. The discovery effort had wound down in early July.
Q. And, in fact, in response to Garrett you say, "I guess I don't understand the reluctance to square up the percentages."
Are you making reference to the lodestar on that?
A. I'm -- I'm -- I'm making reference to the additional 40 percent, the final 40 percent --
Q. I see.
A. -- of the fee to be allocated.
Q. After the 20/20/20 --
A. Correct.
Q. -- the remaining 40?
A. Yeah. If not now when is I'm saying.
Q. And Larry responds: "For one thing, we'll know the actual fees awarded by the Court."
Now did you interpret Court to be a

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reference to the BNY Mellon Court or to the State Street Court?
A. Oh, I thought he was talking about State Street.
Q. Okay. And then in the final word, at least on this e-mail thread, is "I don't see how that matters." This is from you. "It would seem that the respective lodestars, contributions, etcetera, are not terribly divergent and not a skeptical judge..." -- is this the same Judge Mark Wolf that --
A. Well, that is not meant to be pejorative. What that is meant to say is I think we have a judge who appreciates that we've been working hard.
Q. And he had given signals to that effect?
A. Yeah, because, you know, at this point we had reported to him more than once about the progress of the mediation. And Jonathan Marks had also.
And I -- I had the sense that he was pretty convinced that all sides had worked in good faith to craft a hard-won settlement in this case, including -- including State Street's counsel.
Q. Yep.

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A. And I got the sense that he appreciated that. So that's what I was saying there.
Q. Was part of your concern, Dan, that you thought this might be BNY Mellon all over again; that Thornton Law Firm was not approaching this in the proper way, or they weren't emphasizing the right things?
A. Well, you know, it's not as if they weren't approaching BNY Mellon in the right way. I think they -- 'cause they made real contributions in that case as I've talked about --
Q. Yes.
A. -- Mike Lesser in particular --
Q. Sure. I mean as far as the presentation, as far as the documentation and --
A. I don't think they made any errors in their documentation that I can recall in BNY Mellon because as lead counsel we reviewed all those submissions, and I don't recall anything that was off kilter.
I mean their main concern was how modest their lodestar appeared in comparison to other firms in the case, especially Kessler Topaz. So I wasn't concerned that they were doing anything improper.

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I was just trying to keep these two cases separate and not have them cross streams.

THE SPECIAL MASTER: Let me pursue this further. It looks to me in that e-mail that you sent --

THE WITNESS: Yep.

THE SPECIAL MASTER: -- not to be difficult, it would seem that the respective lodestars, contributions are not terribly divergent. You mean in the State Street case?

THE WITNESS: In the State Street case, judge.

THE SPECIAL MASTER: And not a skeptical judge as far as we can tell --

THE WITNESS: Right.

THE SPECIAL MASTER: -- meaning Judge Wolf was not like Judge Kaplan. He was not going to drill down on lodestar and give overemphasis to lodestar as opposed to other kinds of contributions.

THE WITNESS: Right, and I -- yes, I think that's fair, and I --

THE SPECIAL MASTER: And then -- I'm sorry. Go ahead.

THE WITNESS: Well, you're jogging my

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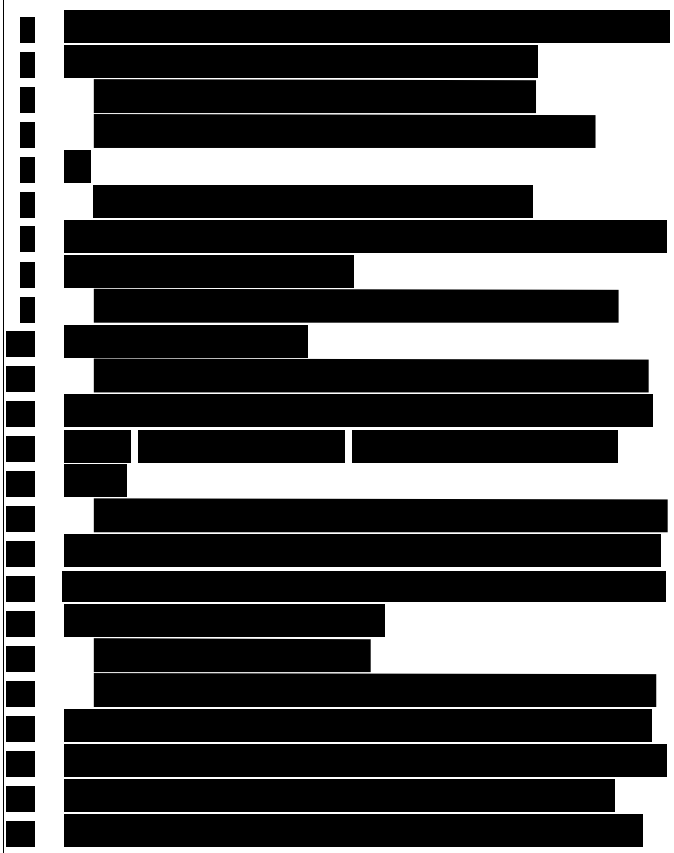

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THE WITNESS: I don't know if I was saying quite that much. I think what I was mainly saying was we have three firms here, and Labaton and Thornton and Lieff Cabraser who have all put in sizable lodestar contributions.

That distinguishes this case from BNY Mellon where you had sort of a top-heavy distribution.

I'm also saying that Judge Kaplan has had a tendency to look closely at detailed lodestar reports and say you didn't need to staff this deposition with as many people, or why is this firm --

THE SPECIAL MASTER: I'm sorry. Go ahead.

THE WITNESS: -- why is this firm doing that.

We did not think Judge Wolf was likely to do that because this was a case that was mediated for the duration with all three firms pulling, in my view, pretty equal weight in that mediation and the overall effort.

(Pause.)

BY MR. SINNOTT:

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to square up the percentages.
A. Huh-huh.
Q. Then Larry responds: "I believe there are other cases and other agreements which are influencing people's desire to either reach agreement now or later. I don't have a dog in the hunt, and I don't want to be drawn into it. I apologize for any mistakes, but I'm not in a position where I can edit my e-mails so I dictate them."
It seems like Larry recognizes the fact that BNY Mellon on has surfaced in this context --
A. Yep.
Q. -- and he's trying to move everybody away from that, correct?
A. Hm hm.
(Mr. McTigue has joined the proceeding.)
BY MR. SINNOTT:
Q. Then there's a response to that from Chris Keller who says we should talk this through. And you're not on this distribution --
A. No, this is the first time I'm seeing this.
MR. HEIMANN: Could you please wait until he finishes his question?

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THE WITNESS: Sorry.
BY MR. SINNOTT:
Q. You're not on this distribution so I'm assuming this is the first time you've seen it, Dan?
A. This is the first time I'm seeing this.
Q. But Chris says, "We should talk this through. The Court absolutely need not understand what the allocation of fees is amongst counsel. So that should not be included in any documents to be filed with the Court. I have to say I'm quite overwhelmed by the size genitals..." -- I guess that's a compliment -- "...Lieff has in this case in which they have no client or title. That said, an agreement or allocation will not happen until the fees are actually in and need to be distributed."
So I guess I'd ask you if you'd agree that Keller and Labaton were not taking this as constructive criticism on your part?
A. If you want to characterize it that way, sure.
Q. And Garrett --
A. It wasn't criticism actually.
Q. All right. It was a suggestion -- a strong suggestion?

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A. It was a strong suggestion --
Q. Yeah.
A. -- as I thought a wise way to proceed.
Q. All right. But Garrett concludes by saying -- in response to Keller's message, "I agree they will threaten their own fee app which I say would invalidate the agreement we have."
Now how would that invalidate the agreement?
A. I don't know.
Q. I couldn't figure that out, but I was hoping you'd be able to enlighten me.
A. I don't know --
THE SPECIAL MASTER: You don't remember any conversations along these lines that if we squared up at this point earlier it could threaten your fee application?
THE WITNESS: If --
THE SPECIAL MASTER: Your, Lieff's, fee application.
THE WITNESS: No. I think what he's -- I think what he's saying there is -- I think what Garrett is speculating there is if -- is if Labaton and Thornton will not agree with my suggestion, then

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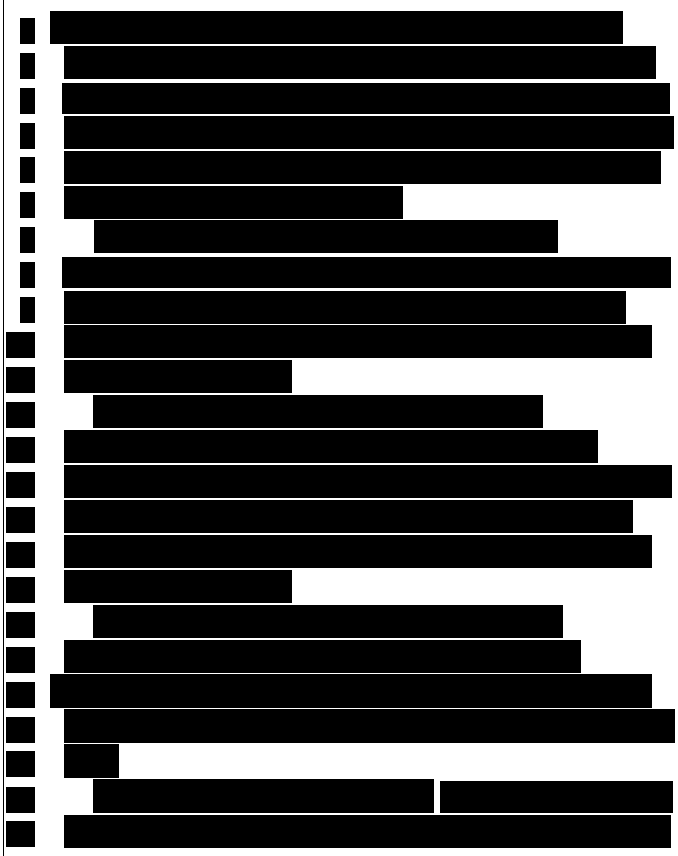

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Mellon, in which they had a much lower lodestar and got less than they thought they should have gotten, they were learning from that experience and looking for a way to build up their lodestar in this case?

THE WITNESS: I was concerned about the prospect of inflated lodestar showing up on their application or anybody else's application, for that matter, 'cause we didn't need to create problems for us.

THE SPECIAL MASTER: As part of that concern, were you concerned about the way in which the staff attorneys that you had loaned them effectively for purposes of cost allocation showing up on their lodestar?

THE WITNESS: No. I was expecting that staff attorneys that they had born the financial responsibility for to appear on their lodestar reports.

THE SPECIAL MASTER: So that raises this question, Dan --

THE WITNESS: Hm hm?

THE SPECIAL MASTER: -- which has perplexed all of us from the beginning on this side of the table.

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THE WITNESS: Hm hm?

THE SPECIAL MASTER: Is there any agreement, written, e-mail, handwritten notes, anything that indicates that Lieff or Labaton specifically consented to Thornton including on their lodestar these staff attorneys that were employed by Lieff or Labaton?

THE WITNESS: Um, okay. There's -- as I answered last time, there's no written agreement to that effect.

THE SPECIAL MASTER: Even not an agreement. An e-mail, anything?

THE WITNESS: Well, there is I think an acknowledgement in August of 2015. I think I sent an e-mail to the team saying should we talk about -- since we're nearing the end here, should we talk about how we're going to account for staff attorneys. Do we want to settle on a uniform billing rate?

And Mike Rogers responds and says that's for another day.

THE SPECIAL MASTER: But that certainly is -- it doesn't approach any kind of an authorization or -- or an agreement to allow

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Thornton to take your staff attorneys and put them in their lodestar.

THE WITNESS: All I can say is, as I said the last time, which was my belief, was because it seemed -- it seemed common sense to me.

It seemed understood to me, and I believe the reason for Garrett's request, that they be allowed to contribute financially to the document review process would be for them to be able to say that they were contributing to the document -- to document review in the case and credit that in their lodestar.

THE SPECIAL MASTER: They could have clearly put an application in for however much they reimbursed you --

THE WITNESS: Hm hm.

THE SPECIAL MASTER: -- you, Lieff, reimbursed Labaton for the cost of the staff attorneys clearly --

THE WITNESS: Right.

THE SPECIAL MASTER: -- but the notion that they would then take those costs and put them on their lodestar at, you know, eight to ten times what they were reimbursing you for is a much

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different -- a much different notion.
And we have looked -- and if you can point us to anything --
MR. HEIMANN: Right here.
THE SPECIAL MASTER: Can I see?
MR. HEIMANN: Sure.
THE SPECIAL MASTER: This is -- you're showing me an e-mail from August 30th which is right about same time.
MR. SINNOTT: Same date.
THE SPECIAL MASTER: Same date.
THE WITNESS: Yep.
THE SPECIAL MASTER: From Mike Rogers to Chiplock with CCs to Mike Lesser, Nicole Zeiss, David Goldsmith.
And it says spoke briefly to Nicole. This needs to be part of a larger discussion for purposes of now no caps and all timekeepers --
MR. HEIMANN: Well, what I'm really talking about is the e-mail that precedes that from Chiplock --
THE SPECIAL MASTER: The one you've highlighted?
MR. HEIMANN: The one I've highlighted

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which he wrote to Thornton and to -- I think this is both the folks at Thornton and at Labaton -- do we want to cap document reviewer rates at a certain level. We probably need to pick consistent rates.
In BNY Mellon -- it's B-N-Y-M-- the top document reviewer rate was $425/hour, I think. And he goes on from there.
Then what you referred to is the response from Rogers copying Lesser and others about the timing of discussing that.
Now if you want to ask Mr. Chiplock to give you the context of this, I think it answers your suggestion about whether or not, A, Lieff Cabraser expected Thornton to include staff attorneys at those levels, $425 an hour, and whether those included staff attorneys that had been housed at Lieff Cabraser and what his expectation was in that regard.
THE SPECIAL MASTER: Since Mr. Heimann has asked the question --
THE WITNESS: You want me to answer that question?
THE SPECIAL MASTER: -- I'll let you answer that question, and then I'll have a few of my

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own.
THE WITNESS: It was my expectation that the three firms would be billing their document reviewers at comparable rates. And perhaps the same rate as I'm suggesting here.
THE SPECIAL MASTER: It looks like you're looking for uniformity at the least.
THE WITNESS: At that point I'm suggesting it might be helpful, yeah, to have a uniform rate. Now it didn't end up happening that way because, as we talked about last time, this discussion gets tabled by lead counsel, and it doesn't get picked up again before the fee applications go in. And that's why the rates are slightly divergent.
Can I also say one other --
MR. HEIMANN: Wait until the question. He's not finished his question. I just want to make sure you were listening to his --
THE SPECIAL MASTER: Yeah, yeah, I'm listening.
THE WITNESS: Can I also say one other thing about -- I want to get into specifics also about the document reviewers that Lieff and Thornton

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shared.
So there were six individuals that we either shared with Thornton or housed for Thornton. Four of those people were paid through an agency.
THE SPECIAL MASTER: Right.
THE WITNESS: So either Lieff paid the agency or Thornton paid the agency.
THE SPECIAL MASTER: Right.
THE WITNESS: So I'm not sure --
THE SPECIAL MASTER: That's interesting. I thought the understanding was Lieff was going to pay the agency, and Thornton would reimburse.
Did Thornton directly pay the agency?
THE WITNESS: Thornton directly paid the agency for those four people for all of the time that those people were doing work for Thornton.
So you have four out of those six people are agency attorneys. Now I don't know if you're suggesting that Lieff Cabraser ought to get to bill them at 415 or whatever we bill, but Thornton only gets to bill them at 40.
That doesn't seem fair to me because we're taking turns paying the agency --
THE SPECIAL MASTER: Or neither of you

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get to bill them at 415 --
THE WITNESS: Well, I would push back strongly on that.
THE SPECIAL MASTER: Well, you can push back, and I'll have to decide that but as to the agency lawyers --
THE WITNESS: Right, as to the agency lawyers who were doing the same work as everybody else.
THE SPECIAL MASTER: At this point I'm more focused, however, on what authorization was given to Thornton, and -- and I think it's important here.
I see this e-mail. I don't think it -- with all due respect, Richard, I don't think it answers my question.
MR. HEIMANN: We disagree. I think it does.
THE SPECIAL MASTER: All right, well, we'll disagree because all it says is we need to pick consistent rates. For any document reviewers.
The question that I've got -- Nicole Zeiss has testified --
THE WITNESS: Yeah.

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THE SPECIAL MASTER: -- she's the one responsible for putting together the declaration and the fee applications; that she knew nothing about any agreement as to -- she knew nothing about any agreement as to allowing Thornton to put your staff attorneys or agency attorneys or Labaton's on Thornton's lodestar.
THE WITNESS: Hm hm.
THE SPECIAL MASTER: As far as I know, that's been the consistent testimony of everybody.
MR. HEIMANN: There's no question yet.
THE SPECIAL MASTER: Yeah, there's no question yet. That's the consistent testimony of everybody.
I keep looking for any direct agreement, implicit agreement, anything that says to Thornton you can put these folks on your lodestar.
By "these folks," I mean staff attorneys or agency attorneys.
MR. HEIMANN: Is that a question now?
THE SPECIAL MASTER: That is a question. If you know of any, please direct me to it. And with all due respect, Richard, this ain't it in my view.

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MR. HEIMANN: We have a difference of opinion, judge.
THE SPECIAL MASTER: Okay. It certainly isn't an agreement. This is a --
MR. HEIMANN: Well, wait a minute --
THE SPECIAL MASTER: This is an e-mail from Dan Chiplock it looks like to Mike Rogers.
THE WITNESS: Who's --
THE SPECIAL MASTER: And others are copied on it.
THE WITNESS: Right, and Mike Rogers --
THE SPECIAL MASTER: Including the Thornton people.
THE WITNESS: Mike Rogers is one of the key point people at Labaton overseeing the document reviewers at Labaton, as I think he testified to.
THE SPECIAL MASTER: Okay.
MR. HEIMANN: Hold on. I can't let this slide. You keep slipping in your language. One time you talk about an agreement. You want an agreement.
Then you go on to say anything explicit or implicit which supports the notion that Lieff Cabraser expected or -- you used the word

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"authorized" -- that Thornton would include on its fee application the staff reviewers at rates that are comparable to what Dan is talking about in this e-mail.
This, at the very least, implicitly acknowledges that's going to happen at those levels in terms of the billing rates. At least when you combine it --
THE SPECIAL MASTER: You and I are going to disagree --
MR. HEIMANN: -- excuse me, let me finish. When you combine it with his testimony about the context in which this occurred.
THE SPECIAL MASTER: You and I are going to disagree about this, but I'm going to remind you, Richard, right now this is a deposition governed by Rule 30.
Under Rule 30(c) objections are to be made non-argumentative and non-suggestive. If you want to testify based on your personal knowledge, that's fine. We'll give you an opportunity. I don't think you have any personal knowledge, frankly.
MR. HEIMANN: And, you're right, I don't

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about this particular --
THE SPECIAL MASTER: So I would appreciate it -- you'll have an opportunity to weigh in on this. That's fine. My question, whether explicit or implicit, was very clear.
I -- my job is to make findings pursuant to my mandate. The accuracy and reliability of representations made in the lodestar. There were representations made in the lodestar to the Court by the Thornton firm that these were the regular rates charged by these attorneys in their firm.
MR. HEIMANN: Hm hm.
THE SPECIAL MASTER: I'm looking for anything that says to Thornton you can put these folks on your lodestar. That's what I'm looking for.
This may raise some slight implication, but this is an e-mail that looks to me to be from Dan to Mike Rogers.
Now Mike Lesser is copied on it. Nicole is copied on it. David Goldsmith is copied on it. But it looks to me to be looking for consistency.
THE WITNESS: Right. And I would just add, judge, that all the people you just named were

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the key people to be involved in the discussion of how these people were to be billed and in what manner.
I would also refer --
(Pause.)
THE WITNESS: When you're ready.
THE SPECIAL MASTER: Yep.
THE WITNESS: I would also refer you back to my communications with Garrett at the beginning of this effort back in January, February of 2015, and also with Mike Lesser, where we're talking about finding them document reviewers, and we're sending them resumes.
And we're saying we're going out to an agency to get a couple people because a couple people left. We want to make sure that, you know, we're kept at parity. There's also a subsequent e-mail in March or April or, whenever it was, where I say I thought the agreement was we were all going to have ten document reviewers. It seems you have more than that now. So I'm going to cut back to get us back to parity.
All these things taken together to me give you the implicit agreement that there are

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document reviewers being credited to each of the three firms that will be included in those lodestar reports at the end of the day.
THE SPECIAL MASTER: If that's the case, why did you include these document reviewers that were allocated to Thornton on your lodestar?
THE WITNESS: Judge, we've been over this --
THE SPECIAL MASTER: It's a very simple question.
If you believed that Thornton was going to claim these folks on their petition, on their lodestar --
THE WITNESS: Right.
THE SPECIAL MASTER: -- why did you claim them?
THE WITNESS: Judge, they weren't all claimed. Four of them were inadvertently claimed, and we've been over this many, many times.
But that was an innocent mistake. Now if your Honor is not convinced of that fact yet, I'll stay here for two more days because that is the truth.
THE SPECIAL MASTER: I don't know about

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innocent. What we're trying to understand here is what was the agreement and arrangement between the law firms. That's what we're trying to understand.
And I'm not making -- I'm not implying in any way as to Lieff that there was anything intentional or anything else in billing these lawyers. I'm not implying that other than the fact that there was a claim for lodestar for these attorneys, and there was also claim for the same attorneys by Thornton.
THE WITNESS: Not all six of them.
THE SPECIAL MASTER: Not all six but four of them.
THE WITNESS: Four of them. And for two of them it was nine weeks of time, and for the other two it was three months of time. For the other two the time was allocated correctly because there was not a bookkeeping error made.
And we've answered these questions at length in our interrogatory responses; and, again, I will stay here until the cows go home -- come home to convince you that that was an innocent mistake if you believe otherwise.
BY MR. SINNOTT:

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Q. Let me ask a couple questions, Dan.
And, you know, like the special master, I don't think there's any implication here that this was a nefarious act by -- by your firm.
But you'd agree with me, wouldn't you, that August 30, 2015 was months after the document review was over?
A. Two months.
Q. Yeah. Two months?
A. Yes.
Q. You'll agree with me also that this does not make reference to share document reviewers, correct?
A. It doesn't make specific reference to sharing document reviewers.
Q. And the Thornton Law Firm had document reviewers on staff, Jotham Kinder, Miss Caruth, Evan Hoffman. Mike Lesser would review documents as well.
A. Hm hm.
Q. So -- and I believe this was around the time that Garrett and Evan were trying to determine a billing rate for Michael Bradley, correct?
A. I don't know about that.
Q. So wouldn't the inference here in light of

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the timing and in light of the lack of mention of shared or sponsored reviewers indicate that this was about the firm's document reviewers?
A. No. All I can tell you is I wrote the e-mail, and I know what I was thinking. And I've told you what I was thinking.
Q. All right, fair enough. All right, thank you.
MR. HEIMANN: You may also want to take a look -- I'll give you Bates range -- of the subsequent e-mail to that in the string. It's LCHB 52627 through 29.
MR. SINNOTT: Could you give me that again?
MR. HEIMANN: 52627 through 52629. I'm happy to share a copy of it with you if you'd like now, but it's a follow-on -- subsequent e-mails that follow on to the string that I gave you.
MR. SINNOTT: All right. Thank you.
BY MR. SINNOTT:
Q. So it's, you know, just getting back to the issue of the exchange between you and the Thornton Law Firm folks on credibility and on hours that you were warning them about the lodestar.

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You were warning them about not inflating it. Correct?
A. Yeah. So here in this e-mail I have heard thirdhand -- I forget even from whom -- that Mike Thornton had mentioned to someone -- it might have been Bob Lieff -- that Thornton's lodestar at that point was 14 million dollars.
That did not square with what I understood to have been the case as of June 29th where based on the hours reported, the 12 million -- the 12,750, the lodestar would have been between 7 and 8 million maybe, give or take.
So those two numbers, obviously, were out of whack, and I responded this way. Probably I am frustrated at this point given the dialogue that's led up to that e-mail, but I think Mike Thornton may have simply been mistaken because that's not the number they ultimately reported. What they ultimately reported was a number closer to what I had been informed of on June 29th.
Q. All right. Thank you. But you -- you were expressing a concern about how Thornton Law Firm would present its lodestar?
A. I was at that moment, yes. And I should

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also add that those hours and that lodestar number that I've given you between 7 and 8 million, that was based on a rough calculation of including their staff attorneys, including the ones that were shared with us or housed at our office and what I guesstimated their rate would be that would be comparable to ours.
So that's how I got to the 7 to 8 million ballpark number, and it seemed, you know, drastically different than 14 million.
Q. All right, thank you.
Now let me direct your attention, Dan, to an e-mail dated -- and it's either the next one or the second one I believe -- Friday, August 28th at 12:04 p.m.
And this is TLF-SST-052975 through 2980. So it would appear to be six pages.
Do you have that in front of you?
A. Yes.
Q. Okay. And this is a response to Brian McTigue; is that correct?
A. You're talking about the e-mail from Larry at the top?
Q. Yes.

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negotiated with ERISA counsel.
Q. Okay. And could it also be an issue of transparency for Brian that he's not trusting lead counsel to represent his -- his client's interest?
A. I am not going to speculate as to what Brian was thinking.
Q. Fair enough.
Now in the top message from Larry Sucharow to Lynn -- and you're CC'd on it -- Larry says in the bottom paragraph, "Of course I intend to honor all commitments, contracts, obligations, agreements, understandings by whatever name or title but especially those that are in writing like Brian's."
Do you know what specifically commitments and contracts and obligations and agreements Larry was referring to?
A. Not specifically apart from the written agreement that we had executed with ERISA counsel that everybody had signed memorializing their 9 percent fee interest.
Q. At this time, Dan, were you aware of the Damon Chargois element in this case?
A. Um, I can't remember when in 2015 I was -- I first became cognizant of it. I don't know if it was before August 28th or after.

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Q. Do you remember how you found out?
A. There was an e-mail exchange where Garrett I think was mentioning a local counsel who was -- to which people were -- which Labaton was obligated to pay a portion of its fee.
And I think I e-mailed back and said I don't think I've seen that agreement; can I see it. And then Garrett forwarded an e-mail string from 2013, which I had not recalled ever seeing, that explained the existence of a local counsel who was owed some percentage of any fee that Labaton was paid in the case.
THE SPECIAL MASTER: Were you on that 2013 e-mail string do you remember?
THE WITNESS: Apparently, I was, but I had no memory of it, and I think I even -- I don't think Bob even remembered it at first.
And I think we've even produced e-mails to that effect where I explained to Bob I did not recall receiving that first e-mail. I hadn't responded to it, and it wasn't something I had been paying attention to.

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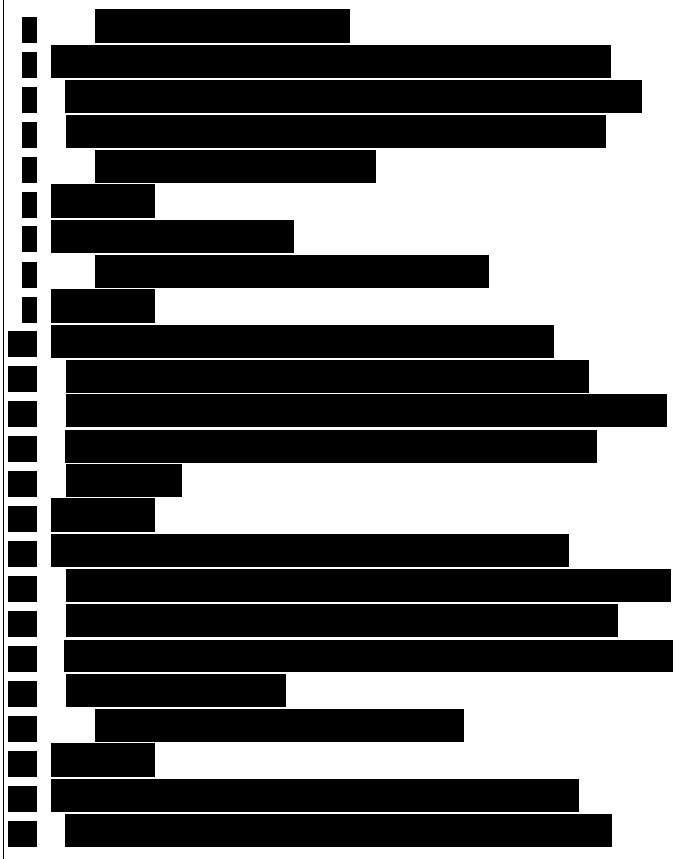

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Zeiss includes you on a distribution and says this sheds light early August.
A. Yes.
Q. And then you respond to your co-counsel and colleagues. You say, "I have e-mails showing that DOL was grumbling about fees as early as July 10th."
A. Hm hm.
Q. "So we need to be careful how we word things. It's not as if two months went by and, bam, they sprang the 10.9 limitation on us."
A. Right.
Q. What is your warning -- what's the nature of your warning or admonition here, Dan?
A. I am trying to recall why we were trying to nail down how much of a time lag there was between the agreement in principle having been reached and the DOL raising this issue.
I think what we were saying here or what we were contemplating saying was that the agreement in principle to settle the case for 300 million dollars with a 25 -- with up to a 25 percent attorneys' fee was reached in late June, early July, and that DOL was there at the mediation when that happened.

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And on top of that, Jonathan Marks, who was the mediator, and I think even Lynn and maybe Brian -- but at least Lynn -- had made clear to the DOL that the agreement was 300 million and that the attorney -- and that the potential attorneys' fees sought would be up to 25 percent.
It was only after the fact -- after the agreement had been reached that the DOL started to push back and say we want to talk about capping the attorneys' fees on whatever portion goes to ERISA plans out of the settlement.
Q. Okay. So you didn't want to get caught flat footed?
A. I'm not sure what that means.
Q. You didn't want to be surprised?
A. By whom?
Q. By DOL.
A. Um, no. I -- what we're saying here is that DOL as, far as we were aware, and, as far as the mediator himself confirmed to us was aware of, and signed off on the notion that we had achieved a 300-million-dollar settlement and that we would be seeking up to 25 percent in attorneys' fees for all the counsel involved.

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Q. Yep.
A. To be divided amongst all counsel involved.
After that the DOL started to walk back, and say, well, we didn't really agree with that even though the mediator told us he told them that.
So then there was a negotiation period, as Nicole discusses here, where even though we feel like everybody had come to an agreement at that last mediation session, we are now -- we embarked on that dialogue with the DOL beginning on or about July 10 -- I think what happened was I found e-mails on or around July 10th -- and it may have even been from Lynn -- where he was hearing from the DOL that they wanted to do something about attorneys' fees in order to juice up the ERISA recovery that much more.
THE SPECIAL MASTER: The ERISA class recovery?
THE WITNESS: Well, there was no ERISA class, but to -- to juice up the recovery that would go to ERISA plans a little bit more.
Because in the BNY Mellon case ERISA plans got a slight premium because of the DOL's presence, and the threat of a DOL lawsuit. And the DOL wanted something similar here where they could

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say ERISA plans are getting a slight bump.
The 60 million allocation already represented a slight bump, and they wanted a slightly -- an additional bump that would be the product of a slightly lower attorneys' fee that would come out of that 60 million dollars.
But that was all the subject of a negotiation that took several months after the agreement in principle had been reached and after we already thought that we had an agreement. So we had to -- there was -- there was more dialogue with the DOL before we actually got a term sheet signed.
Q. Okay. Dan, look at document dated July 25, 2016. I think it's the next in line. And the Bates numbers on this are TLF-SST-051653, and the top message is from David Goldsmith to you and to others in the customer class.
But just if you'd like, it goes 653 Bates stamped to 657.
A. Hm hm.
Q. And, once again, it would appear that the first couple pages -- several pages from the back are essentially a drafting exercise --
A. Right.

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Q. -- by Nicole and -- and Mike Lesser and David.
And then at the top of page 2 you respond to their edits by saying that, "The real premium here was demanded/earned by the DOL, not ERISA counsel whose claims offered no greater benefit than our claims. That's why I wouldn't have bothered including that first highlighted sentence below. By doing so we are saying that the private ERISA claims added extra hefty to ERISA plaintiffs' damages and they didn't. The only reason ERISA plaintiffs are getting more money is to keep the DOL from filing its own lawsuit. In other words, to settle the DOL's claims. We didn't have this language in the Bank of New York notice. That's why I was wondering who wanted this language inserted."
To which Goldsmith responds: "That's a fair point. I would just go with the language that Nicole circulated."
And you respond: "Given a choice between the two, Nicole's version is less problematic if we really feel we have to include language along those lines."
A. Hm hm.

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Q. Why was there a feeling that you needed to "include language along those lines," Dan?
A. I'm sorry, that was a long wind-up to a question that I wasn't anticipating. So why -- why -- language along these lines. Which language are we talking about then? It's the language that David Goldsmith suggested in red --
Q. Yes.
A. -- or something else?
Q. I'm assuming that you're advocating Nicole's language because you find it to be less problematic.
A. All right. Let me just try to find Nicole's language. Nicole's language being on page 3?
Q. I believe so.
A. Are we looking specifically at the highlighted language?
Q. I don't know. I mean your message indicates that you would go with Nicole's language. And I'm assuming this has to deal with the premium.
A. Okay, I'm sorry. Maybe I should just read it.
Q. Take your time.
A. Okay.
(Pause.)

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A. Okay.
Q. Does that refresh your memory?
A. Yes. Let me just compare it to David's. Okay. Yes. I'm -- I'm with you now.
Q. Okay.
A. The difference between Nicole's language and David's language.
Q. Right. So what's that -- what's the upshot of adopting Nicole's language?
A. Well, we wanted to -- I guess the feeling was we wanted to say something in the notice by way of explanation as to why ERISA claimants would be getting a premium over non-ERISA claimants who are members of the same class.
Q. Okay. All right. Thank you.
As best you recall, Dan, what were the concerns as you understood them that the Department of Labor and SEC had regarding the ERISA participants?
A. I think the DOL as I -- I'm not in their heads, but I think based on what they said to us in their conversations with us, they wanted to be -- I think, first and foremost, honestly, is that they didn't want to underperform the BNY Mellon

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settlement.
Q. What do you mean by that?
A. They wanted ERISA claimants to get a premium that was on par with what they obtained in the BNY Mellon settlement.
Q. Okay.
A. I think that was their sort of -- their underlying concern because they saw the settlement as very similar.
Q. Did you sense that DOL was giving the ERISA claims greater scrutiny or heightened scrutiny over other claims?
A. The claims? I think -- you mean the settlement terms?
Q. The terms, yeah.
A. I think they -- they, obviously, only cared about the settlement as it applied to ERISA plans. I don't think they cared about the settlement otherwise.
Q. And was Mr. Sarko the primary point of contact or one of the primary points of contact with the Department of Labor?
A. Certainly one of the primary points of contact with the DOL, yes.

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Q. Okay. Who else had a --
A. I think Carl Kravitz also had a fair amount of contact with them.
Q. Okay. And let me direct your attention, Dan, to two e-mails, the first one from August 6, 2015 at 2:30 p.m. and the second a few minutes later at 2:43.
In the first one -- the 2:30 p.m. one is TLF-SST-053992 --
A. Hm hm.
Q. -- and I'd like to make reference -- you know, after Mr. Sarko talks about coordinating a call with DOL and follows that up with an update on page 1, as to his conversation with Mr. Goldstein of the Boston DOL office, Garrett responds: "They have done nothing but come in at the end and try and hold us up. It's time to go over his head. We're asking for 25 percent. I'm getting a little tired of the tail wagging the dog. ERISA is a small piece here of the overall settlement. There was a lot of talk about ERISA counsel's ability to guide them to see how good the settlement is. I think it is time to do that."
A. Hm hm.

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Q. When he talks about "they," is it fair to say he's talking about DOL and them changing the rules --
MR. HEIMANN: Wait until he's through.
A. Changing the rules?
Q. Changing the rules coming in at the last minute and trying to hold us up? Or is he talking about ERISA counsel?
A. He's not talking about Lynn and Carl and Brian there.
Q. Okay.
A. I think he's talking about the DOL. And, as I explained a little while ago, we were all at a mediation in Boston with Jonathan Marks. He explained the parameters to the DOL and then --
Q. -- DOL says that's not what we said.
A. -- and then DOL says, no, we didn't -- we didn't agree to that, even though the mediator said otherwise.
Q. The second document at 2:43 p.m. which is TLF-SST-053994 through 995 -- it's a two-page document.
In that same update Mr. Sarko references

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[redacted]

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talking about there.
Q. Do you also risk a Court going for the lowest common denominator and saying we'll go with the lower number for both?
A. That's what I started out by saying, yeah. Because 18 percent was lower that be what everybody was hoping for given what had been invested into the case.
Q. Okay. All right. Let me direct your attention to the August 10, 2016 e-mail that should be the next in line. And this is TLF-SST-051916 through 918.
And my focus here, even though I see you're not on the original message, it was forwarded to you at 4:27 on August 10th. So it was immediately after this message was sent.
A. Hm hm.
Q. And in this message Mr. Goldsmith says that the ERISA settlement allocation was negotiated directly among lead counsel, ERISA counsel and representatives of the DOL. The ERISA settlement allocation even without the $10,900,000 cap on attorneys' fees described above provides a premium per dollar indirect FX trading volume for ERISA

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plans and eligible group trusts in comparison to the allocations to other settlement class methods.
What's the significance of the 10,900,000 cap here?
A. Well, it results in a slightly greater -- it results in a slight premium in the recovery that goes back to ERISA plans that are part of the class. So they get a slight premium in their recovery over and above what non-ERISA plans were getting.
Q. Okay.
A. And it was because of the DOL and its threat of separate litigation.
(Justice Kelly and Mr. Sarko have left the proceeding.)
THE SPECIAL MASTER: Could you -- I'm not -- I'm still not clear how the premium is reflected in the 10.9 cap on the ERISA settlement allocation.
THE WITNESS: Well, because 10.9 million of 60 million is less than 25 percent. It's less than a 25 percent fee.
That 60 million has been cordoned off and delineated for ERISA plan class members or those who qualify under ERISA plans under our plan of

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allocation.
So they're paying less in fees than non-ERISA plans are.
THE SPECIAL MASTER: At 10.9.
THE WITNESS: At 10.9. Because I don't have a calculator or whatever 10.9 divided by 60 is.
MR. HEIMANN: 18.1.
THE WITNESS: 18.1. So they're effectively -- ERISA plans are effectively paying an 18.1 percent attorneys' fee.
THE SPECIAL MASTER: Capped at that.
THE WITNESS: It's capped at that 10.9 million.
THE SPECIAL MASTER: And, in fact, they ended up really paying less, right?
THE WITNESS: No. No. I think there's a misunderstanding on this point.
THE SPECIAL MASTER: So how does that work?
THE WITNESS: So that 10.9 million is for all counsel. It's not just for ERISA counsel. That 10.9 --
THE SPECIAL MASTER: That's part of the larger pot?

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THE WITNESS: Yes. That 10.9 million dollars is not just ERISA's counsel's fees --
THE SPECIAL MASTER: It's all counsel.
THE WITNESS: It's all counsel in recognition for everybody's contribution to the recovery that is going to ERISA plans.
THE SPECIAL MASTER: But in the way it breaks down then, ERISA counsel ended up getting about 7-and-a-half million, right?
THE WITNESS: Sounds about right.
THE SPECIAL MASTER: Yeah. And the cap -- the ERISA -- it's called in the agreement the ERISA settlement allocation --
THE WITNESS: Yes.
THE SPECIAL MASTER: -- that was a cap on the allocation of fees out of the ERISA --
THE WITNESS: Settlement.
THE SPECIAL MASTER: -- plan settlement, right? Out of the ERISA plan settlement, right?
THE WITNESS: Yes.
THE SPECIAL MASTER: 10.9 million, which Richard has done the math, is 18.1 percent --
MR. HEIMANN: Well, no. Lynn was doing the -- was the source of that figure.

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THE SPECIAL MASTER: Lynn. 18.1 percent. I haven't done the math. But 18.1 percent which is less than 25 percent.
THE WITNESS: Right. Yes.
THE SPECIAL MASTER: But in reality, the ERISA lawyers actually only got 7-and-a-half million dollars, and the differential on that then went back to the customer class lawyers, right?
THE WITNESS: Correct. Yes.
THE SPECIAL MASTER: So that part we understand.
THE WITNESS: Right.
THE SPECIAL MASTER: Where maybe the lack of understanding is -- and I don't think the agreement really helps us on it, but if it does, make you can walk us through that.
It looks in the agreement like there's a 10.9 percent cap because it's captioned ERISA settlement allocation. It looks like that is an allocation for ERISA counsel.
THE WITNESS: No, it never was. No, and let me go back and say that 7.5 or 7.7 million -- whatever it was that ERISA counsel got -- that was 10 percent of the total attorneys' fee.

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THE SPECIAL MASTER: Right.
THE WITNESS: That has nothing to do with this 10.9 million. The 10.9 million goes into that 74 point whatever million dollar attorneys' fee.
But the way you arrive at the 7.5 million for ERISA counsel is by taking 10 percent of the total attorneys' fee. It has nothing whatsoever to do with this ERISA allocation. What the -- the ERISA settlement allocation.
What the DOL was trying to do there was to limit the total attorneys' fee that was taken out of the ERISA settlement. The DOL was not saying only ERISA counsel made this settlement possible. They weren't saying that.
Because the ERISA cases never even got past a motion to dismiss, and nobody had ever even argued, let alone had the argument sustained, that our claims -- the consumer claims which were brought on behalf of everyone, including ERISA plans, were preempted.
So no one had taken the position that you, consumer lawyers, have done nothing for ERISA plans. Nobody had ever said that, and that was not

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the DOL's position either. I hope that makes it clear.
THE SPECIAL MASTER: It helps certainly, but what I'm not understanding is if that's the case --
THE WITNESS: Hm hm?
THE SPECIAL MASTER: -- why is the ERISA settlement allocation applicable only as a percentage of the ERISA plans and not to the ERISA fees themselves -- out of the ERISA counsel's fees themselves out of the total 60 million dollars?
Why didn't DOL just come in and say, look, we want to make sure that the folks in the ERISA plans are protected and that they get the greatest possible recovery; therefore, we want to limit their lawyers' fees out of the 60 million to X percent?
MR. HEIMANN: Who are their lawyers in your question?
THE SPECIAL MASTER: Well, I think testimony and documents say they -- at least the Andover folks and the original four ERISA plaintiffs -- viewed their lawyers as being Lynn Sarko and his firm, Carl Kravitz and his firm, Brian

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McTigue and his firm and at varying other times the other folks who have appeared.
MR. HEIMANN: He can respond to that. I won't want to suggest that, but is that true?
THE WITNESS: The DOL did not think that, as far as I'm aware. The DOL was talking to us, too. They weren't just talking to Lynn and to Carl.
The DOL understood that the 300-million-dollar settlement was for the entire class, including ERISA plans. What the DOL wanted at the end of the day was to make sure that ERISA plans who were participants in the class got some kind of premium in recognition of the fact that they're ERISA plans, and that if the DOL wanted to, it could file its own lawsuit the next day.
THE SPECIAL MASTER: So that was in return for a release from DOL --
THE WITNESS: Yes.
THE SPECIAL MASTER: -- presumably?
THE WITNESS: Yes.
THE SPECIAL MASTER: Okay.
THE WITNESS: State Street got a release from the DOL ultimately.

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THE SPECIAL MASTER: Which was an important objective in the settlement to get a global -- a global settlement, and State Street was going to demand global releases.
THE WITNESS: Yes. Correct.
MR. HEIMANN: Can I ask another question to illuminate -- eliminate something --
THE SPECIAL MASTER: Yeah, yeah. Please.
MR. HEIMANN: What percentage for fees would have been taken out of the 60 million as allocated to the ERISA plans -- however you characterize them -- had the Court awarded 15 percent rather than 25 percent as the fee?
THE WITNESS: 10.9 million.
MR. HEIMANN: Really?
THE WITNESS: That was the cap.
MR. HEIMANN: Think about that. Think about that.
THE SPECIAL MASTER: That was 18.1.
MR. HEIMANN: Yeah, but if the Court had award reasonable doubt 15 percent instead of 25 percent, what would the fee have been in terms of net out of the 60 million.

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plans.
And I know I might get push-back from my ERISA colleagues over that, but I was class counsel in addition to Labaton and Thornton, and that class, judge, was defined to include all custodial customers of the bank.
We did not exclude ERISA plans. We filed our case in February of 2011 on behalf of a broadly-defined class as such. We got past a motion to dismiss in which we asserted Chapter 93A claims on behalf of everybody that afforded up to treble damages and 12 percent prejudgement interest and attorneys' fees for everybody including ERISA plans.
ERISA counsel filed a case months after we did. Never got past a motion to dismiss. They amended their complaint a couple times but never actually had a motion to dismiss adjudicated. And so it was never decided by anybody that you, customer class, no longer represent ERISA plans because those claims are preempted.
It's not even clear to me had they gotten past a motion to dismiss that our claims would have been preempted. Nobody's told me that definitively one way or another.

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So at that moment, yes, your Honor, I represented everybody in the class and that included ERISA plans.
THE SPECIAL MASTER: Would that not have rendered not just you, but apparently Labaton, and even Thornton then would have also represented the ERISA plans, right?
THE WITNESS: ERISA plans were part of our class. They were part of our class.
THE SPECIAL MASTER: So the answer's yes?
THE WITNESS: Yes.
THE SPECIAL MASTER: Would that not have rendered the role of Lynn Sarko, Brian McTigue, Carl Kravitz superfluous?
THE WITNESS: No -- well, no. Because I think, as we've been trying to say throughout this discovery, is that ERISA counsel filed a case asserting ERISA claims. We did not bring ERISA claims, statutory claims.
So they had a case. It was pending. The judge had asked us all to mediate together. State Street wanted global peace. The DOL becomes interested -- once there are ERISA cases on file,

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the DOL becomes interested. The DOL investigates, says maybe we'll bring a case.
They don't actually bring one, but all of these things are in the ether when we finally come to an agreement in July of 2015. And to achieve global peace you don't beat up on people and say you're totally superfluous; you were never going to get past a motion to dismiss; you get nothing. Because we don't know that.
So we're trying for global peace as is State Street. And, as I've said previously, ERISA counsel did contribute, particularly in interfacing with the DOL and in trying to assuage whatever concerns the DOL may have, that ERISA plans would get treated in a manner that they should so that the DOL felt satisfied it did not have to bring its own case.
THE SPECIAL MASTER: So then you had joint client responsibility to Andover and to the four individual ERISA plaintiffs?
THE WITNESS: Um --
THE SPECIAL MASTER: Along with Mr. McTigue and Lynn Sarko and Carl Kravitz.
THE WITNESS: We had a responsibility as

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class counsel to the class. And that included ERISA plans. It included group trusts. It included RICs, registered investment companies. It included pension plans.

I had no interaction with any of the clients that Brian or Lynn had, but we're class counsel. We have a responsibility to the class.

THE SPECIAL MASTER: Okay.

BY MR. SINNOTT:

Q. Dan, if you could look at one of the November --

THE SPECIAL MASTER: Just let me follow up.

MR. SINNOTT: Sure. Of course.

THE SPECIAL MASTER: The cases were consolidated --

THE WITNESS: I don't think they were --

THE SPECIAL MASTER: -- for purposes of -- consolidated may not be the right term.

They were double captioned as separate cases --

THE WITNESS: Right.

THE SPECIAL MASTER: -- but for purposes of discovery --

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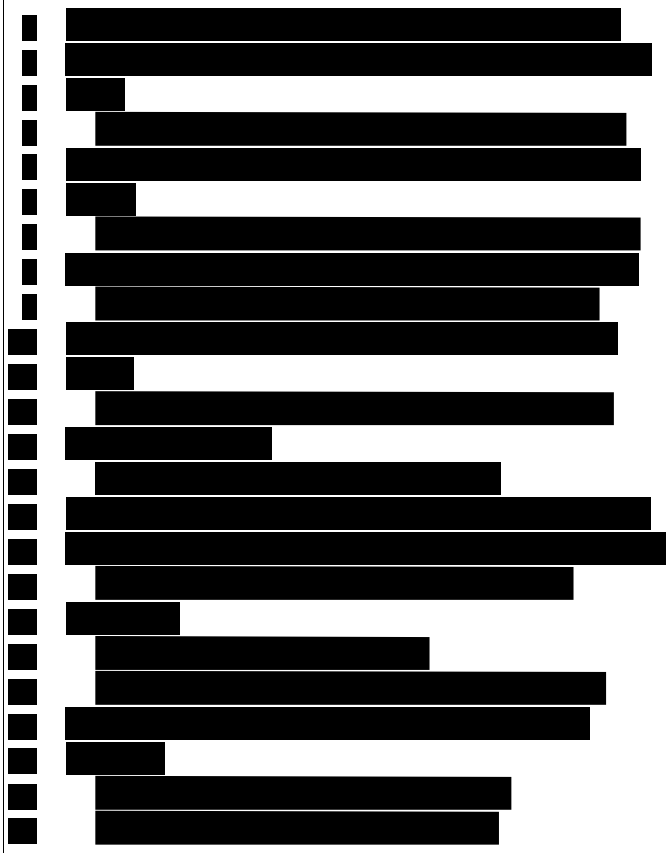

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interaction with any of the named plaintiffs in the ERISA cases.

THE SPECIAL MASTER: But you felt at least that you had a responsibility to the ERISA class members?

THE WITNESS: I felt that customer class counsel had a responsibility to the entire customer class with no distinctions. We didn't discriminate in our class definition. We didn't see the need to when we filed our case.

We had a very powerful consumer statute under Massachusetts law with a very generous damages remedy. I don't know if ERISA affords that.

THE SPECIAL MASTER: Okay. ERISA, as we've discussed, at least from the ERISA lawyers' viewpoint, they brought things to the case that you didn't have.

THE WITNESS: I -- I accept that they say that and that they feel that way.

THE SPECIAL MASTER: Okay.

BY MR. SINNOTT:

Q. Dan, let me ask you to look at document from December -- from November 22, 2016 at 1:01 p.m., and this is TLF-SST--012272.

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Do you recall the discussion around November 22nd about claw-back letters?
A. I recall a discussion about claw-back letters, yes.
Q. All right. And I know you're not an addressee on that top message from Larry Sucharow to Labaton attorneys plus Garrett Bradley, but do you see where it says need two letters with breakdown?
A. Yes.
Q. "ERISA just gets sent to ERISA counsel with 10 percent off the top and then a third each. Class co-counsel gets one with ERISA 10 percent off top; Damon's percentage also off the top. Then each of class co-counsel split with the percentages agreed to."
And then in the next paragraph it says, "In short, no reason for ERISA to see Damon's split. They only need to see their 10 percent and then split three ways."
Were you part of any conversations about concealing the existence of the referring attorney, Damon Chargois, from the ERISA counsel?
MR. HEIMANN: Object -- let me get the objection out.

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MS. LUKEY: Objection to the characterization as "concealing." This is Joan.
MR. HEIMANN: And the reference to ERISA counsel.
A. The answer is not that I recall.
Q. Okay. And did you complete the interrogatories?
A. I worked with the firm to -- which interrogatories are you talking about?
Q. The supplemental interrogatories that -- the responses that were completed --
A. -- on August 11?
Q. -- on August 11.
A. I worked on those, yes.
Q. Okay. And to the best of your knowledge, are those truthful and accurate?
A. To the best of my knowledge, yes.
Q. All right. And in response to 1F interrogatory, you and the firm responded, "LCHB defers to Labaton as lead counsel with respect to why the nature of Labaton's relationship with Mr. Chargois, and any intention to pay Mr. Chargois a percentage of the fee award was not disclosed to the Court prior to submitting the fee petition."

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Is that accurate to the best of your knowledge?
A. That we were deferring to Labaton for that answer? Yes.
Q. All right. And is it your testimony that you don't know why the -- well, strike that.
With respect to the e-mail that I just directed your attention to from November 22, 2016 at 1:01 p.m. with the sentence, "in short, no reason for ERISA to see Damon's split," is it your testimony that you don't know why Mr. Sucharow wrote that?
A. Yes, I don't know why.
THE SPECIAL MASTER: Did you know that the ERISA lawyers were not going to be told or Mr. Chargois' split was not going to be disclosed to them? Did you know that?
THE WITNESS: I didn't know one way or another. No, I was not part of this conversation, and I don't recall being part of any such conversation.
THE SPECIAL MASTER: All right. So you weren't -- you weren't consulted on it I take it.
THE WITNESS: I don't recall being

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consulted on that.
THE SPECIAL MASTER: All right.
Were you advised in any way that the ERISA lawyers were not going to -- that it was not going to be disclosed to the ERISA lawyers?
THE WITNESS: I don't recall one way or another as to Mr. Chargois. It's possible that I may have been aware that there was not a plan -- well, let me put it this way: I never knew what the plan for -- of allocation was on the ERISA side, like how ERISA counsel intended to divide up their fee.
I didn't consider it my business to know. Frankly, if I had a voice in that decision, I would vote for Lynn to get the bulk of it, but it's not up to me.
So I did not know how they planned to allocate their fee, and it would make sense to me if the plan was not to tell ERISA counsel how we planned to divide or allocate the fee on the customer side.
But with respect to Mr. Chargois specifically, I don't recall any such conversation.
Q. Did you recall any conversation aside from

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the name Damon Chargois that referenced a referring attorney?
A. No. And with respect to Mr. Chargois, he was never characterized to me as a referring attorney.
THE SPECIAL MASTER: How was he characterized to you?
THE WITNESS: Local counsel. He was always described as -- when I say "always," I mean there were maybe five or six e-mails during the life of this case on this issue that I can recall.
He was always described as local counsel. He was never --
Q. And what does that mean to you that someone's local counsel?
A. Well --
MR. HEIMANN: Excuse me. Generally or in this instance?
MR. SINNOTT: Generally.
Q. We'll start -- we'll start there.
A. Well, it can mean a few things. I can tell you what I thought it must have meant here.
What I assumed when I was told local counsel -- and I think there was another e-mail from

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Garrett that said he had played an important role in the case.
So it was -- it's not at all atypical in cases like this for an institutional plaintiff, especially a pension fund, to want there to be like a hometown lawyer or a local counsel who's close to them, who's involved in the case somehow.
I can give you an example. In the BNY Mellon case we represented Ohio Pension Plans. The Ohio AG selected an Ohio counsel to work with us. We had no -- we had no input into that. And that was their choice.
They wanted to have what they called a local counsel, even though the case was pending in New York, to interface with them, to give them comfort, to respond to questions and maybe do, you know, one -- run some things down on the local side on the client-facing side, you know, while we as national counsel are involved in the main part of the litigation.
So we had local counsel in the BNY Mellon case who actually did a fair amount of interaction with the Ohio AG's office.
THE SPECIAL MASTER: And is that the

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role you thought Mr. Chargois -- when you heard about Mr. Chargois, and he was referred to as local counsel or the local --
THE WITNESS: Hm hm?
THE SPECIAL MASTER: -- is that the role you thought he was playing?
THE WITNESS: Well, I didn't think it was anything extensive, but I figured this must be a relationship that goes back to maybe an RFP response, a request for proposals response.
Sometimes a public pension fund will ask you to actually team up with a local counsel meaning a hometown lawyer when you make your presentation. And if you get selected, you're part of a package deal going forward to the extent you do cases together.
I assumed that's the kind of arrangement this was. Yeah.
Q. At some point after you learned about the local counsel or Mr. Chargois --
A. Hm hm?
Q. -- did anyone caution you not to reveal his existence to ERISA counsel?
A. No.

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Q. Were there any caveats with respect to Mr. Chargois?
A. Caveats?
Q. Warnings. Don't do this.
A. No. From whom?
Q. From anyone.
A. Um, I don't recall anything like that, no.
Q. And you don't recall exactly how you heard?
A. Well, I think, as I said earlier, what I recall is in 2015 at some point Garrett Bradley recent an e-mail from 2013 to me and Bob Lieff in which Garrett said something about a conversation that he and Bob and Mike had had in Dublin about a local counsel that Labaton owes an obligation to and trying to devise an agreement whereby essentially we share in that obligation rather than just make it Labaton's.
Q. And you and your firm were okay with that?
A. Well, in 2013, as I said, I didn't recall even getting that e-mail. So Bob, apparently, responded and said I agree. I'm not cognizant of it until 2015 when I ask what agreement are you talking about, Garrett, and he resends it. And I don't even think Bob even remembers it.

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And so by that point two years have gone by, and I think it's difficult for us to walk back the initial agreement by Bob to share in that obligation to local counsel.
Q. Do you recall what the payment terms were for Mr. Chargois?
A. Ultimately?
Q. Both historically and ultimately in State Street.
A. Well, I think initially how it was characterized to us was that he was local counsel and that he was entitled to 20 percent of Labaton's fee, and the proposal by Garrett was that it instead be taken off the top of whatever the total fee turns out to be.
So those were the terms as they were described in 2013 and then in 2015 and then again in 2016 I think. And then ultimately he was paid 5-and-a-half percent of the total fee.
Q. All right. And how did you learn that?
A. We agreed ultimately. There was a -- when we finally agreed on the allocation of all fees to all customer counsel in I think late August of 2016, there was a provision in there for local counsel or

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Arkansas local or however he was described.
Q. All right. Let me direct your attention to an e-mail before you dated July 8, 2016 at 7:06 p.m., and the Bates number on that is LBS 040924. It's a one-page document.
A. Sorry.
Q. Take your time. It's 7/8/16. July 8, 2016 at 7:06 p.m.
A. You said it's one page?
Q. Yes.
THE SPECIAL MASTER: It's a one pager, yes.
A. 7:06 p.m.?
Q. That's it.
A. Okay.
Q. And you'd agree that that's an e-mail from Garrett Bradley to several others including Michael Thornton, Larry Sucharow, yourself, Christopher Keller and Eric Belfi, correct?
A. Yes.
Q. And in that e-mail Garrett writes: "As we discuss how to distribute the fee between ourselves and of course the ERISA attorneys, I have had discussions with Damon Chargois, the local attorney

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in this matter, who's played an important role. Damon and his firm are willing to accept 5.5 percent of the total fee awarded by the Court in the State Street class case now pending before Judge Wolf.
As you know, we had a prior deal with him that his fee would be off the top. He understands that ERISA counsel is now in the same pool of money. He has agreed to come down to this..." -- I'm assuming that should be "down" -- "...to this number with a guarantee that it will be off the court-awarded fee number. Please reply all if you agree. Given that it is off the total number, there is no need to add the ERISA counsel to this e-mail chain."
A. Hmm.
Q. So do you remember receiving this message, Dan?
A. I do now, yeah.
Q. All right. And is it fair to say that there was a warning or caveat that -- or a statement that there was no need to include ERISA counsel in this notification?
MR. HEIMANN: I object. Compound.
A. I see that there's a sentence at the end

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that indicates there's no need to add ERISA counsel to the chain.
Q. Okay. Does that refresh your memory as to that statement?
A. Well, I -- now I recall that statement being made. It wasn't one that made much difference to me one way or another.
Q. Did you come to know the circumstances of Mr. Chargois' history with Labaton?
MR. HEIMANN: At what point in time?
THE SPECIAL MASTER: Good question. At the point in time -- since you don't have a recollection of 2013, right --
THE WITNESS: Right.
THE SPECIAL MASTER: -- at 2015 when you became cognizant that there was going to be a fee -- a payment to Mr. Chargois --
THE WITNESS: Hm hm?
THE SPECIAL MASTER: -- were you advised by anyone at Labaton of the history with Mr. Chargois -- Labaton's history with Mr. Chargois?
THE WITNESS: No. What was always represented to us -- at least the communications that I'm copied on and that I took part in -- were

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that he was a local counsel, and sometimes he's described as local counsel for Arkansas or Arkansas local counsel. And sometimes he's described as local counsel for Labaton.

THE SPECIAL MASTER: And what did you take that to mean?

THE WITNESS: As I said earlier, I assume -- you know, between those representations and between this representation here (indicating) that he performed some kind of an important role, that he was some type of local counsel of the type that I described a little while ago.

THE SPECIAL MASTER: In this case, State Street?

THE WITNESS: Yes.

THE SPECIAL MASTER: Did you know that he did no work whatsoever on this case?

THE WITNESS: No, I did not know that.

THE SPECIAL MASTER: Did you know that the payment was being made pursuant to a much earlier agreement between Labaton and Chargois in which Mr. Chargois was given a 20 percent interest in any Labaton fee that Labaton received in any case in which Arkansas was either lead or co-payment --

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or co-plaintiff and Labaton was lead or co-lead counsel?

THE WITNESS: Well, the nature of the relationship as it was described I think in the 2013 e-mail was something along those lines; that he has a 20 percent interest in Labaton's fee.

I can't remember -- and I think it might have said in cases involving the Arkansas Teachers Retirement System.

MR. HEIMANN: I think you'd be better off looking at the e-mail rather than as to what he says.

THE WITNESS: Actually, do you mind if I take a bathroom break?

THE SPECIAL MASTER: Yeah, go ahead.

MR. SINNOTT: Of course.

(A recess was taken.)

MR. SINNOTT: Is there anyone on the phone?

MS. HARLAN: Yes. Emily Harlan's on the phone.

MR. SINNOTT: Anybody else?

MR. HEIMANN: I heard Joan.

MR. SINNOTT: Joan, okay.

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MS. LUKEY: Yeah, I'm on.

MR. SINNOTT: Anybody else besides Joan and Emily?

MS. HYLENSKI: This is Linda. I'm still on.

MR. SINNOTT: Okay, Linda.

MR. TOOTHMAN: John Toothman.

MR. SINNOTT: We're taking attendance so we can rat you out to your bosses that you're not on the phone. So you guys are all safe. Back on the record.

BY MR. SINNOTT:

Q. Dan, just before the break we were talking about the so-called Dublin e-mail and a series of e-mails dating back to April of 2013 that dealt with the referring attorney or local counsel or the local as he's referred to in this e-mail.

In that April 24th -- by the way, the Bates number that I'm referencing is LCHB 005483, 484, 485 as well as 0053538 and 3540.

But with respect to the April 25, 2013 e-mail, at 6:07 p.m. Garrett Bradley informed you and a number of other customer class attorneys -- and CC'd Mr. Chargois -- as follows: "Bob, as you,

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Mike and I discussed in Dublin last week, I'm sending this e-mail regarding the obligation to local counsel who assists Labaton in matters involving the Arkansas Teacher Retirement System. Labaton has an obligation to this counsel, Damon Chargois, copied on this e-mail of 20 percent of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4 percent because of the agreement between Labaton, Thornton and Lieff of a division of 20 percent guaranteed each with the balance to be decided upon at a later date. Obviously, this may go up should Labaton receive an amount higher than 20 percent.

We have agreed that the amount due to the local, whatever it turns out to be, 4 percent, 5 percent, etcetera, will be paid off the top with the balance of the overall fee split between Lieff, Labaton and Thornton pursuant to our agreement. The local asked that I copy him out on this e-mail so he will have confirmation of this agreement. When we spoke to him, he was agreeable to this as well."

You recall that message?

A. I recall Garrett sending it to me again in 2015.

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Q. Okay.
A. 'Cause I had no memory of it prior to that time.
Q. All right. But my reading refreshes your memory as to that message?
A. Yes. I recall that message as recent to me in 2015.
Q. Okay. And with respect to that message, do you recall that the local or Mr. Chargois responded to Garrett shortly after that message went out?
A. I did not recall it at the time. I recalled it after going back and looking at e-mails that I had been copied on.
Q. Okay.
A. That, apparently, I was copied on that response.
Q. All right. And in 2016 do you recall receiving that message forwarded to you on June 14th? Does that sound about right?
A. Of 2016?
Q. Yes.
A. Could be. Yeah, I think -- I think Garrett may have forwarded it to me and Bob in 2015 to remind us both of it. And then it was sent again in

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2016.
Q. Yeah, I see where Bob was an addressee, but maybe Bob gave it to you --
A. May have been.
Q. -- in 2015. It looks like it was re-sent to you by Garrett in 2015. So that's how it arrived there.
But, in any event, you do recall being informed as to the arrangement, even though it was not solid or completely defined, between Labaton and consequently by the customer class firms and Mr. Chargois?
A. I recall his -- the description of him that was offered in that e-mail which was I think the -- the words they used were that he assisted Labaton in matters pertaining to Arkansas.
Q. And did you interpret that description of he assisted as meaning he took an actual active role in those cases?
A. I actually assumed that, yes.
Q. Okay.
A. That it was some kind of a role, some kind of an assistance offered by a local counsel.
And for that assumption I based it on my

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own experience, my own recent experience in the BNY Mellon case.
Q. Tell us about that experience --
THE SPECIAL MASTER: I think he did. I'm curious at any point in all this did you ever learn that the interest that Mr. Chargois had went back years to this original agreement that Labaton had with Mr. Chargois on every case in which -- apparently, in every case in which Labaton served as lead counsel or co-lead counsel and Arkansas was plaintiff or co-lead plaintiff, irrespective of whether Mr. Chargois had any role to play whatsoever?
THE WITNESS: No, I didn't understand -- I never learned of the relationship in the manner that you just described. I didn't know how old the relationship was.
All I knew was what was presented to us in that e-mail and in subsequent e-mails in which he was described as local counsel.
THE SPECIAL MASTER: Do you know if anyone else in your firm -- I don't want you to speculate, just only on your personal knowledge based on conversations you may have had with Bob

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Lieff or anybody else.
Did anyone in your firm know the nature of this relationship -- of Labaton's relationship with Mr. Chargois?
THE WITNESS: I don't know of anyone else at my firm knowing the nature of the relationship beyond what was described in the e-mails.
BY MR. SINNOTT:
Q. Can I ask you this question, Dan: What is the arrangement that your firm typically has with a referring attorney?
A. A referring attorney?
Q. Yes, sir.
A. I have not had many relationships with, quote/unquote, like pure referring counsel who just send you a case and then back off and aren't involved in the case anymore.
In fact, I don't think I've had any such relationships in any of the cases I've worked on. Typically this -- this comes up more in torts cases and personal injury type cases that my firm does where counsel will refer cases to us because of our expertise and because we may be doing a mass action

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involving many similarly-situated people where they refer the cases to us, but in our retainer agreements we make clear to the client the nature of that relationship and how much the referring attorney's going to get paid because there are rules that vary from state to state that tell you what you need to do when you're dealing with a referring counsel type of arrangement.

THE SPECIAL MASTER: Did you know that in this case George Hopkins, who was the client representative, did not know about the Chargois relationship?

THE WITNESS: No, I did not.

THE SPECIAL MASTER: When did you find that out?

THE WITNESS: I've -- I don't know if I'm --

MR. HEIMANN: Just when. Not from whom.

THE SPECIAL MASTER: Just when. Not from whom.

THE WITNESS: Within the last couple days.

THE SPECIAL MASTER: Just want to take you back to Garrett Bradley's e-mail to Mike

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Thornton and Larry Sucharow and to you that Bill related -- the 7/8/2016 e-mail at 7:06.

THE WITNESS: Hm hm?

THE SPECIAL MASTER: Do you agree that there was an agreement not to tell ERISA counsel about the relationship with Mr. Chargois?

THE WITNESS: I don't. I don't agree that there was an agreement not to tell because I didn't agree not to tell anybody.

THE SPECIAL MASTER: Fair enough.

THE WITNESS: I see Garrett saying here that given it's off the total -- given it's off the top, there's no need to add ERISA counsel to that string, and I think I understand the logic which is 9 or 10 percent is 9 or 10 percent of the total fee, and that doesn't change no matter who else is getting paid. I think that's what he's saying there.

But there was -- I wasn't aware of any agreement to hide this.

THE SPECIAL MASTER: Let's not say agreement.

Were you aware now -- were you aware then that there was a decision made -- if not an

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agreement, a decision not to share this information with ERISA counsel?

THE WITNESS: Um, yes. It seems clear from this e-mail from Garrett that he feels there's no need to tell ERISA counsel because it doesn't impact their share of the fee one way or the other.

THE SPECIAL MASTER: Do you think it might have impacted their approach to arriving to an agreement to receive 9 or 10 percent had they known that Mr. Chargois was going to receive 5.5 percent?

MR. HEIMANN: You're asking for him to speculate what might have been in the minds of others folks.

THE WITNESS: Yeah. I don't know. I don't know one way or another what they would have thought.

THE SPECIAL MASTER: Let me ask it another way.

Were you aware at the time that ERISA counsel made this agreement to receive 9 percent, that they had not been informed about the relationship with Mr. Chargois? Were you aware of that?

THE WITNESS: I was not aware, but I

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have to say nor was I aware of Mr. Chargois myself.

THE SPECIAL MASTER: Okay.

THE WITNESS: I mean I think the written agreement was reached in December of 2013 with ERISA counsel. I think that's what the date is.

And it's been produced. So you should have it.

THE SPECIAL MASTER: Hm hm.

THE WITNESS: That's December of 2013. So this -- one of the e-mails we've been referring to is from April of 2013, but I had no memory of it.

So I didn't know who Mr. Chargois was myself in December of 2013 when it was negotiated with ERISA counsel that they would receive 9 percent of the total fee.

And even had I known, to me he was local counsel. That's what -- that's how it was described to me. So he's yet another counsel that you have to take into account. There was nothing untoward about it.

THE SPECIAL MASTER: Okay. But another counsel you have to take into account.

THE WITNESS: Right.

THE SPECIAL MASTER: Don't you think the

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clients -- in this case I mean the ERISA plans -- had a right to know about this?
MR. HEIMANN: Now you're asking for a legal opinion.
THE SPECIAL MASTER: I am asking him based on his experience.
THE WITNESS: Um, I think it depends on that lawyer's status. So I assumed that George Hopkins as the client or whoever the client --
THE SPECIAL MASTER: Well, the ERISA folks were clients. You testified that they were your clients.
MR. HEIMANN: Excuse me. No, I'm sorry, your Honor, that's not what he testified to.
THE WITNESS: Yeah, I'm -- I testified that we represented a class of consumers that included ERISA plans.
I understand that ERISA counsel had retainer agreements with individuals who had hired them to be their lawyers, and I'm not purporting to have that type of attorney/client relationship with their clients.
So I just want to make that --
THE SPECIAL MASTER: Well, let's cut

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through all this. Somebody -- whether it was you or ERISA counsel --
THE WITNESS: Hm hm?
THE SPECIAL MASTER: -- didn't they have an obligation to tell their clients about an agreement in which an attorney was going to receive 5.5 percent off the top of the attorney fee?
THE WITNESS: Maybe.
MS. LUKEY: Objection. That's Joan.
THE WITNESS: Sorry. I haven't done the research on that issue to answer the question definitively for you.
I think -- as I said before, I do know based on experience that when you have a referring counsel arrangement, it's usually written into your retainer agreement.
It's very clear with your client how that referring attorney is going to be paid and what percentage they'll be paid and whether they'll be doing work that approximates the amount --
THE SPECIAL MASTER: -- the value that they're paid.
THE WITNESS: -- the value that they're being paid.

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Um, you know, if I'm ERISA counsel, does it matter to me whether there is another firm that's being paid out of the 90 percent -- the 91 percent that I'm not getting?
Does it matter to me that there are four firms rather than three getting the 91 percent?
I don't know that it does.
THE SPECIAL MASTER: Before you agreed --
THE WITNESS: Uh-huh?
THE SPECIAL MASTER: -- to take 9 percent or 10 percent --
THE WITNESS: Right.
THE SPECIAL MASTER: -- wouldn't you have wanted to have that knowledge?
THE WITNESS: I'm not sure why to be honest. I think what matters --
THE SPECIAL MASTER: 'Cause you might not have agreed to 9 percent --
MR. HEIMANN: All right, I'm sorry, but please, both of you. I'm sorry, but you ought to let him finish his answer, and we'll try to make sure he doesn't answer until you finish your question.

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THE WITNESS: I'm really not trying to be difficult here. I'm not sure whether it would matter to me whether there's three lawyers, four lawyers or more sharing that 91 percent.
I think the basis for that agreement was I think to try to recognize the approximate value of the ERISA case if it were a standalone case vis-a-vis the consumer case.
I think that's what that ratio was to trying to approximate at that point in time, and I think at that point in time the volume -- the ERISA volume that we understood was less than 9 percent. I think it was much lower than that. It was like 3 or 4 percent were the numbers we were looking at.
So that percentage -- that 9 percent was not a function at all of how many firms on either side, whether it's ERISA side or the consumer side, were working the case.
It was really driven by what we believe to be the estimated value of the ERISA case which was much a much smaller case vis-a-vis the global case.
THE SPECIAL MASTER: Mr. Sarko has testified this morning that it would have impacted

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greatly his willingness and he believed the others -- we'll let Mr. McTigue testify on his own and Mr. Kravitz, but he testified it would have impacted greatly his willingness to have entered into this agreement.

THE WITNESS: Can I ask a question?

THE SPECIAL MASTER: That's a question --

MR. HEIMANN: No. No, no. There's no question's been put. He made a statement to you.

THE SPECIAL MASTER: Does that affect your answer now?

MR. HEIMANN: Now I object to that question because it misstates --

MS. LUKEY: Objection.

MS. HARLAN: I object also. This is Emily.

MR. HEIMANN: I believe it misstates the testimony, and I don't know what arrangement you're referring to.

You're referring to an arrangement that he knew about or thought existed --

THE SPECIAL MASTER: This is a speaking objection. What's your objection?

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THE WITNESS: Well, he's saying exactly what I was about to say.

THE SPECIAL MASTER: Yeah, I know that. That's the problem.

THE WITNESS: Well, it's not problem because he's -- I'm not being coached 'cause this is exactly what I was just going to say which is I don't know what arrangement you're talking about.

I think -- I need to know what upsets Lynn about that arrangement. Is it the fact that there's one more law firm? I don't think that's what it is.

I think it's that there was this law firm or lawyer who was being paid characterized as local counsel but wasn't as local counsel is typically understood and didn't do anything in the case.

I think that's what Lynn is saying he wished he had known before he agreed to 9 percent. Am I right about that?

THE SPECIAL MASTER: He testified that he wouldn't have signed the agreement. You can quibble about that, but that's what his testimony was.

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THE WITNESS: I think that's fair.

THE SPECIAL MASTER: He would have felt other obligations.

So does that change your understanding then of whether or not the ERISA lawyers who made the agreement had complete information?

THE WITNESS: Well, judge, all I can say is --

MS. LUKEY: Objection.

THE WITNESS: Yeah.

All I can say is I need to read Lynn's testimony for myself before I can answer your question fairly, and I'm happy to do that.

But I don't know that you're characterizing it in a manner as complete as I need it to be characterized before I can answer that question.

I've just described to you --

THE SPECIAL MASTER: Let me just ask you this: Do you think it was appropriate to keep this information from the ERISA lawyers?

MR. HEIMANN: And what information are you talking about?

THE SPECIAL MASTER: About Mr. Chargois,

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all of the information -- apparently, it wasn't fully disclosed to you either, at least not the total relationship and the history.

THE WITNESS: Hm hm.

THE SPECIAL MASTER: Do you think it was fair and appropriate to keep this information from the ERISA lawyers and the complete information from you? By "you" I mean Lieff and Thornton.

MS. LUKEY: I respectfully object. This is Joan.

THE WITNESS: I myself have only learned of much of this information over the last couple days.

So I am surprised by some of it myself. It surprises me that the client wouldn't have known.

THE SPECIAL MASTER: Mr. Hopkins?

THE WITNESS: Yes. If -- I mean I wasn't there for his testimony, but as you're describing it to me.

So I can understand Lynn who I respect very much, I can respect his position that he wishes he had known and that he may not have agreed to the original fee allocation had he been informed of that.

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I don't question Lynn's position on that respect.
THE SPECIAL MASTER: Do you believe that Labaton should have disclosed to you or Bob Lieff or somebody at your firm the total relationship and how the obligation to Mr. Chargois arose?
THE WITNESS: Um --
MS. LUKEY: Objection. This is Joan.
THE WITNESS: I think --
(Pause.)
THE WITNESS: I am disappointed to learn of things after the fact and that this obligation was shared with us without our being fully informed of the nature of the relationship and who this person was because it may have impacted our view as to whether the Court should be informed.
THE SPECIAL MASTER: Well, you've anticipated my next question.
Given the nature of the relationship, do you believe -- what you've learned to date of the nature of the relationship, do you believe that the Court should have been informed?
THE WITNESS: I think it would have been better --

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MS. LUKEY: Objection.
THE WITNESS: I think it would have been better to have been more transparent with the Court about that. The way rule -- Rule 54 says that fee allocations amongst counsel will be disclosed if the Court so orders.
The judge didn't order that which is why fee allocations amongst counsel were not disclosed. And that's pretty typical in most of these cases. It's usually not volunteered in the first instance. We did it in the BNY Mellon case because we knew as a matter of course Judge Kaplan asks for that information.
So I have to assume that had Judge Wolf asked what the allocation was going to be, that Mr. Chargois' allocation would have been disclosed.
THE SPECIAL MASTER: Counsel had no independent obligation to bring this to the Court in the context of a fairness hearing and the allocation of fees and how the fees were going to be allocated to the class and then to -- to the lawyers?
THE WITNESS: No --
MS. LUKEY: I object.
THE WITNESS: What I'm saying is I can

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only go back to what I knew at the time the materials were submitted to the Court; and at the time the materials were submitted to the Court, there was a local counsel as it was represented to me who was going to share in the fee.
And there were other firms on the ERISA side who we had had no contact with, virtually none, who also shared in the fee. Firms like Beins Axelrod and Richardson Patrick, and there was a local counsel I think for the ERISA cases.
THE SPECIAL MASTER: They worked on the case.
THE WITNESS: They did. They submitted time. And for all I knew --
THE SPECIAL MASTER: And their time was in the lodestar.
THE WITNESS: It was. And for all I knew, a declaration was going to be filed by this local counsel, too. I didn't know one way or another. I didn't give a lot of thought to it just as I didn't give much thought to the minor players on the ERISA side.
And I didn't have control over what went in. It all went in, as you know, on the 15th, and

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there were declarations from firms who weren't otherwise mentioned in the papers like Beins Axelrod and Richardson Patrick and others.
THE SPECIAL MASTER: And that's sort of the point; that they were before the Court.
THE WITNESS: Right. Ultimately. But I didn't know. I didn't know what the plan was.
MR. SINNOTT: Can I just ask a question on that?
THE SPECIAL MASTER: (Nods head.)
BY MR. SINNOTT:
Q. With respect to the fee declaration and the omnibus declaration, you were heavily involved in that, correct?
A. Not heavily, no.
Q. All right. Did you have any role on that at all?
A. I edited the fee brief and the omnibus declaration. I sent some red lines.
Q. Was there any discussion in the context of the fee declaration as to whether information should be included about Mr. Chargois?
A. No, not that I recall.
Q. With respect to the fairness hearing, did

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you participate at all in that hearing? Were you present?
A. I was present.
Q. And did you and Mr. Goldsmith discuss his presentation?
A. You mean before he made it?
Q. Yes.
A. I'm sure we did.
Q. Was there any discussion as to whether the role of Mr. Chargois should be proffered to Judge Wolf?
A. It wasn't mentioned at all. There was no discussion of that.
Q. And with respect to the November 10, 2016 letter to Judge Wolf, did you participate in that?
A. Yes.
Q. Was there any discussion during the preparation of that letter as to whether the existence or the role of Mr. Chargois should be presented?
A. No. That wasn't the object of that letter.
Q. What was the object of that letter?
A. The object of the letter was to inform the Court of the error that had been discovered with

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respect to double count of lodestar and to correct it.
Q. And it's your testimony that revealing the identity of an individual that had received 4.1 million dollars was not part of that correction?
A. There was no discussion of Mr. Chargois at all. After -- after the fee agreement, the fee allocation agreement was reached in late August of 2016, I don't recall any discussion one way or another of Mr. Chargois at all that I took part in.
THE SPECIAL MASTER: I just want to understand.
You've been at some pains to say that you viewed the ERISA plans and the ERISA representatives -- the four individuals -- as part of the class --
THE WITNESS: No, actually I should correct you.
THE SPECIAL MASTER: Please.
THE WITNESS: The ERISA individuals wouldn't have been class members because we represented actual -- the class as was defined in our case -- it's in our complaint -- is custodial customers of the bank.

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So that would be the ERISA plans themselves. I understand that ERISA counsel represented a number of individuals who were plan participants in those plans, and they had -- their argument was the individuals had standing --
THE SPECIAL MASTER: Had standing --
THE WITNESS: -- to bring claims --
THE SPECIAL MASTER: -- to bring claims --
THE WITNESS: -- on behalf of injured claims.
So as a technical matter, no, I don't think the individual plan participants that were represented by Mr. McTigue and others were part of the class as we defined it in our complaint.
THE SPECIAL MASTER: Now I'm really confused.
THE WITNESS: But we did represent a class of customers that included all affected pension plans, ERISA plans, registered investment companies and the like.
THE SPECIAL MASTER: And that would have included Andover?
THE WITNESS: Yeah. To the extent it's

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an affected plan, yes.
THE SPECIAL MASTER: And that would have included the four individuals that we talked about.
THE WITNESS: They're not plans. The individuals are not plans. They're individuals.
THE SPECIAL MASTER: But they're punitive class members, aren't they?
THE WITNESS: I don't think they could file a claim. I think the ERISA plan of which they are beneficiaries can file a claim and receive money as part of the settlement, but I don't think the individuals can file claims and receive like a check in the mail.
Like Mr. --
THE SPECIAL MASTER: But as class representatives they could.
THE WITNESS: No. No. They're not going to file -- I mean Brian can correct you, but the individual plan participants are not going to file claims --
THE SPECIAL MASTER: Not as individuals but on behalf of the ERISA plan members.
THE WITNESS: No. The plans --
THE SPECIAL MASTER: They don't have

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standing?
THE WITNESS: The plans themselves will receive notice. Their administrator or whoever receives notice of class settlements that impact them will receive a notice. It's probably someone sitting in the main office for that pension plan will receive a notice and will submit a claim for that plan.
And to the extent the plan gets money, it would inure to the benefit to its participants which would include individuals.
THE SPECIAL MASTER: But at the very least, Andover --
THE WITNESS: Yeah.
THE SPECIAL MASTER: -- was --
MR. HEIMANN: Wait a minute. Did you hear a question there?
THE WITNESS: Sorry.
THE SPECIAL MASTER: At the very least Andover was a member of the class?
THE WITNESS: Should have been, yes. I mean I haven't vetted their custody data to make sure they were actually a custody customer of State Street but as represented, yes.

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THE SPECIAL MASTER: So if you and Labaton and Thornton were representing the class and Andover was a named plaintiff in the -- what we've characterized as the ERISA litigation --
THE WITNESS: Okay.
THE SPECIAL MASTER: -- should they not have been given notice by somebody?
Probably Labaton as lead counsel. Should they not have been advised of the Chargois relationship?
MR. HEIMANN: Because they were members of the class? Is that what you're saying?
THE SPECIAL MASTER: Yes. And -- and given the procedural posture here, which is a little unusual, but given the procedural posture in which there was a separate case in which they were a named plaintiff, should they not have been advised?
MR. HEIMANN: Well, again, I have to object as compound 'cause there are two questions in that.
THE SPECIAL MASTER: You can pick any one.
MS. LUKEY: I need to add my objection as well respectfully.

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THE WITNESS: Can you repeat it?
THE SPECIAL MASTER: It's a pretty simple question.
Should Andover not have been advised of the payment that Mr. Chargois was receiving given their role in this case?
THE WITNESS: Um, I think it -- I would not have objected to their being advised. It would have been fine with me to advise them and ERISA counsel, frankly, of Mr. Chargois' existence.
THE SPECIAL MASTER: And the payment to him?
THE WITNESS: Sure -- well, the ultimate payment? Because nobody knows what Lieff Cabraser got paid either, except you 'cause we told you in discovery.
THE SPECIAL MASTER: I don't mean -- the 5.5 percent split.
THE WITNESS: Well, nobody knows what Lieff Cabraser's split was either except you asked and we told you.
THE SPECIAL MASTER: Okay.
THE WITNESS: So, again, this goes back to Rule 54 which is you disclose things if you're

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ordered to do it or if the Court asks you. If the Court is interested.
THE SPECIAL MASTER: So -- I'm sorry. Go ahead.
THE WITNESS: And the Court didn't ask what the allocation was on either the customer side or the ERISA side.
Had he asked, again, I have to assume that it would have been disclosed; that all of the allocation would have been disclosed to the Court.
MR. HEIMANN: And I don't want to make a speaking objection here, but it may make a difference, your Honor, when you ask these questions as to whether the role that Chargois played was as Mr. Chiplock understood it when you're asking the questions or as it really was as we've now learned?
THE SPECIAL MASTER: Fair enough.
MR. HEIMANN: That may make a difference in terms of his opinion as to what should have been disclosed --
THE SPECIAL MASTER: Fair enough.
Yeah, I guess I'm assuming in all of my questions that Mr. -- that the role was as we've now

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learned it, not as Mr. Chiplock understood it at the time.
THE WITNESS: Hm hm. Okay.
THE SPECIAL MASTER: So let me ask it again.
Given the role that we've now -- that we all now understand that Mr. Chargois had and the reasons why he was paid --
THE WITNESS: Hm hm?
THE SPECIAL MASTER: -- should that not have been disclosed to the Court?
THE WITNESS: I think insofar --
MS. LUKEY: Objection.
THE WITNESS: If Mr. Chargois was acting as a pure referral counsel for Labaton and it was at the client's behest that he be paid, I'm not certain that it's required that that relationship and that payment be disclosed in the first instance because it's not unusual for referral counsel to exist in cases. There are rules that govern those relationships, as I've testified to earlier.
So if there was that type of relationship, even if he had not done any work in the case, if he was being paid pursuant to a pure

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referral arrangement, I don't know that it's actually required to disclose that in the first instance, unless you are asked or ordered to do so.
Given that it sounds like the client -- given the relationship as it's been described to me over the last two days -- and I'm not sure I fully understand it -- I think the better part of valor would have been to disclose --
THE SPECIAL MASTER: Or at least the better part of discretion.
THE WITNESS: The better part of discretion. Sorry, it's a long day. -- to disclose, you know, frankly -- so the client and everyone else are on board with who's being paid and how.
THE SPECIAL MASTER: I want to understand your testimony on the relationship that Rule 54 plays here.
THE WITNESS: Hm hm.
THE SPECIAL MASTER: And Rule 23.
THE WITNESS: Yep.
THE SPECIAL MASTER: Are you implying that given all of the circumstances here the burden is on the Court to ask?

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THE WITNESS: I'm not implying anything, judge. I think what I've tried to describe are two different situations.
One is if you have a referral counsel who's subject to some kind of a written agreement and full disclosure to the client, the client understands what the parameters are and how they're being paid. If that's all up to snuff under the rules, I don't know that there is an obligation to tell the Court that in the first instance along with all the other allocation information.
If there is, I'm sorry. I have not done the research in the last 48 hours because I did not know this was an issue. So I'm only speaking off the cuff on that based on my understanding of Rule 54 and how this usually works. And usually you don't in the first instance tell the judge what the allocation is amongst all counsel.
And if you have a referral counsel who didn't submit a fee declaration but is still going to get paid, I just don't know for certainty whether that has to be disclosed, even if the other parts of the allocation don't. Okay?
But what I have said I think twice now,

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and I'll say it again, is given as it's been described to me and as I think I've come to understand over the last two days -- and I'm not sure I have a full understanding yet -- but if it's true that the client didn't even know, then I think there needed to be more transparency in that regard.
THE SPECIAL MASTER: Andover was a client.
THE WITNESS: Of who?
THE SPECIAL MASTER: Well, you tell me. 'Cause I'm totally confused on what your view is who the clients were here. They were at least a client I believe of Mr. Sarko and Mr. McTigue.
THE WITNESS: Uh-huh. Yeah, so all the clients. Everybody. Disclosure to everybody.
If the relationship was such as it's been described over the last couple of days, I think the better part of discretion would have been for all clients to know and the Court to know.
THE SPECIAL MASTER: Meaning ERISA counsel should have been told so that they could disclose it to Andover, and, if they viewed the four individuals as their clients, to those folks.
THE WITNESS: I think it's the better --

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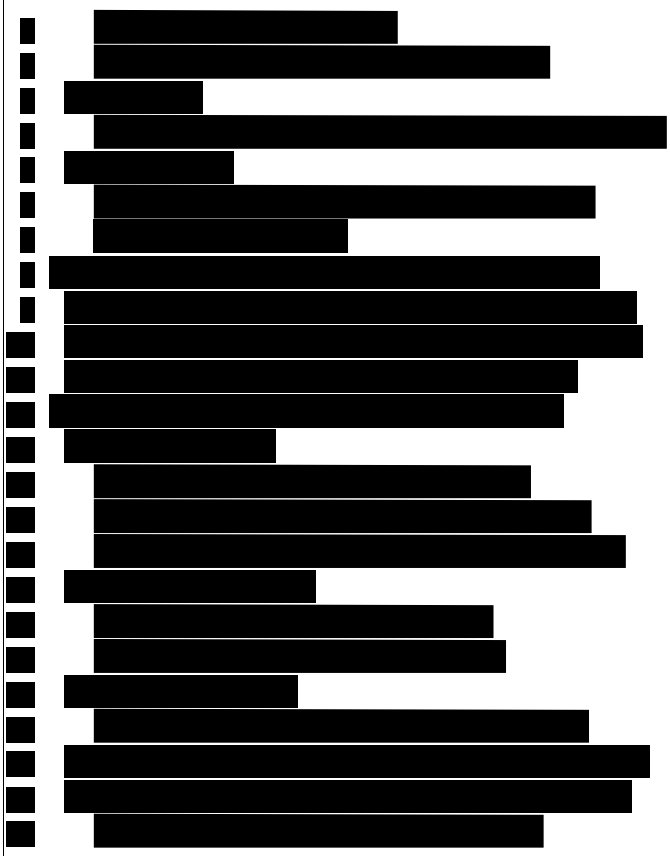

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that's what I had -- well, wait a minute. What's this?

MR. HEIMANN: No, that's not it.

THE SPECIAL MASTER: What's the date, Rich?

MR. HEIMANN: It's -- the date is --

THE WITNESS: Is it double-sided?

MR. HEIMANN: Is it double-sided. I always tell my folks never to give me double-sided documents, and they always do. So -- all right.

BY MR. HEIMANN:

Q. There are several e-mails in succession. The first is dated April 24, 2013. And it's an e-mail from Garrett Bradley to Bob Lieff, Mike Thornton and Eric Belfi with a CC to Damon Chargois.

And it's the e-mail that we looked at earlier --

THE SPECIAL MASTER: That's the Dublin e-mail?

MR. HEIMANN: It begins as you, Mike and I discussed in Dublin.

THE SPECIAL MASTER: Okay.

BY MR. HEIMANN:

Q. That e-mail was forwarded to Bob Lieff or --

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sorry.

The next e-mail is Bob Lieff's responding to that e-mail which he says, "I am in full agreement. Bob."

The next e-mail is dated July 28, 2015, and it's from Garrett Bradley to Bob Lieff, and it reads: "Here is the e-mail we discussed tonight." So that's forwarding the below e-mail.

And then Garrett Bradley -- the next e-mail is from Bradley to Lieff, Chiplock and Thornton. Subject: Forward State Street fee regarding local counsel that reads: "I found it in my e-mail..." -- in my sent e-mail -- excuse me.

And then the concluding e-mail is from Chiplock to Bob Lieff that reads: "See below. I don't know how you get around this." All right?

Now with all of that, can you describe the circumstances under which you sent that e-mail to Lieff, the last e-mail?

A. Yes. So Bob I believe -- even at this stage in 2016 -- didn't recall this arrangement, even though there'd been a couple e-mails about it and even though --

THE SPECIAL MASTER: What goes in Dublin

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stays in Dublin probably.
THE WITNESS: Well, I don't know. He responded in 2013 saying I am in full agreement, Bob. I didn't recall it. He didn't recall it --
THE SPECIAL MASTER: Were you in Dublin?
THE WITNESS: No, I was not in Dublin.
THE SPECIAL MASTER: Okay.
THE WITNESS: So Garrett forwards this e-mail in 2015 I think after I've asked the question there's a local counsel? Describe it for me and describe this agreement, send it to me if you have it. And he forwards to Bob -- I'm sorry.
He forwards it to me on August 30th after he had previously sent it to Bob a month earlier. So Bob and I are both having difficulty remembering this in 2015 -- in the summer of 2015.
Then almost a year passes which is June 2016 where I go back into my archives to find the e-mail again because the question has come up one more time about this local counsel that we are -- we are all supposed to share in the obligation for.
And Bob and I are trying to recall what the origins of that agreement were. So I forward that to him, and I say I don't know how you get

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around the fact that you said yes in 2013.
THE SPECIAL MASTER: Meaning no way to get out of this agreement?
THE WITNESS: Meaning no way to get out of sharing in Labaton's obligation to Labaton's local counsel.
THE SPECIAL MASTER: Right.
THE WITNESS: Right. 'Cause Labaton had decided we were all going to share in paying rather than Labaton fulfill that obligation itself.
THE SPECIAL MASTER: Just a followup.
Had you known then what you know now about the nature of the relationship, would that have been maybe a way to get around this?
THE WITNESS: Yes. Um, I certainly --
MS. LUKEY: Objection.
THE WITNESS: Yes. At this point in time all we know is local counsel, and it's something we agreed to three years prior.
So we couldn't really say no at that point. But had I known now what I knew then --
THE SPECIAL MASTER: Had you known then what you know now --
THE WITNESS: Had I known then what I

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now know -- sorry. Again, it's been a long day.
THE SPECIAL MASTER: Yeah.
THE WITNESS: -- I would not have been so amenable to that proposal.
THE SPECIAL MASTER: And we've seen in other e-mails that we've discussed that you pushed back in certain situations when you were concerned.
THE WITNESS: Yes.
THE SPECIAL MASTER: Would you have pushed -- had you known then what you know now, would you have pushed back similarly?
THE WITNESS: Yes.
MS. LUKEY: Objection. I'm sorry, I can't get the objections in fast enough 'cause I'm not sitting there, and the witness is answering before the question is done.
THE SPECIAL MASTER: They're noted, Joan.
MS. LUKEY: I ask that they be treated as timely.
THE SPECIAL MASTER: All right. In fact, if you like, we'll give you a standing objection, okay?
MS. LUKEY: No, your Honor, because

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EX. 42

Volume: 1

Pages: 1-266

JAMS

Reference No. 1345000011/C.A. No. 11-10230-MLW

In Re: STATE STREET ATTORNEYS FEES

BEFORE: Special Master Honorable Gerald Rosen,
United States District Court, Retired

DEPOSITION of DAVID J. GOLDSMITH

September 20, 2017, 9:21 a.m.-4:20 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

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[redacted]

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[redacted]

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That wasn't the sum total of our communications with ERISA counsel by any means, but a very large part of it to my recollection concerned the DOL side of the settlement.

Q. Great. Thank you. And that's a good overview, and I'll ask you some specifics on that shortly.

Is it fair to say notwithstanding the fact that Labaton was lead counsel in this matter that the ERISA firms were active and equal partners in this prosecution of this matter?

A. I hesitate a bit when you say prosecution. The reason I hesitate a bit is that the ERISA counsel were not put to the test of surviving a motion to dismiss at the outset of their cases. We were. We meaning the Arkansas counsel.

We were put to the test of having our complaint tested. Our allegations were tested and survived. The ERISA complaints, as I recall, State Street moved to dismiss those complaints, but those motions to dismiss were ultimately withdrawn as moot once it was agreed that all of the cases would be moved into the mediation protocol.

So in terms of prosecution, that's why I

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hesitate.

[redacted]

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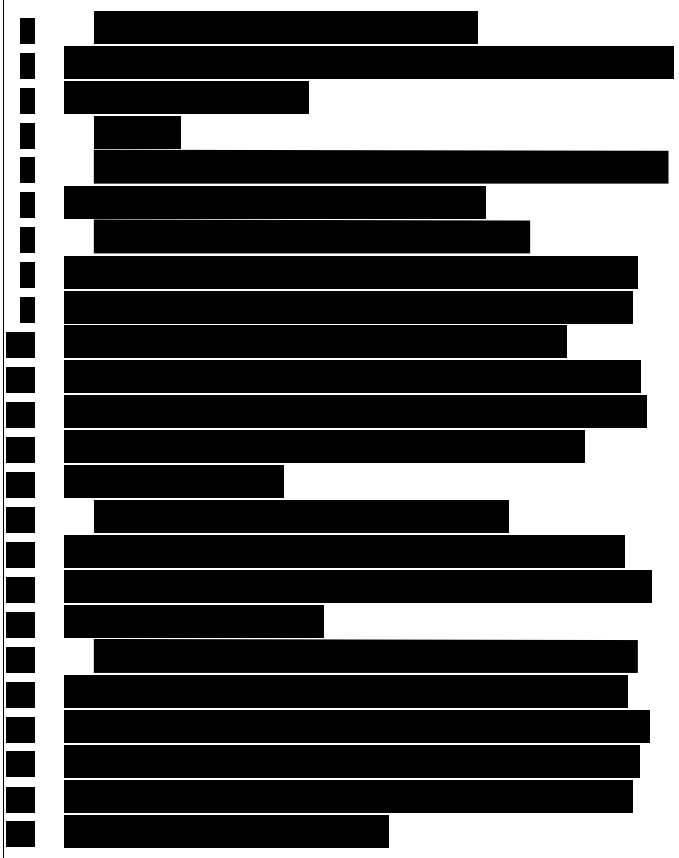

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I then questioned him on then on what role did ERISA counsel have. And maybe it's what I sort of characterize as the hybrid nature of the mediation and discovery, but I'm very interested in what your view was of Labaton's relationship to the what I will characterize as the ERISA plaintiffs.

Did you view them as clients? Or at least did you view Labaton as in some sense representing them?

THE WITNESS: I would not view the ERISA plaintiffs as clients of Labaton Sucharow. I would say -- and, you know -- I would say that Labaton Sucharow as lead counsel for the broad case -- there is a consolidation order; the precise words of which I don't have in front of me, but I would say the overall.

MR. WOLOSZ: I do have them.

THE SPECIAL MASTER: Let him finish and then maybe unlock this mystery. I'm sorry, David. Go ahead.

THE WITNESS: I would say that Labaton Sucharow as the lead counsel had the overall umbrella responsibility for the entire matter. I mean there is a reason why I argued, for example,

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the fairness hearing and not one of the ERISA counsel.

You know, there's a reason why -- and I'm sure we're going to talk about this -- why we, you know, the big three so-to-speak received the lion's share of fees in the case.

So I would say as a practical management reality concern, I do think Labaton Sucharow led the three captions, but I do not believe that the ERISA plaintiffs -- those actual persons or entities -- were formal clients of my firm.

THE SPECIAL MASTER: Okay. Not formal clients, but do you view -- do you believe that Labaton had some representational responsibility to the named ERISA clients? Or named ERISA parties?

THE WITNESS: Yes in the sense that -- yes in the sense that we -- because we signed onto a settlement agreement and settled the case in which the settlement class is defined to include those parties.

THE SPECIAL MASTER: How about before the settlement though?

I mean once you got to the settlement class and you were representing the larger -- I

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don't know the term you want to use -- merged cases, merged plaintiffs, larger settlement class, you probably did have some representational responsibilities at that point would you agree to the ERISA named plaintiffs?

THE WITNESS: Once we signed the settlement agreement?

THE SPECIAL MASTER: Yes.

THE WITNESS: Yes.

THE SPECIAL MASTER: And made the application for approval to the Court in the fairness hearing.

THE WITNESS: I would say yes.

THE SPECIAL MASTER: Okay. Let's go back then to the beginning of the mediation process.

What did you believe was Labaton's relationship to the named ERISA clients up to the point that settlement was reached, and there was an agreement to present that settlement as one settlement class to the Court?

THE WITNESS: I would -- I would say, as I said before, I think we had no actual client relationship or formal representational responsibility.

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The way these two cases got put together and the way, as I think Judge Rosen indicated, our firm was appointed lead counsel in the Arkansas case, and then the ERISA cases came around. And the ERISA plaintiffs, to my recollection -- and I believe Judge Rosen may have mentioned this -- were not appointed lead plaintiff in the ERISA cases.

But the ERISA counsel was still or became very much involved in the case throughout. Usually in these kinds of class actions to my experience, once you have lead counsel appointed in the case, by design any other counsel that brought a -- that filed a complaint goes away. Right?

I mean that's sort of the whole point of the exercise is that once -- when you have a lead counsel and lead plaintiff competition for lack of a better word, once the judge settles the -- um, the competition and appoints a lead plaintiff and a lead counsel, that sets up the leadership of the case, and all of the other prospective lead plaintiffs and lead counsel go back to their various firms and, you know, move on.

Here that didn't happen. And -- and I suppose shouldn't have happened because you had the

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Arkansas case over here (indicating) with the 93A claims with the Arkansas class. Then you had the ERISA class cases with the ERISA claims over here (indicating).

And it was -- and it was decided that these cases would be -- would go forward on tracks; that we would be cooperative with each other; we would do this discovery protocol and at a mediation effort all at the same time, and we would work cooperatively together.

However, it was understood at some point pretty early on that the ERISA cases were much smaller, and Larry was the one who brokered this entire thing. Our case came first. We survived the motion to dismiss. And so it was understood pretty early on that Labaton would be leading the entire overall effort, and Larry, correctly, wanted to preserve that position.

So I think that was the motivator for Larry's e-mail here. So I think you naturally have a bit of confusion in terms of exactly how this stuff gets divvied up.

THE SPECIAL MASTER: So I'm still trying to understand.

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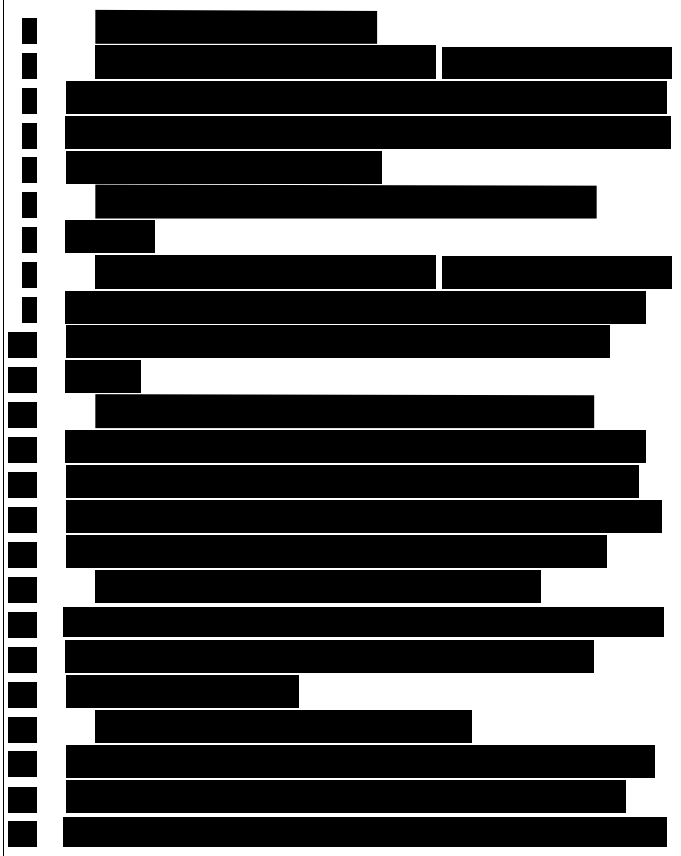

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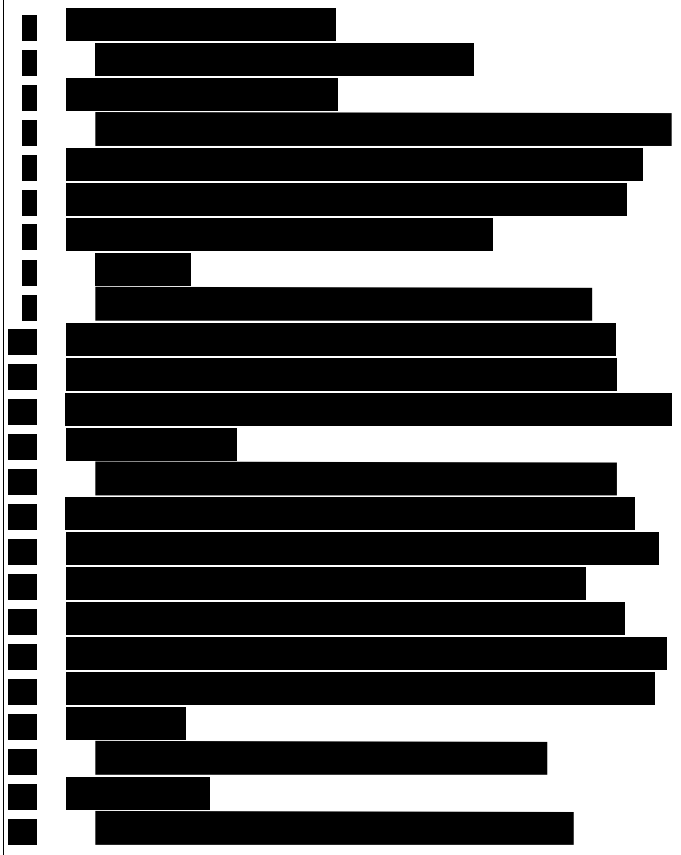

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THE SPECIAL MASTER: Okay, fair enough. So let me break it down.

THE WITNESS: Sure.

THE SPECIAL MASTER: Is it fair to say that at no point did you view the ERISA named plaintiffs as your clients?

THE WITNESS: At no point before the signing of the stipulation of settlement did I view the ERISA named plaintiffs as my clients.

THE SPECIAL MASTER: Okay. At the point of the signing of the stipulation of settlement, did you then view them as your clients?

THE WITNESS: It's not something that actively entered my mind on that day, but thinking about it now, I think that is fair to say.

(Pause.)

THE WITNESS: But -- I'm sorry. But as a practical matter, their lawyers in terms of who they would call and who they would speak to --

(Interruption.)

(Off the record.)

MR. SINNOTT: If we could pause for a moment.

THE SPECIAL MASTER: Why don't you go.

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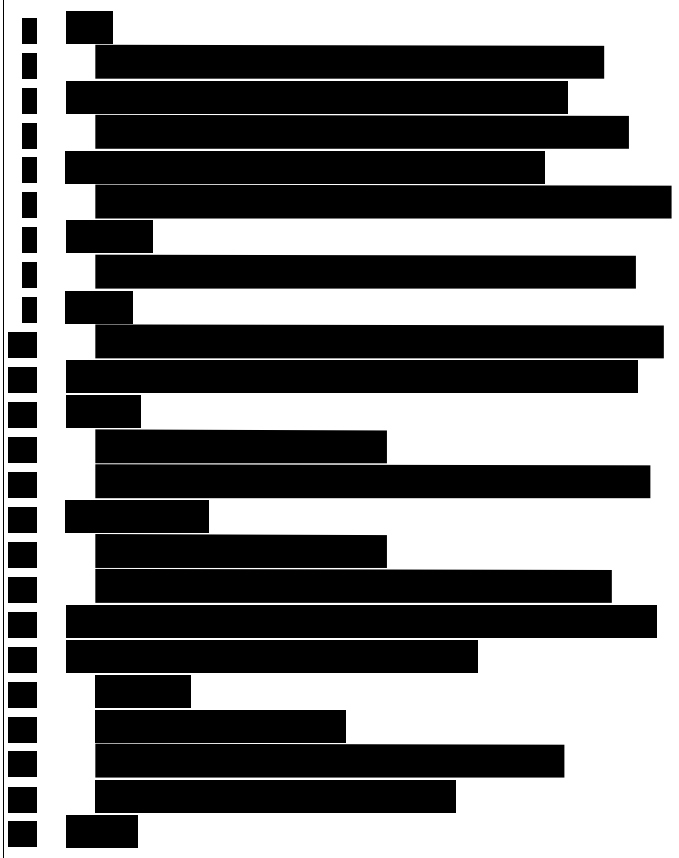

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THE SPECIAL MASTER: Please.
THE WITNESS: So as a practical matter --
MR. SINNOTT: Thank you, Paulette.
THE WITNESS: Thank you. As a practical matter, throughout the life of the case and continuing to today, if you were to ask any of the ERISA plaintiffs who their lawyers are, they will all say the same thing, either Mr. Sarko or Mr. Kravitz or Mr. McTigue. I'm confident that if you took a poll that would be your answer. I think that's clearly the case.
Um, and with respect to the signing of the stipulation of settlement, one thing that also occurs to me, given my experience in this area, is that the class hadn't yet been certified.
So actually once -- since the class wasn't yet certified, absent class members -- and I viewed the ERISA class members as absent class members once we signed the settlement agreement.
They actually weren't Labaton clients, to the extent they ever were, until the class is certified. The class wasn't certified until the settlement was approved, if they ever were -- until

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the settlement was finally approved by the Court which was I think on or about November 2, 2016.

And so that would be the date that I would give as the date that the ERISA plaintiffs would become clients of Labaton Sucharow, LLP.

THE SPECIAL MASTER: Who then represented the ERISA named plaintiffs before the Court for purposes of presenting the settlement?

THE WITNESS: I argued the fairness of the settlement. The fairness of the settlement applies to the whole class. I mean there wasn't any reason to have more than one person argue those issues, although we did during the preliminary approval hearing I believe have one of the ERISA counsel speak up when there was an issue regarding the plan of allocation and how it impacted the ERISA class members to my recollection.

THE SPECIAL MASTER: So your testimony now is that you had no client relationship -- you Labaton -- no client relationship to the ERISA named plaintiffs, even at the point of presenting the settlement to the Court?

THE WITNESS: I had no formal client relationship -- I had no formal attorney/client

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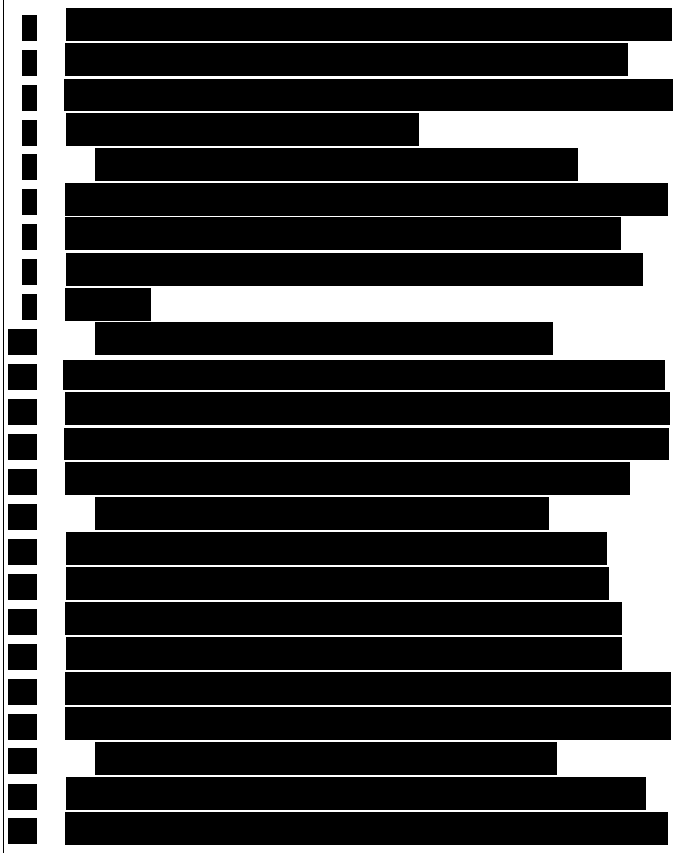

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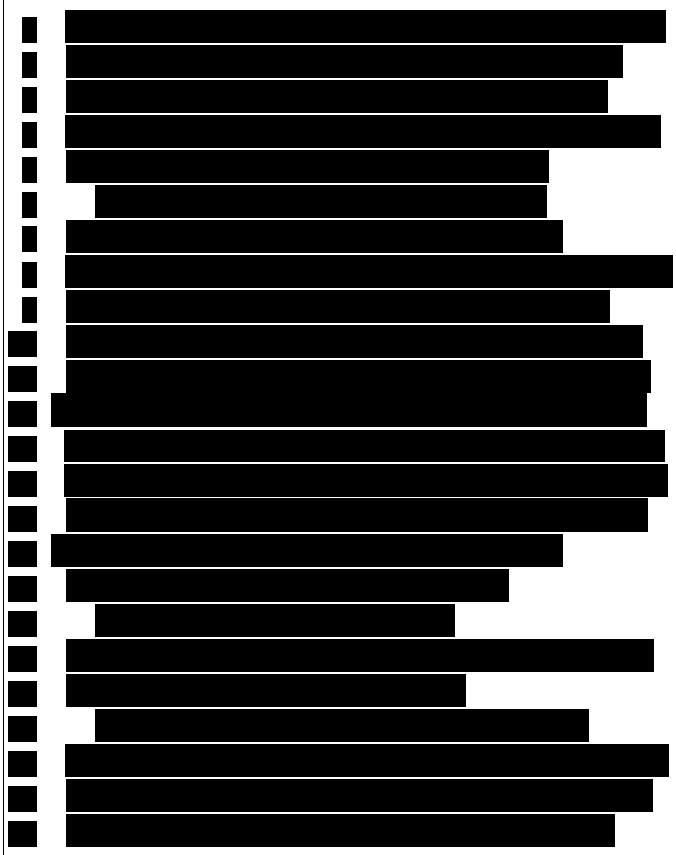

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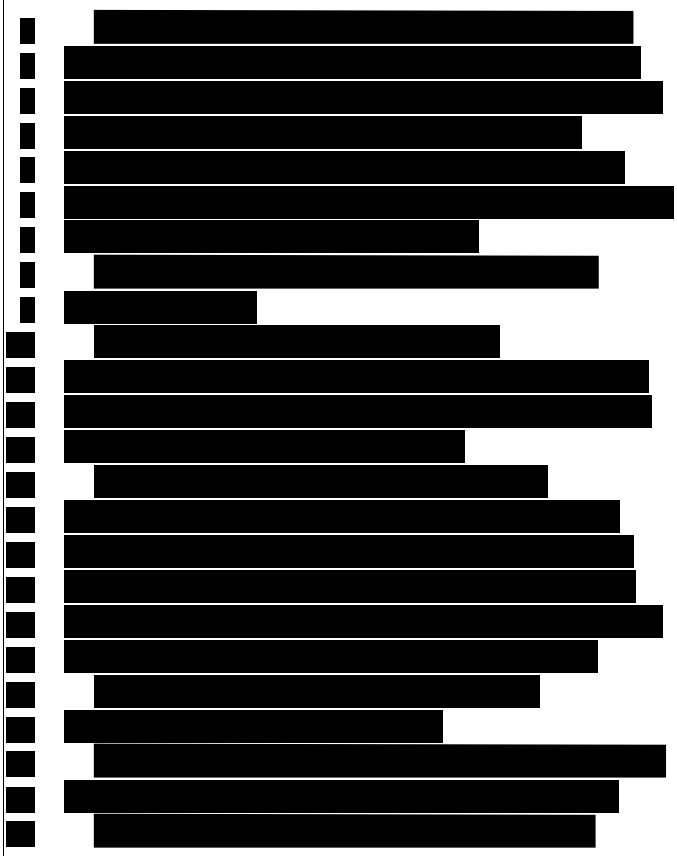

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same.
THE SPECIAL MASTER: Okay. So, in fact, the ERISA lawyers got approximately 7-and-a-half million dollars, correct?
THE WITNESS: Yes.
THE SPECIAL MASTER: So there was -- as between the cap and the actual allocation of fees to ERISA counsel, there was approximately a 3.4-million-dollar differential?
THE WITNESS: I mean arithmetically if you subtract one number from other, that's true.
But I don't think those two numbers have anything to do with each other. We agreed with ERISA counsel early in the case -- I personally didn't have anything to do with the negotiations, but there was an agreement struck early in the case long before the settlement that the ERISA counsel would have 9 percent of the gross fee.
I believe that 9 percent was a function of the approximate ERISA volume of the class. Basically -- basically how big the ERISA case was compared to the Arkansas case.
THE SPECIAL MASTER: Based upon what was known at the time.

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THE WITNESS: Known at the time, correct. Later -- much later Larry decided to voluntarily bump that percentage up to 10 percent, and that's -- and that is the fee that the ERISA counsel received.
There was never, to my knowledge, any sort of cross-over or discussion of how this cap, which was requested by the DOL and negotiated between the DOL and Lynn Sarko to my recollection, informed or had anything to do with the 9/91 and then later 10/90 agreement.
THE SPECIAL MASTER: Okay. So at least from the DOL's perspective, if the differential between the 10.9-million-dollar cap and what ERISA counsel received didn't go to ERISA counsel for fees, shouldn't DOL have rightly expected that differential to go to the ERISA class since DOL's objective was to maximize the recovery to the ERISA class?
MS. LUKEY: Objection.
THE WITNESS: Well, DOL did maximize the recovery to the ERISA class, and I believe that DOL was well aware of the -- what I would call the 9 percent/91 percent agreement. And the reason I say

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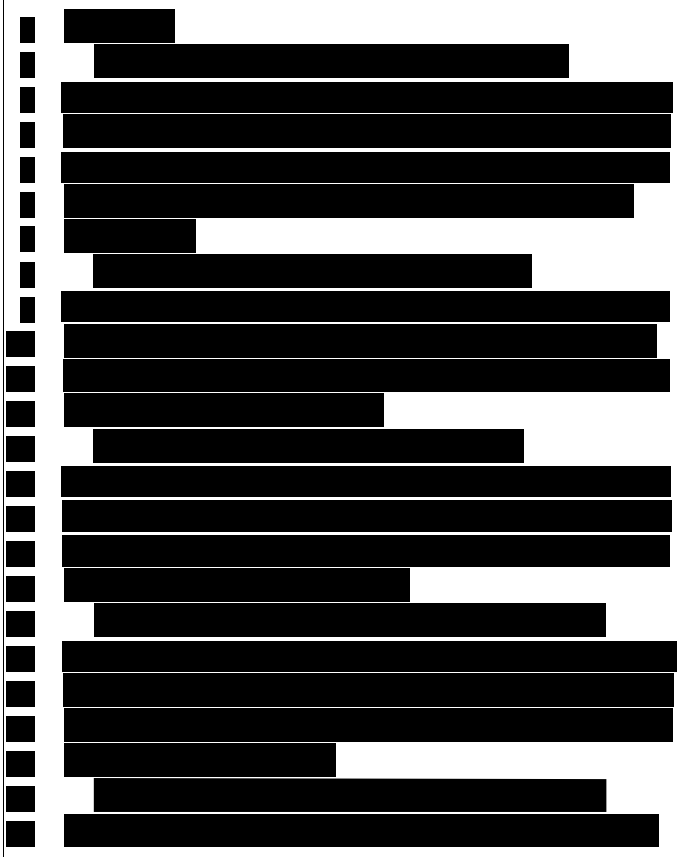

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bring the DOL into the tent -- the settlement tent, I think you testified earlier -- and I just want to make sure that it's still your testimony -- that it was necessary to have DOL as part of the settlement and that DOL be satisfied because State Street wanted DOL as part of a global settlement because State Street wanted a release from all parties, including DOL?

THE WITNESS: Right. It was State Street that wanted the DOL in there. We didn't want them.

THE SPECIAL MASTER: Yeah, because State Street needed a release from everybody including DOL, correct?

THE WITNESS: Correct.

THE SPECIAL MASTER: So DOL needed to be satisfied.

THE WITNESS: They did.

BY MR. SINNOTT:

Q. David, when did you first learn of the presence or association of a referring attorney or if you knew him by name of Damon Chargois in the State Street case?

A. I first learned of the existence of the

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referring arrangement, and the first name of the referring attorney on Monday, November 21, 2016. That was the Monday before Thanksgiving.

THE SPECIAL MASTER: That was after the class had been certified.

THE WITNESS: Yes, sir.

Q. Now had you worked on any previous cases in which Mr. Chargois was the referring attorney?

A. Not to my knowledge. But, as I sit here today, I know that I have worked on two.

Q. And which two are those?

A. A10 Networks --

THE REPORTER: I'm sorry?

THE WITNESS: Letter A number 10.

A. -- Networks and Hewlett-Packard.

THE SPECIAL MASTER: You didn't work on Colonial?

THE WITNESS: No, sir.

BY MR. SINNOTT:

Q. You didn't work on K12?

A. No, sir.

Q. When you say you worked on those cases with him, did you meet him during those cases?

A. Well, I did not work with him at all. I

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THE SPECIAL MASTER: Does that mean that you didn't know a fee was paid to a -- another attorney?
THE WITNESS: It does.
THE SPECIAL MASTER: It means that.
THE WITNESS: It means that I had no idea that a fee was paid to anyone other than Labaton Sucharow.
THE SPECIAL MASTER: More generally, were you aware at any point before -- is it November 21st of 2016?
THE WITNESS: That's the correct date.
THE SPECIAL MASTER: Were you aware that Labaton had an agreement with Mr. Chargois to pay 20 percent of any Labaton fee in which Labaton was lead counsel or co-lead counsel and Arkansas was lead or co-lead plaintiff?
THE WITNESS: No.
THE SPECIAL MASTER: You knew nothing about that?
THE WITNESS: Knew nothing. Before November 21st of 2016 -- actually, I should say November 22nd of 2016 because on November 21st of 2016 I only knew the name Damon. It wasn't until

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November 22nd of 2016 that I knew the last name Chargois.
But I'll tell you -- I can tell you why.
But before that time -- this was Thanksgiving week. Before that time I had no idea of any referring relationship of any kind relating to Arkansas Teacher, and I had never heard of Damon Chargois in any capacity. As a referring counsel or as any other type of counsel.
THE SPECIAL MASTER: So is it fair to say when you made your presentation to the Court of the settlement agreement on November 2, 2016, you knew of no relationship with Mr. Chargois?
THE WITNESS: That is very fair to say.
THE SPECIAL MASTER: Is it also fair to say that you did not know that Mr. Chargois was going to receive 5.5 percent of the total attorney fees, 75 million dollars? Is that fair to say?
THE WITNESS: On November 2, 2016?
THE SPECIAL MASTER: Correct.
THE WITNESS: That is correct.
The reason I hesitated a bit is I am not clear as to the date on which the 5.5 percent was agreed to. I believe -- could be wrong -- that that

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5.5 percent was set later.
But be that as it may, I knew nothing of Damon Chargois or any referral relationship concerning Arkansas Teacher on November 2, 2016.
THE SPECIAL MASTER: And you knew nothing of any payment that was to be made to Damon Chargois out of the class funds on November 2, anyone when you presented the settlement to the Court?
THE WITNESS: That is correct.
MS. LUKEY: Objection.
THE WITNESS: Correct.
BY MR. SINNOTT:
Q. Wouldn't that have been important information for you to have before you went before Judge Wolf in the fairness hearing?
A. Yes. I would have liked to have known that.
Q. Did you become aware of any actions or activities by Damon Chargois in the State Street case?
A. I'm sorry. Just -- actions or activities?
THE SPECIAL MASTER: Work on the case.
THE WITNESS: Oh.
THE SPECIAL MASTER: Is that a better --

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MR. SINNOTT: That's a better way of putting it, yes.

THE WITNESS: Understood. So -- well, in terms of personal knowledge, I never -- no, I never witnessed Damon Chargois performing any work on the State Street case, and I have since read the response to the interrogatory on that subject.

I've never met Damon Chargois. The only e-mails I've had with him have been very limited, and that was beginning in late November 2016.

THE SPECIAL MASTER: So as far as you know at this point, even today, Damon Chargois performed no work on this case at all? Is that correct?

THE WITNESS: Correct.

THE SPECIAL MASTER: Now not looking at your own personal knowledge but what you've been told by anybody else in the case -- any other lawyer in the case --

MS. LUKEY: Not outside counsel.

THE SPECIAL MASTER: Not outside counsel, Joan. So that we're clear.

Based upon what you've been told by any other lawyer in the case other than outside

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counsel --

THE WITNESS: -- or inside counsel? Just -- sorry.

THE SPECIAL MASTER: Yeah. Any other lawyer who worked on the case.

THE WITNESS: Fair enough.

THE SPECIAL MASTER: Involved with the case itself.

THE WITNESS: Fair enough.

THE SPECIAL MASTER: Are you aware today of any work that Damon Chargois performed on the case?

THE WITNESS: I am not.

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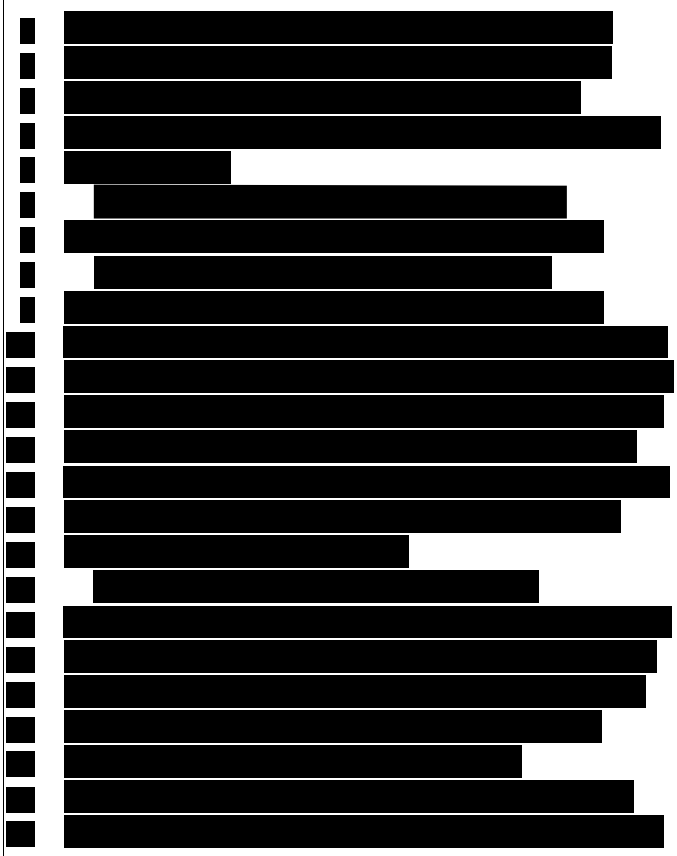

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fee is awarded.
What I'm trying to say, judge, is to my understanding I don't think there would have been much concrete information that would have been, you know, able to be known at the time the 9 percent/91 percent division was agreed to.
THE SPECIAL MASTER: So is your testimony that at no time was there an obligation on the part of Labaton to disclose to ERISA -- the ERISA lawyers --
(Interruption.)
THE SPECIAL MASTER: Sorry. At no time was there an obligation to disclose to the ERISA lawyers the existence of the Chargois relationship and the fact that Mr. Chargois was going to be receiving a substantial percentage of the attorneys' fees?
THE WITNESS: Well, first of all, no one knew what percentage that would be until the percentage was agreed to. But to your first point, I say this with all respect 'cause I have a great deal of respect for Mr. Sarko and Mr. Kravitz, but the answer is -- the answer is, yes, I do not believe we had any duty to disclose the Chargois

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relationship to ERISA counsel.
That is, in my mind, business proprietary information that is internal to Labaton Sucharow and is not the type of information that we ordinarily disclose to other attorneys. And it's -- and I'm being entirely consistent with my testimony with regarding disclosure to the Court.
ERISA counsel are smart, sophisticated, experienced, senior lawyers. If they at the time really wanted to know whether the fees were going solely to Labaton, Lieff and Thornton or if there was some referring counsel in the wings who would have received some portion of that fee, they were absolutely free to ask that question. And I am sure that Larry would have provided some information or maybe even full disclosure to them in response. But they didn't -- they didn't ask that question.
Now I don't think Larry was thinking about that at all, but they -- they didn't ask the question at the time, and I do not believe it was incumbent upon us to provide that information.
BY MR. SINNOTT:
Q. Well, are you saying this was just an omission; that there wasn't a conscious effort on

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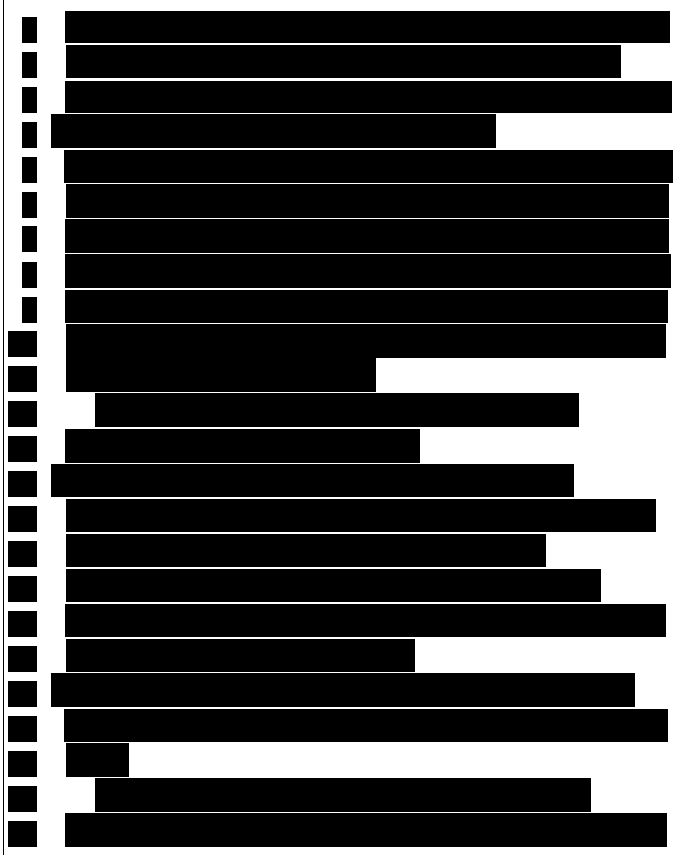

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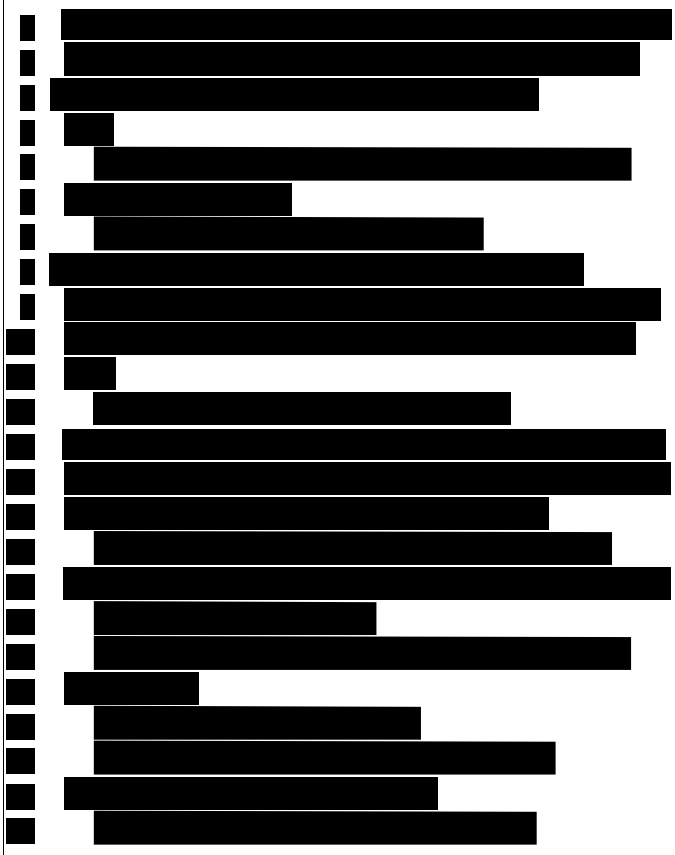

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BY MR. SINNOTT:

Q. David, if you could look at the bottom of page 1, there's an e-mail that you sent to obviously multiple parties at 6:54 p.m. on November 21st, and you say, "All, attached please find a draft letter setting out our plan with regard to the November 10th letter that we filed with the Court and future distribution of fees and expenses. Please let us know if you have any comments or concerns. We'd like to circulate a final version and collect signature before the holiday, if possible."

And then just a short period of time -- a few minutes later, 39 minutes later, at 7:33 p.m. Larry writes back to you. And he writes: "David, I was reminded by Garrett that we also need Damon and Arkansas to sign off on a similar letter in case we need to claw back from them. In addition, we will need both Lieff and Lieff Cabraser firm to sign off." And then some unrelated language after that.

And then in response to this -- presumably in response to this message from Larry to you about Damon you respond at 12:37 a.m. "I'll do a letter for Damon from Eric I suppose. The letter has separate signatures for Bob Lieff and the Lieff firm. Yes, the breakdown wouldn't be circulated until after everyone's at least on board and preferably Brian has signed."

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Now my question to you is on November 21st when Larry brings up the subject of Damon and Arkansas, at least with respect to this e-mail thread, there's no expression of surprise on your part. There's no questioning as to Damon who or what's this all about.

You dutifully say, "I'll do a letter to Damon from Eric I suppose." I guess were you aware that Eric was the relationship partner that worked with Damon?

A. That was an assumption because he was and is the relationship partner for Arkansas.

Q. So based on this thread here, it's difficult to discern when you did not know about Damon. Perhaps you can tell us and put this in context.

A. Sure. So -- so this was, um -- this e-mail from Larry on November 21st, 2016 at 7:33 p.m. was in fact, um, the first time that I learned about Damon. Um -- Larry was reminded by Garrett, as the e-mail indicates, that we would need this Damon in Arkansas to sign off on a similar letter.

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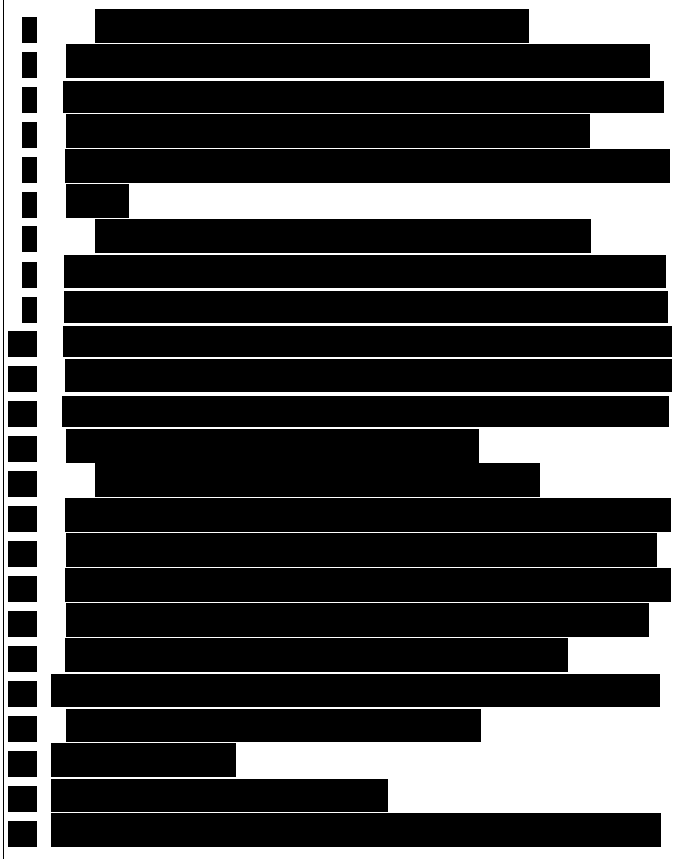

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that is to say, negotiating that 60-million-dollar earmark -- that it was their view that it was the ERISA lawyers and only the ERISA lawyers who brought about that result as opposed to any efforts on behalf of the customer class counsel?
A. No.
Q. Why is that?
A. Well, the 60 million dollars wouldn't exist unless the 300 million dollars existed. The 300 million dollars existed because of the efforts of customer class counsel and ERISA class -- ERISA counsel.
Q. The Department of Labor also negotiated a cap of some 10.9 million dollars on the fees to be charged against the 60-million-dollar amount that they had negotiated for the ERISA class members, correct?
A. Correct.
Q. And did that negotiated fee apply only to the settlement being allocated to the ERISA plan -- excuse me.
Let me begin again. Did that cap on the fee apply only to the ERISA counsel's fees?
A. No.

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Q. Did it apply to all counsel's fees?
A. Yes.
Q. In your view did the customer class counsel play a role in obtaining a recovery for the ERISA plans?
A. Absolutely.
Q. Would you regard that role characterized fairly as substantial?
A. Yes, I would.
Q. In the course of the work on the case as opposed to most more recent times, did anyone ever suggest that the ERISA counsel deserved 100 percent of the credit for that 60-million-dollar recovery going to the ERISA members of the class?
A. No.
Q. Did any of the ERISA counsel -- I'm talking now about comments made back during the day, not most recent self-serving comments.
Did any of the ERISA counsel ever suggest that?
A. Absolutely not.
Q. And did the DOL, Department of Labor, suggest that?
A. No.

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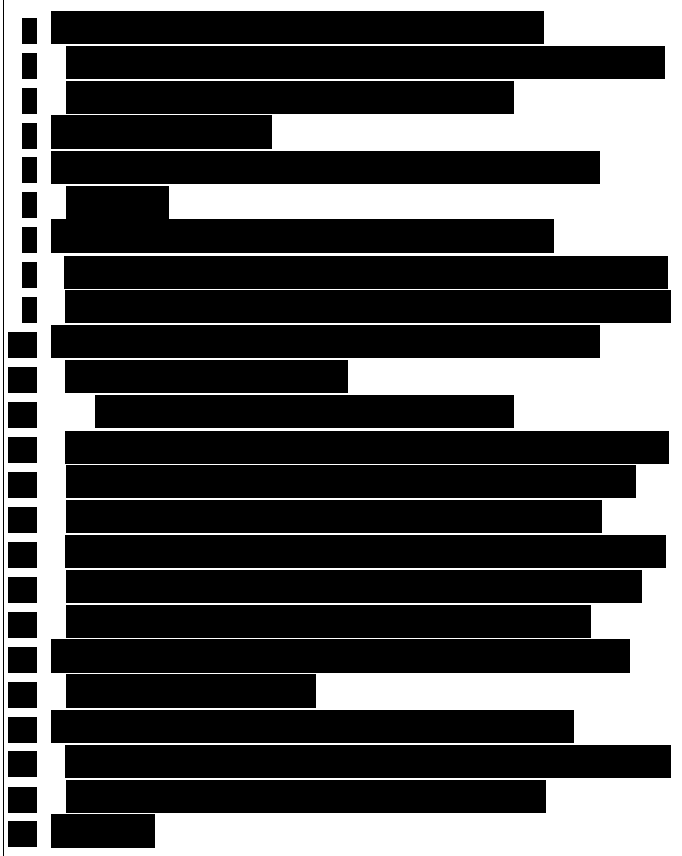

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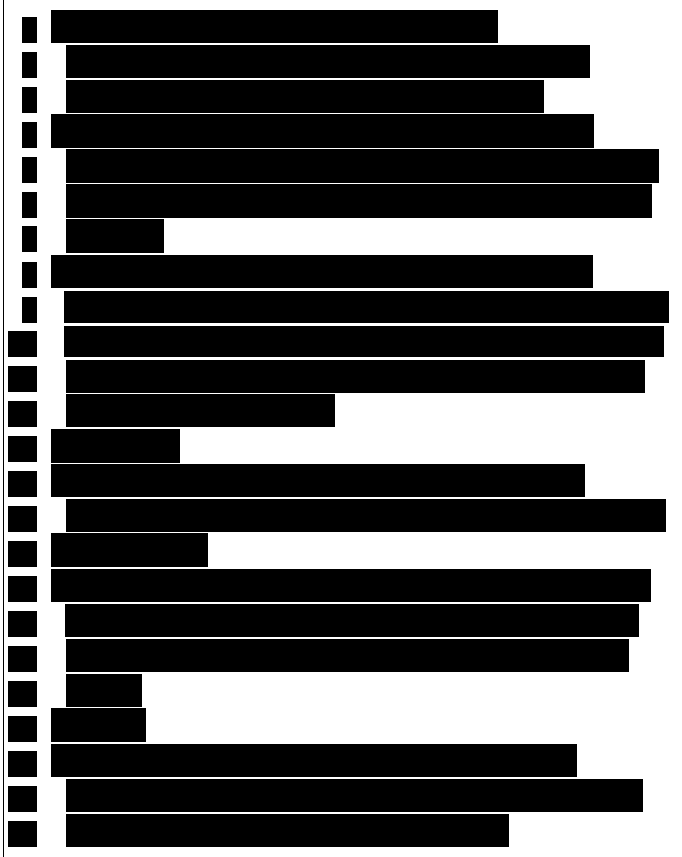

EX. 43

JAMS, INC.

Volume: 1

Pages: 1-99

Ref. No. 1345000011

Exhibits: 0

In Re: STATE STREET ATTORNEYS FEES

Before: SPECIAL MASTER HONORABLE GERALD ROSEN,
UNITED STATES DISTRICT COURT, RETIRED

Date: June 19, 2017

Time: 4:32-6:17 p.m.

Deposition of GARRETT J. BRADLEY, taken by counsel to the Special Master held at JAMS, Inc., One Beacon Street, Boston, Massachusetts before Cynthia Stutz, CPR, Notary Public of the Commonwealth of Massachusetts.

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with Labaton and Lieff come about?
A. I recall in late '14, early '15 I got a call from Eric Belfi. For whatever reason, I remember walking, I was walking onto an airplane, I think in Detroit. And Eric said that we needed to staff up. There was a significant amount of documents to go through and he wanted to know if we would accept risk sharing proposal where we would assume the risk for a certain number of staff attorneys. I think the number was ten. And he wanted to know if we could reach out to Lieff and see if they would be interested in sharing the risk, as well.
Q. So this was Eric Belfi's idea?
A. He called me, yes.
Q. Okay. And was this memorialized in e-mails or any kind of an agreement?
A. There's not an agreement laying it out, but there's e-mail traffic that I think we've turned over to you that we talk about that it's happening.
Q. And you say this was in 2014 or '15?
A. Late '14, early '15.
Q. Not 2011?
A. 2011 there was an agreement reached on the

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fee, on part of the fee, but not on the sharing of risk on the staff attorneys. That wasn't until late '14, early '15.
Q. And when you say the sharing of risk on staff attorneys, describe what you mean?
A. Well, we were a contingent firm. You're extending money against one of the largest custodial banks in the world. The idea is you want to share the risk. That's why we have multiple firms in the case. So that's what we did. We paid for ten reviewers, five that were at Labaton and five that were at Lieff or this affiliate company and we paid their costs through a couple year period.
Q. Is it true, though, that it actually went beyond just paying their costs? There was a by name designation of certain attorneys at those two firms as being Thornton designated attorneys?
A. That would have been something that whoever housed them would have designated. All's we know is that there were ten people that we were responsible for picking up the cost for however long the process required. We didn't -- I wasn't, I wasn't picking names out of a hat. It was you pick the ten and we'll pay for them and we'd get monthly

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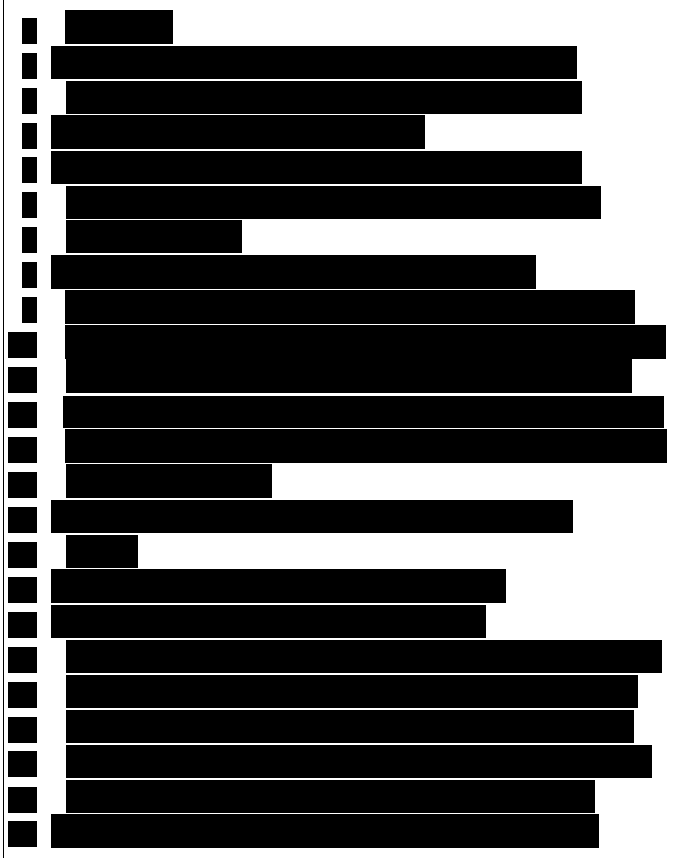

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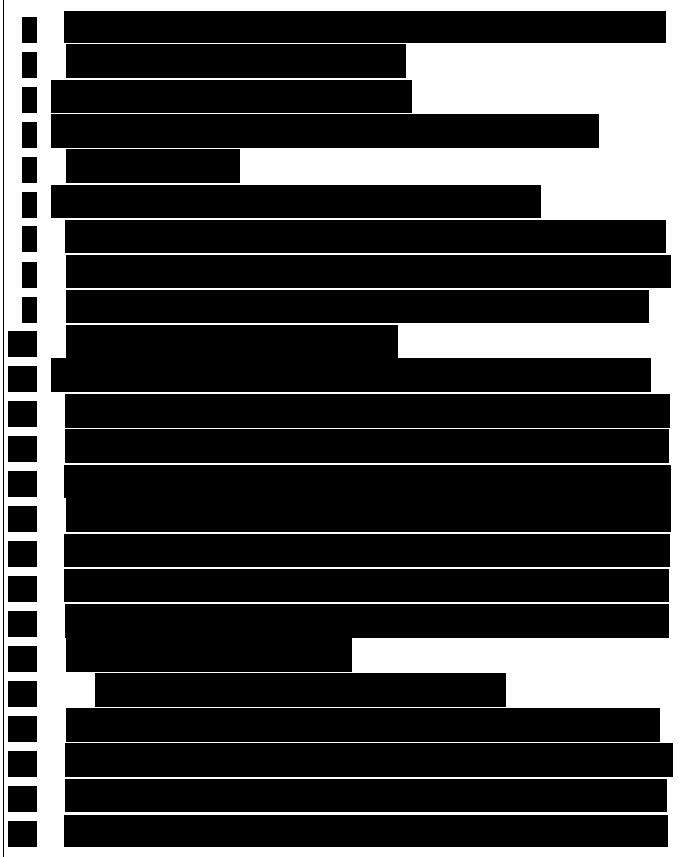

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will go to Labaton, with 40% of the net fee to the three firms to be determined as we get to the end, which it was.

If you're not sharing in the risk as you go along, you're not going to have a very strong or any argument to get the 30%, which we did. We ended up getting 29%, and that was because we shared the risk with the other two firms.

Q. Sure. I think you're missing my point, though. I'm not saying that you shouldn't share in the risk. I'm just asking why it was done this particular way, as opposed to just saying, Look, every month we'll pay a third of the costs for these document reviewers.

A. Well, when I got the invoice from Ray Politano at Labaton, it didn't say John Smith, Nancy smith. It just said amount, rate, and here's the bill. So in my mind, I was paying one-third as we went along every month.

Q. Was there a feeling, Garrett, that by having particular attorneys that the firm could claim as its own, that it would help in its load star calculation in the final fee petition?

A. From the fact of the matter is we had a

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fee agreement in place in August of '16 before we filed the fee application. We knew at the time what our fee was going to be. Quite frankly, we didn't have to put them on our fee application. It's just that was the way it was decided to be done. It could have been left on Lieff and Labaton and it could have no effect on our net fee at all.

Q. So this was not an attempt to demonstrate to the court that, you know, we're as much of a player as these other firms. We had, you know, ten attorneys doing document review in this case.

A. There was one overall fee that was authorized by the client, 25%. And we never -- The Court never asked us how we were going to divide that. It was already determined how it was going to be divided. So quite frankly, we didn't have to put a fee application if we didn't want to.

Q. But just from a practicality perspective, didn't it confuse things at times?

A. Well, clearly it got confused, because we made a mistake at the end and it got double counted, which is highly embarrassing and we're sitting here. But, you know, it wouldn't have mattered if we left them on Lieff and Labaton's, what the Thornton fee

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was going to be. We just assumed -- I just assumed where the local counsel were on the papers, we're litigating the case, we're putting the fee up, why wouldn't we put the people up that we were paying for?

Q. Who was responsible at the respective firms for insuring the accuracy of hours and time-keeping?

A. Well, you have Evan Hoffman was probably point for calculating all of our time and collecting it all from the staff attorney times from Lieff and Labaton. My brother Michael also reported to him, I believe, on a weekly basis what his time was.

So he and Mike Lesser took the main role in drafting the fee, the fee application that we got. We got a draft form from lead counsel to fill in certain sections that related to us. So Mike and Evan did that and then I reviewed it and I signed it.

Q. What was your understanding, Garrett, as far as what billing rates would be used for the staff attorneys performing document review at Labaton and Lieff?

A. There was a conversation that I think it

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was on the e-mail chain at one point of using the same rate that we had used in the Mellon case, which was 425. So that's how we ended up with the 425 for the most of them. Our partners and staff have a rate, and then obviously, my brother's rate.

Q. Had Thornton ever entered into a similar cost sharing agreement with other firms in past cases?

A. Not that I recall in past cases, no.

Q. And did you ever have any discussions with Eric or Chiplock or anybody else as far as what the impact of the cost sharing agreement would be on the load star calculation and the fee petition?

A. You mean individual load star or overall load star?

Q. Both.

A. Overall, I mean, I wasn't really concerned about overall load star in this case. Number 1, we have a 25% fee agreement with Arkansas. The case went on for seven years, had nine firms working on it.

And load star really isn't a concern in this jurisdiction, because it's a common fund jurisdiction. When you look at the Goldberg

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Factors, it's called Berger Factors, one of them is load star as a cross check. But that was going to be in our favor anyways. And then the other factor is risk. Did the government follow you? Did you follow the government? They were all very much in our favor. So I was never really concerned about it on an overall perspective.

Q. But you didn't discuss this with other counsel, to your recollection?

A. I think we needed to get through the documents. And that was the reason to go and hire the staff attorneys. That was the discussion, not about, you know, helping load star.

Q. Okay.

MR. KELLY: Could we just have a clarification? Aggregate load star versus individual load star?

MR. SINNOTT: Yeah. And my response was with both.

A. Well, let me clarify, Bill. That last answer I'm talking about aggregate load star. Clearly, I had a concern about our load star until we had a division of the 40%. I wanted to make sure we were keeping pace with the other two firms who

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were bigger than us and doing more of these type of cases. But I most definitely had a concern that we were doing, taking our fair share of the risk so that we could get our fair share of the reward. Because at the end I don't want to end up and somebody says, Well, you didn't put enough work into this case. I want to make sure we were being offered the work and we were doing the work.

Q. So your concern, Garrett, was beyond the 20/20/20, which was a handshake agreement, right?

A. There's a letter agreement that was sent. The older guys they never sign anything, so I don't know where the signed copy is.

Q. Okay.

A. There's one. Mike's on it, Larry's it and Bob Lieff is on it.

Q. But your concern was for that 40% that was not applied in that 20/20/20 agreement, that you wanted to make sure that vis-a-vis the other firms, that you got your fair share of that?

A. I wanted to make sure we were offered the work and, yes, offered a fair share with a 40% at the end.

Q. Were there tensions with the other members

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[redacted]

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brother if he had time to do this work. And I asked Mike Thornton if it would be all right, because he was going to take it on a contingency, to add him into the reviewing people. We had four people, I think, doing it in-house on staff and then I thought adding him in would help us keep pace with the other firms.

Q. Why did you think your brother would be a good candidate to perform this work?

A. Well, it was -- My understanding at the time was that it was done remotely. It was an access into a database. So Number 1, I could trust him because he was going to do it because he's my brother. Number 2, he was a former prosecutor and was the head of the Underground Economy Task Force, which was a gubernatorial appointment, and their role was to look at fraud in companies. So I didn't know what was going to be in these documents, but I thought he might have a unique perspective on it and he was willing to take the risk and not get paid until the end.

Q. Was there a particular hourly rate agreed upon?

A. At some point we agreed upon 500. I think

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I might have had a general conversation about what his rate was when we first started. And I remember at the end I had to figure it out, because I didn't remember what we had talked about. But the general consensus was that he had billed around 450 when he started the case and I thought 500 was a reasonable number, given the risk that he had took.

Q. Because it was a contingent?

A. Yeah. He had to carry it and might not get paid.

Q. Did Michael attend any training in preparation for document review?

A. Yes, Evan Hoffman and him connected and got trained on the system. I don't understand the system. I don't know any of the specifics about how it works, but my understanding is that there was a training program that they had to go through before reviewing.

Q. So you never worked in the Catalyst system?

A. No. All my document review would have been really pertaining to Arkansas and the records pursuant to that, because I and Eric were coordinating with the client throughout the case.

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[redacted]

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administrator, this case wasn't settled.

But at some point I did, probably when we were determining the fee application or sharing our load star with other counsel at some point, probably late, maybe late '15, around that time frame.

Q. It's fair to say that it wasn't until after the mediation that the $500 amount was confirmed?

A. No, I wouldn't say that. I think we might have had a conversation at the beginning, because I remember asking him, like, what do you bill? And at the time he said 450. And I said, Well, probably try around 500. I'm pretty sure that was at the beginning. And then I had to remember it again and go back and confirm it with him, so I'm sure there was a couple of conversations.

Q. All right. But nothing in writing, to your knowledge?

A. No, not to my knowledge, no.

Q. And do you recall the January 9th, 2015 conversation?

MR. SINNOTT: And, Brian, this would be SST-012554. Did you want to pull it up? I've

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[redacted]

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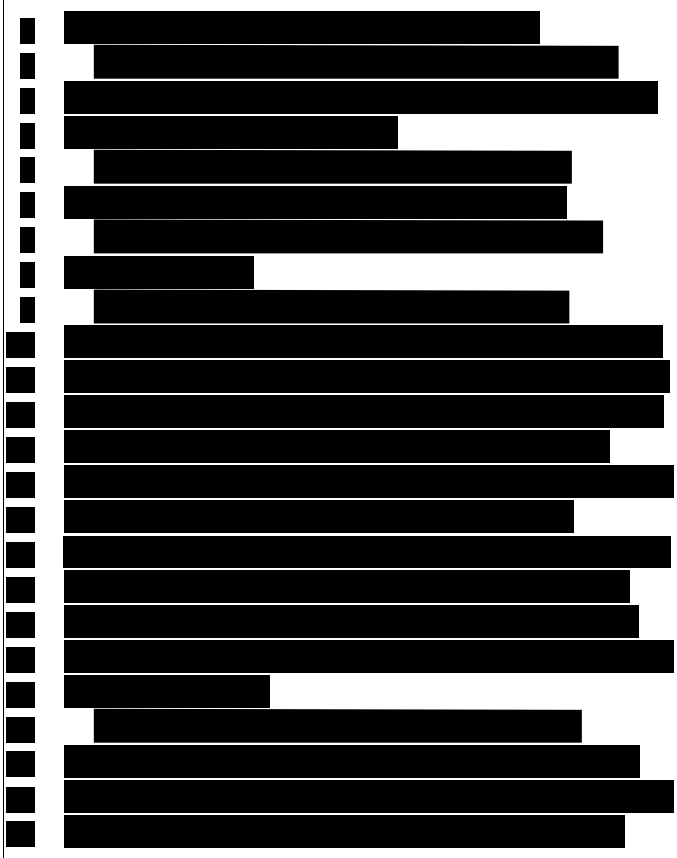

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1136. Do you have that?
MS. McEVOY: Help me out here.
THE SPECIAL MASTER: What I'm trying to understand is what was the $500 rate tethered to? Was it tethered to his experience? Was it tethered to the rates that other attorneys doing similar work were getting? Was it tethered to the value to the firm or the work that was being performed or was it tethered to a concern about the load star rate?
THE WITNESS: It was --
THE SPECIAL MASTER: Or any of them.
THE WITNESS: It was tethered to the fact of how many years he was an attorney, what he had recently billed to an hourly client, and the fact that he took it on contingent.
THE SPECIAL MASTER: The contingency.
THE WITNESS: That's what led up to the 500.
THE SPECIAL MASTER: There was a specific e-mail that I'm thinking of that you may have asked him about already. It was an e-mail between Garrett and, I believe, Mike Lesser, but go ahead. I'll look for it. We have many of them

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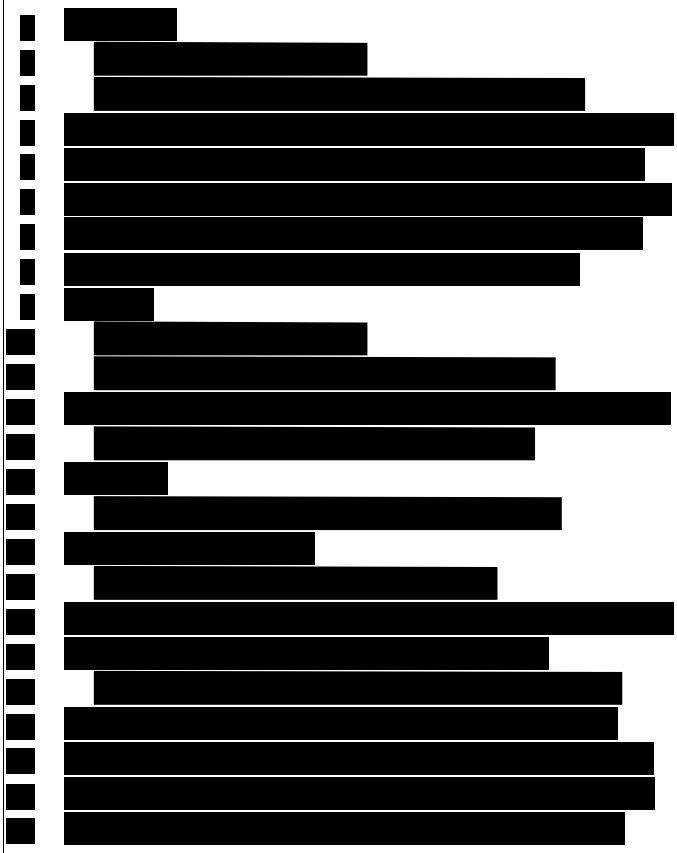

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vis-a-vis the other firms' and the allocation.

THE WITNESS: That is a reference to us why we were sharing the risk and paying these staff attorneys, because it is the best way for us to increase our load star and make it comparable to the other two firms. Because at this point 40% of the fee was still outstanding. So we're not going to take the risk and do the work and we're not going to have evidence of that work with load star when it came down to distribute that 40%, we would have been left holding the bag. That why we did it. But I absolutely was concerned about Thornton's load star vis-a-vis the other two firms.

THE SPECIAL MASTER: Okay, good. So now that we're back on track and talking about Thornton's load star, there's one reason for having Mike's rate at $500 to jack up, in the words of the e-mail, jack up Thornton's load star.

THE WITNESS: No, I never gave that a thought, Judge, to be honest with you, the rates. I don't even know when we shared load star with our other firms, if we gave rates. I thought we just gave time, how many hours were done. So it never occurred to me that that would make a difference at

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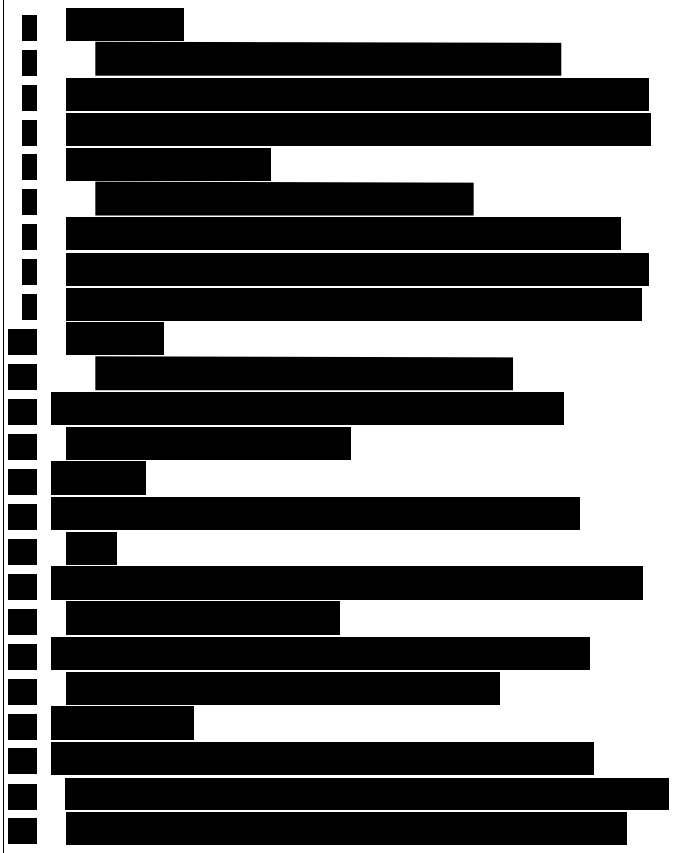

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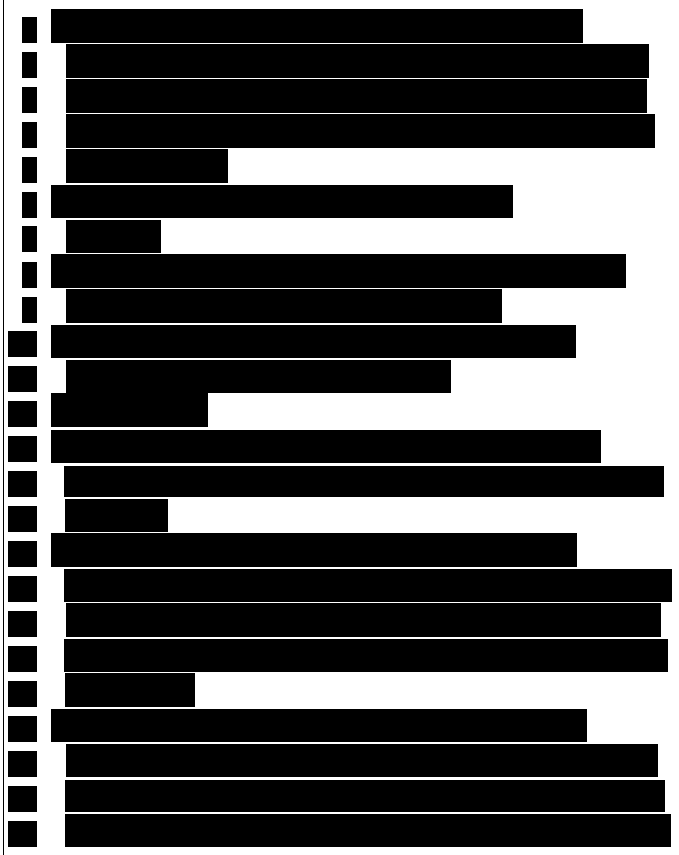

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THE WITNESS: I did not change it, no.
THE SPECIAL MASTER: It was exactly as it was given to you in the form by the Labaton folks?
THE WITNESS: Yes.
THE SPECIAL MASTER: Right?
THE WITNESS: Yes.
THE SPECIAL MASTER: Could you read that out loud again and tell me if you think it's accurate now in retrospect?
THE WITNESS: The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charge for the services which have been accepted in other complex class actions.
And as I indicated at the hearing in front of Judge Wolf, that that is not clear and that is not accurate, given that we allocated staff attorneys on our fee petition. It's messy and it's embarrassing.
THE SPECIAL MASTER: Okay. I know you said that in the hearing, but we've got to have a full record.

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THE WITNESS: I understand that. But quite frankly, it's embarrassing and it's disappointing that it wasn't clear.
THE SPECIAL MASTER: And in fact, it's not really accurate as to Michael Bradley, either --
THE WITNESS: No.
THE SPECIAL MASTER: Because he is not an attorney in your firm.
THE WITNESS: Correct.
THE SPECIAL MASTER: And he's listed on Exhibit A, correct?
THE WITNESS: Correct.
THE SPECIAL MASTER: I don't have anything more on that, but I just wanted to get a complete record.
Q. Garrett, who was primarily responsible for drafting of Thornton's fee petition, the small declaration?
A. Mike Lesser.
Q. Mike Lesser?
A. And with assistance from Evan.
Q. Okay. And, ultimately, you signed a declaration?

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A. I did.
Q. When and how did Thornton decide on which hourly rates to charge for the staff attorney hours for the attorneys located at Lieff and Labaton?
A. I believe Evan had a conversation with -- I'm sorry. I believe Evan had a conversation with Mike Rogers and Dan Chiplock. I think I was copied on the e-mail, and we determined -- they determined to use the rate that was used in Mellon for the staff attorneys, which was a case that had settled about a year before.
Q. Was it the same for the two firms?
A. Say that again?
Q. Was it the same rate?
A. I don't remember, I don't recall them going back and clarifying it. We used them for all the attorneys at both Lieff and Labaton, we used the 425.
Q. Okay. And when you received the small fee declaration from Nicole Zeiss, and did you see that when it came in?
A. I saw the final. Evan brought it in. I gave it, obviously, not a close read and than I signed it. I'm sure I was on e-mail traffic for the

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draft form, as well.
Q. Is it pretty typical that a firm would receive model declarations from lead counsel in a case like this?
A. This really was kind of my first rodeo. I think this similar thing happened in Mellon, but I don't have enough experience to answer that question.
Q. Okay, thank you. And is there currently an arrangement between Thornton and Labaton for the use of a staff attorney?
A. Yes, in [redacted] which is a generic drug litigation.
Q. And did you have a discussion with Labaton as far as how costs and fees would be handled in that?
A. No. We were getting a monthly invoice, much like State Street. We have not had that discussion yet, because the case is in its infancy.
Q. And that's just one staff attorney, correct?
A. Yes, just paying for one staff attorney.
Q. Let me direct your attention, Garrett, to November of 2016 and ask how you first learned about

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a problem with the billing?
A. Through counsel.
Q. Okay. And when you say through counsel, who do you mean?
A. Attorneys at Nixon Peabody.
Q. Through the firm's counsel?
A. Yes.
Q. Okay. And did you also receive an inquiry from a reporter?
A. That inquiry was received from counsel and relayed to us.
Q. I see, okay. And when you learned of this problem or issue with the billing, what was your reaction?
A. First thing I did is I went down to Evan Hoffman's office, asked him to print out all of the fee declarations, because I only looked at mine before filing it. Asked him to lay -- get them all out. I took Lieff's and Labaton's and immediately noticed same names, different rates, and I knew something was wrong right away. So I picked up the phone and called.
THE SPECIAL MASTER: Same dates.
THE WITNESS: I'm sorry?

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THE SPECIAL MASTER: Same dates.
THE WITNESS: I don't even know if I got that far. I knew right away from the same names and the different rates that something was amiss. And I don't know if we had -- We didn't have -- In our fee application we have our backup shows the dates. I don't think I saw Lieff and Labaton's, so I don't think I got into the dates. But as soon as I got on the phone, they pulled up what they had, we pulled up what we had and we could tell that there was a problem. And I had Mike Lesser reach out to Dan Chiplock and check that out, as well.
Q. And what else did you do?
A. E-mails back and forth to confirm that, you know, the scope of the problem. And then David Goldsmith took the lead on writing a letter explaining it to the Court.
Q. Okay. And tell us about that letter.
A. Mike Lesser had a lot of involvement. I had some stylistic, very small changes to it. I saw a couple drafts and then lead counsel, David Goldsmith submitted it.
Q. And ultimately, everyone was in agreement that this was the letter that you wanted to send?

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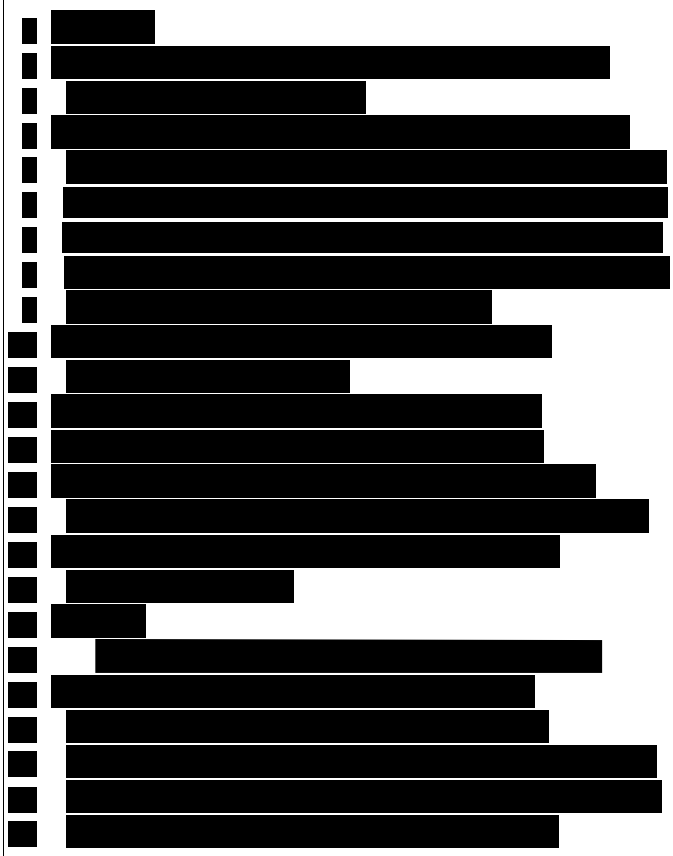

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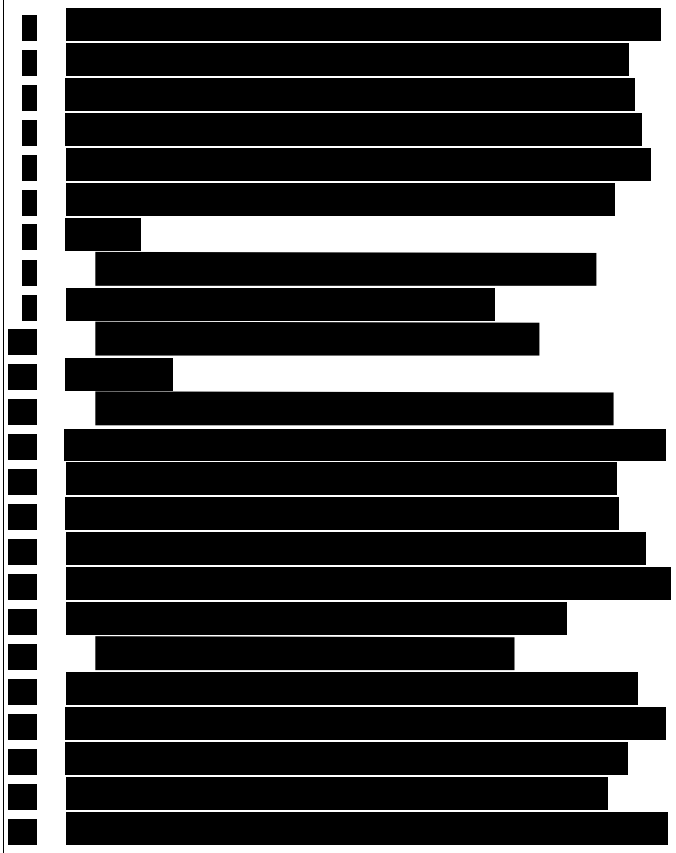

EX. 44

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs v. STATE STREET CORPORATION, STATE STREET BANK AND TRUST COMPANY, and STATE STREET GLOBAL MARKETS, LLC, Defendants	)	Case No.: 1:11-cv-10230-MLW

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

Plaintiff Arkansas Teacher Retirement System ("ARTRS") is a sophisticated institutional investor that manages an $8.8 billion pension fund using its own large staff, outside investment consultants, and some of the world's best investment managers ("IMs"). It has allocated more than $2 billion of its investment portfolio to international investments. Foreign currency exchange ("FX") is a commonplace feature of such an international investment strategy, because foreign investments typically are settled using, and pay income in, foreign currency.

The Amended Complaint ("Complaint" or "Compl.") addresses one kind of FX transaction – indirect FX trades – that ARTRS or its investment managers executed with the State Street Global Markets ("SSGM") division of State Street Bank and Trust Company ("SSBT").[1] SSGM is a principal FX dealer that executed FX trades with ARTRS directly (at rates agreed to by ARTRS or its IMs prior to execution) and indirectly (at rates set by SSGM and disclosed to ARTRS and its IMs). ARTRS claims that State Street breached its custody contract and other legal duties by setting rates for indirect FX trades by adjusting (marking up or down) market rates without disclosing the amount of the mark up or mark down.

ARTRS's fiduciary duty claim fails because the parties' custody contracts defined and limited the scope of the parties' relationship, which was not fiduciary in nature. These contracts did not require SSBT to execute FX transactions, to do so at a particular rate, or to disclose its margin on FX transactions. Instead, the contracts required SSBT to hold assets and provide administrative services to ARTRS. Plaintiff's contract claim fails for the same reasons.

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[1] Plaintiff nevertheless asserts claims against State Street Corporation (SSBT's parent corporation), SSBT, and State Street Global Markets, LLC (hereinafter "SSGM LLC"), to which ARTRS refers to as "Defendants" and "State Street." SSGM LLC is a separate subsidiary of State Street Corporation that is different from the SSGM division of SSBT. SSGM LLC does not enter into principal FX transactions. Of the three named Defendants, only SSBT is a party to ARTRS's custody contracts and only SSBT trades foreign currency. It does so through its SSGM division. *See infra* at 3, 5, 43-44.

ARTRS's claims under Chapter 93A and for negligent misrepresentation fail because nothing unfair or deceptive occurs when the buyer or seller of a commodity does not disclose its margin on a purchase or sale. State Street had no more duty to disclose the mark up on FX transactions than would any other merchant as to any other commodity. Moreover, Plaintiff cannot plausibly assert that ARTRS and its sophisticated IMs were unaware that the rates for its FX transactions were marked up from market rates.

All of ARTRS's claims, which seek relief for events dating back to 1998, are also in part barred by the applicable statutes of limitations. Finally, State Street Corporation and SSGM LLC must be dismissed because neither had any role in FX trading.

ALLEGATIONS OF THE COMPLAINT[2]

I. The Parties

A. State Street

SSBT, which provides a variety of financial services to institutional investors, has served as custodian for ARTRS since 1998. (Compl. ¶¶ 2-3, 16.) In its role as custodian, SSBT holds assets and provides administrative services including accounting, safekeeping of assets, and making payments from client funds upon receipt of instructions from the client or its IMs, including payments to settle securities and currency transactions. (*Id.* ¶¶ 1-3; Custody Contract

[2] The following allegations are taken from the Complaint and from materials incorporated by reference in the Complaint, as well as from relevant public sources. *See Risberg ex rel. Aspen Tech., Inc. v. McArdle*, 529 F. Supp. 2d 213, 219 (D. Mass. 2008) ("Rule 12(b)(6) permits the court to take into consideration matters of public record, including public filings … as well as documents incorporated in, central to, or materially referenced in the Complaint.") (citations omitted); *Watterson v. Page*, 987 F.2d 1, 3-4 (1st Cir. 1993) (on motion to dismiss, Court may consider "documents the authenticity of which are not disputed by the parties," "official public records," "documents central to plaintiff's claim," and "documents sufficiently referred to in the complaint"). For purposes of this motion, Defendants assume that well-pleaded, factual allegations are true. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009). The Defendants do not admit any of the Complaint's allegations. Documents referenced herein are attached to the Declaration of Adam J. Hornstine in Support of Defendants' Motion to Dismiss ("Hornstine Decl.").

between ARTRS and SSBT, Sept. 15, 1998, §§ 2, 8 (Hornstine Decl. Ex. A).) Those custody duties are described in custody agreements between SSBT and ARTRS. Separately, the SSGM division of SSBT also acts as a principal dealer in foreign currency for its own account. As discussed more fully below, SSGM trades currency with various counterparties, including some of SSBT's custody clients like ARTRS. (State Street Investment Manager Guide, Nov. 20, 2009 at 34 (Hornstine Decl. Ex. B); Compl. ¶ 3.) SSBT's custody contracts with ARTRS did not require either SSBT or ARTRS to execute FX transactions with one another.

B. Arkansas Teacher Retirement System

ARTRS is a sophisticated institutional investor that oversees the investment of $8.8 billion in assets held with respect to Arkansas defined benefit pension plans for public school and other public education-related employees. (Compl. ¶ 14.) ARTRS manages pension assets contributed with respect to 343 participating employers and more than 115,000 individuals. (*Id.*)[3] ARTRS employs a full-time professional administrative staff, including a general counsel, and retains the services of multiple outside professional services firms. (ARTRS 2010 Comprehensive Annual Financial Report at 11-12 (Hornstine Decl. Ex. D).)[4]

ARTRS's mandate is to invest its assets to obtain a return on its investment such that its total assets, expressed as a percentage of active member payroll, will remain constant over time. *See* Ark. Code. Ann. § 24-7-401; Hornstine Decl. Ex. D at 41. To do so, ARTRS has developed investment guidelines (Compl. ¶ 15) that allow it "to capture opportunities, yet ensure that both prudence and care are maintained in the execution of the investment program" while

[3] ARTRS was established by Act 266 of 1937 (Ark. Code Ann. § 24-7-101 *et seq.*) for the purpose of providing retirement benefits for employees of any school or other educational agency participating in the system. (Compl. ¶ 14.)

[4] ARTRS's annual report is a statutorily required public filing. *See* Ark. Code Ann. § 24-7-305(e).

simultaneously taking "appropriate levels of risk to earn higher levels of investment return" over a long-term investment horizon. (Hornstine Decl. Ex. D at 39.)

In order to ensure compliance with its guidelines, ARTRS hires external IMs that are "experts in their field," chosen based on their "demonstrated professional performance, organizational depth, institutional investment management capability, and reasonableness of fee structure." (Hornstine Decl. Ex. D at 9, 39, 41.) ARTRS's IMs include premier investment management companies who invest ARTRS's assets in the full range of investment opportunities, from domestic and global equities to convertible bonds and fixed income to alternative investments and private equity. Many of the IMs chosen by ARTRS are household names, including BlackRock, PIMCO, Loomis Sayles & Company, and Putnam Investment Management.[5] (Hornstine Decl. Ex. D at 12-14.) The IMs are required to report quarterly and annually to ARTRS. (Hornstine Decl. Ex. D at 44.) For the fiscal year ending June 2010, ARTRS paid its domestic, international, and alternative money managers approximately $26 million for their professional services. (Hornstine Decl. Ex. D at 34.)

ARTRS is also advised by a team of professional investment consultants. (Hornstine Decl. Ex. D at 9, 12-14.) Although it is ARTRS's responsibility to supervise its IMs, ARTRS's Board also appoints a professional investment counsel to advise it on each investment. *See* Ark. Code. Ann. §§ 24-7-303(e)(1), 24-7-303(e)(2)(A). ARTRS does not make investments without the advice of investment consultants. (Hornstine Decl. Ex. D at 39, 41.) In September 2009, ARTRS held one-third of its investment portfolio in overseas markets. (Compl. ¶¶ 32-33.)

[5] ARTRS's IMs also include a number of other sophisticated entities – including Lazard, Knight Vinke, Wellington, UBS, and T. Rowe Price – that focus specifically on global equities. (Hornstine Decl. Ex. D at 12-13.)

II. Foreign Exchange Trading

A. FX Markets

An FX trade is an exchange of one sovereign currency for another. (Compl. ¶ 33.) Larger FX trades often occur in what is known as the interbank currency market – an informal network of banks and dealers, including SSBT, that trade with each other. The interbank market has no central exchange or consolidated record of the prices or volume of transactions executed among market participants.[6] *See* Sam Y. Cross, All About ... the Foreign Exchange Market in the United States 21 (Fed. Reserve Bank of N.Y. 2002); Hornstine Decl. Ex. B at 34. As far back as 2001, the average interbank FX transaction exceeded $5 million. *See In re Mexico Money Transfer Litig.*, 267 F.3d 743, 745 (7th Cir. 2001). Principal dealers like SSGM (also known as market makers) also make their own markets in FX by selling or buying currency to or from parties who are not interbank market participants. (*See* Hornstine Decl. Ex. B at 35.)

B. ARTRS's FX Trading

SSGM is a principal dealer in FX, which means that it buys and sells currency for SSBT's own account and not as an agent for a counterparty (such as ARTRS). (Hornstine Decl. Ex. B at 34.) When a dealer buys currency as a principal (*e.g.*, buys currency *from* ARTRS and not *for* ARTRS), it assumes and manages the risk that the value of the currency it buys may decline. (*Id.*)

FX trading is a fundamental part of investment management. IMs for institutional investors like ARTRS determine what FX transactions are appropriate, with which FX dealer to execute those transactions, and on what terms and in what manner those transactions will be executed. (Hornstine Decl. Ex. B at 34.) This means that SSBT does not decide with whom and

[6] *See Salomon Forex, Inc. v. Tauber*, 8 F.3d 966, 977 (4th Cir. 1993) (describing the interbank market as an informal network of banks and dealers exempted from regulation); *Commodity Futures Trading Comm'n v. Baragosh*, 278 F.3d 319, 328 (4th Cir. 2002) (accord).

on what terms ARTRS will execute FX transactions. That determination is generally made by an IM for ARTRS, which is free to choose any FX dealer. The custody contracts between SSBT and ARTRS do not oblige either party to execute any FX transactions with the other.[7] (*Id.*; Compl. ¶¶ 3, 53-54.)

ARTRS alleges that some of the FX transactions that its IMs chose to execute with State Street were executed at rates negotiated and agreed upon directly between the parties prior to execution ("direct FX trades"); and others were ordered by ARTRS or its IMs and executed at rates set by State Street and thereafter promptly disclosed to ARTRS and its IMs ("indirect FX trades"). (Compl. ¶¶ 41-42.) ARTRS claims that between January 3, 2000 and December 31, 2010, ARTRS or its IMs executed 10,784 FX transactions with State Street, representing a "majority" of the FX trades that ARTRS and its IMs executed. (*Id.* ¶¶ 45, 66.) This means, of course, that during the same period ARTRS and its IMs used other FX dealers for a substantial portion of their FX trades.

ARTRS alleges that a substantial majority (61%) of its FX trades with State Street were executed directly at rates that ARTRS or its IMs negotiated prior to execution.[8] (*Id.* ¶¶ 41, 66.) ARTRS does not allege that these trades were conducted at interbank market rates. Quite to the contrary, ARTRS concedes that these trades were done at a mark up to market rates. (*Id.* ¶ 41.) According to ARTRS, the remaining minority of FX trades – indirect trades – were smaller

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[7] Neither State Street Corporation nor SSGM LLC – entities that are distinct from SSBT – has anything to do with acting as an FX dealer. ARTRS provides no factual support for any assertion to the contrary. In addition, neither entity is a party to ARTRS's custody contracts with SSBT. (*E.g.*, Hornstine Decl. Ex. A.)

[8] The Complaint does not reveal the percentage of these trades by dollar volume but concedes that the trades for which rates were set by direct agreement were generally larger than those executed indirectly. (Compl. ¶¶ 41, 44, 70, 72.) According to ARTRS, the 4,216 indirect FX trades had an aggregate trading volume exceeding $1.2 billion (or, on average, about $285,000). (*Id.* ¶ 66.)

transactions that it or its IMs determined did not warrant the time and effort required for direct rate negotiations; and ARTRS or its IMs chose to execute these small transactions at rates set by State Street and reported to ARTRS and its IMs. (*Id.* ¶¶ 44, 66, 76.)

Throughout the proposed Class Period, SSBT provided reports to ARTRS showing the rates for all direct and indirect FX trades with ARTRS. (*Id.* ¶ 76.) The Complaint makes clear that these rates obviously were not interbank market rates. As noted, the direct rates to which ARTRS or its IMs agreed in advance of execution were less advantageous than interbank rates. So too, according to ARTRS, were the indirect rates. According to ARTRS, 53% of the indirect FX rates were outside the daily range of market rates on the day of execution – something that ARTRS could determine with publicly available information. (*Id.* ¶¶ 73.) ARTRS also asserts that its indirect FX trades were, on average, 17.8 basis points (0.178%) above or below what ARTRS calls the market mid-rate for the day (the average of the market high and low of the day). (*Id.* ¶ 70.) These figures also could have been calculated at any time during the proposed Class Period.

ARTRS does not allege, and cannot plausibly allege, that State Street was obliged to execute, or that ARTRS expected State Street to execute, FX trades at interbank market rates. Plaintiff does not allege that ARTRS was ever a participant in the interbank market. ARTRS identifies no agreement with State Street to execute any FX trades with ARTRS at any particular rates (let alone interbank market rates). Moreover, ARTRS concedes that it or its IMs separately negotiated and agreed in advance of execution to literally thousands of FX transactions at rates less advantageous than market rates. (*Id.* ¶ 72.)[9]

[9] Similarly, in this context, the Complaint offers no factual context or support for its conclusion that the rates for FX transactions with ARTRS should approach the "average" interbank FX rate in a given currency on a given day. (Compl. ¶ 39.)

III. The Custody Contracts

ARTRS alleges that it entered into four successive custody contracts with SSBT in 1998, 2001, 2004, and 2009. (Compl. ¶ 49.) None of these contracts authorized or required either party to execute FX transactions with each other, and none of them required execution of FX transactions at interbank market rates. More specifically, the Complaint's contract claims rests exclusively on one clause that appears in each of the parties' custody contracts and similar clauses in two of the fee schedules appended over time to two of the contracts (1998 and 2009).

The clause appearing within the parties' 1998 custody contract is typical, and it describes the only service required under any of the contracts with respect to FX transactions executed by ARTRS or its IMs:

> Only upon receipt of Proper Instructions and written agreement as to security procedures for payment order, which may be standing instructions, or as may be otherwise authorized within this Contract, the Custodian shall pay out, or direct its agents or its subcustodians to pay out, moneys of the Account in the following cases … For the purchase or sale of foreign exchange or foreign exchange contracts for the account of the Fund, including transactions executed with or through the Custodian, its agents or its subcustodians.

(Hornstine Decl. Ex. A § 2.6.)[10] This clause did no more than require SSBT to perform a custodial function: to settle FX trades agreed to by ARTRS or its IMs (*i.e.*, to deliver payment from ARTRS's account at SSBT to the FX counterparty and to deposit the counterparty's funds

[10] The parties' three other contracts contain similar "proper instructions" clauses, but also do not otherwise address FX transactions. (*See* Custody Contract between ARTRS and SSBT, July 1, 2001, § 2.6 (Hornstine Decl. Ex. E); Custody Contract between ARTRS and SSBT, June 29, 2004, § 2.6 (*id.* Ex. F); Custody Contract between ARTRS and SSBT, June 30, 2009, § 2.7 (*id.* Ex. G).)

in ARTRS's account at SSBT). Accordingly, the custody contracts did not oblige SSBT to execute FX with ARTRS or to do so at any particular rate.[11]

ARTRS's contract claim ignores the fact that the parties to the custody contract did not agree to do any FX trading with each other and then misreads a similar clause in two of the seven fee schedules appended to the contracts to imply an obligation not to deviate from market FX rates. (Compl. ¶¶ 50-51.) In fact, all seven of these schedules actually address only the amount of fees to be charged for custody services, and they do not purport to set rates for FX trades. (*Id.* ¶¶ 50, 52.) That is, as to FX, these schedules (expressly or by silence) address only the extent to which SSBT would charge an administrative fee for *settling* – *i.e.*, processing – FX transactions and not the actual rates at which FX transactions would be executed.

Specifically, the 1998 fee schedule (in a section entitled "Other Charges (only if applicable)") sets forth a series of fees that could be charged for particular custody services, for example: wire transfer fees ($7.50), couriers (out-of-pocket costs, borne by client), frequency pricing of a net asset value ($0.75), or registration fees (absorbed by SSBT). (Fee Schedule between ARTRS and SSBT, Sept. 15, 1998 at 3 (Hornstine Decl. Ex. H).) As to FX trades, the 1998 fee schedule states: "No Charge will be assessed for foreign exchange executed through a third party. Foreign Exchange through State Street - No Charge." (*Id.* Ex. H at 3; Compl. ¶ 55.) This clause does not address FX execution *rates*. The first sentence of the clause simply could not do so, because SSBT had no ability to prevent third party FX dealers from setting whatever FX rates they saw fit. The only thing that SSBT does with respect to third party FX transactions is process (*i.e.*, settle) them. The second sentence of the clause – in the context of the first and in

[11] Nor is there a duty to provide "time-stamps," which are an "indication of the time of the day that [an FX] trade was executed," to ARTRS under the parties' contracts. (Compl. ¶ 76.) Although ARTRS suggests such information was "important" (*id.* ¶ 139), nothing in the Complaint or the parties' contracts indicates that such time-stamps were ever required.

the overall context of the list of processing fees discussed on the same page – also refers to FX processing and cannot be read to refer to FX execution rates.

Together, all of the fee schedules for all of the contracts are consistent with the proper, contextual interpretation of this clause of the 1998 fee schedule: that the custodian would not charge a fee to process any FX transaction. None of the next five fee schedules agreed upon after 1998 contain the 1998 clause (or mention FX at all). Thus, the next five schedules, covering the period 2001 to 2009, do not contain a rate commitment.[12] Instead, they memorialize via silence the same conclusion reflected in the 1998 schedule – that the custodian would not charge a fee to process or settle FX transactions executed with third parties or SSBT.

The current fee schedule (agreed upon in 2009) helps explain how the 1998 language came to be used. As shown by the 2009 schedule, sometimes SSBT charges a processing fee for third party FX transactions but waives the fee for FX transacted with SSBT. The 2009 schedule states: "A third party FX charge of $25 will be applied for all foreign exchange trades not transacted through State Street. Transaction costs for all foreign exchange trades transacted through State Street will be waived." (Fee Schedule between ARTRS and SSBT, July 1, 2009 at 3 (Hornstine Decl. Ex. N); Compl. ¶ 56.) These two sentences are similar in form to those used in 1998 to memorialize the earlier agreement that no processing fee would be charged for any FX trades, no matter with whom it was executed.

IV. Indirect Rates Are "Based On" Market Rates

ARTRS alleges that the rates for indirect FX transactions that it challenges were derived from market rates by applying a "mark up" or a "mark down" to an "actual" market rate.

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[12] *See* Fee Schedule between ARTRS and SSBT, July 1, 2001 (Hornstine Decl. Ex. I); Fee Schedule between ARTRS and SSBT, July 1, 2004 (*id.* Ex. J); Fee Schedule between ARTRS and SSBT, July 1, 2007 (*id.* Ex. K); Fee Schedule between ARTRS and SSBT, April 1, 2008 (*id.* Ex. L); Fee Schedule between ARTRS and SSBT, November 1, 2008 (*id.* Ex. M).

(Compl. ¶ 69; Hornstine Decl Ex. B at 34.) ARTRS also alleges that the Investment Manager Guides published by State Street stated that "State Street Foreign Exchange Transactions," direct or indirect, "are priced *based on* the market rates at the time the trade is executed." (Compl. ¶ 61.) The method of pricing described in the Complaint is consistent with the Guides' language. This mark up (or mark down) is compensation for the additional services provided and for the risks taken in executing indirect FX transactions. (Hornstine Decl. Ex. B at 35.)[13]

ARGUMENT

I. Plaintiff's Conclusory Allegations Should Be Dismissed Because They Are Not Well-Pleaded

The Complaint must be dismissed because it does not contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Mass. v. Sebelius*, 677 F. Supp. 2d 397, 399 (D. Mass. 2009) (citations omitted). This is because if a Complaint does not include well-pleaded factual allegations permitting the Court to infer more than the mere possibility of misconduct, then the plaintiff has not shown that it is entitled to relief. *Iqbal*, 129 S. Ct. at 1949-50 (where complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'"); Fed. R. Civ. P. 8(a)(2). Here, Plaintiff identifies no facts supporting a plausible claim.

In ruling on a motion to dismiss, District Courts should "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth."

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[13] The proposed Class Period runs from January 2, 1998 through December 31, 2009. Although Plaintiff offers the perfunctory assertion that State Street "dramatically changed its FX trading policies" after October 2009, ARTRS offers no factual allegations to substantiate its conclusion that the November 20, 2009 IM Guide referenced in the Complaint (Compl. ¶ 82) reflects anything more than the continuation of SSBT's longstanding FX trading procedures. *Iqbal*, 129 S. Ct. at 1949-50. Indeed, the pricing language in all guides is similar. (*Compare*, *e.g.*, Hornstine Decl. Ex. B at 39-40; State Street Investment Manager Guide, Dec. 30, 2008 at 37 (*id.* Ex. C); State Street Investment Manager Guide, Sept. 26, 2006 at 37 (*id.* Ex. O).)

Iqbal, 129 S. Ct. at 1950. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.* at 557. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient. *Iqbal*, 129 S. Ct. at 1949-50.

The Complaint relies heavily on formulaic conclusions and omits facts sufficient to make Plaintiff's claim plausible under *Twombly* and *Iqbal*. ARTRS also relies heavily on "information and belief" pleaded without facts or sources to demonstrate that liability is plausible. As shown below, this paucity of factual detail in the Complaint and the basic inconsistencies between it and the facts of record (including the contracts themselves) mandate dismissal.

II. The Complaint Does Not State A Claim For Breach Of Fiduciary Duty

A. ARTRS's Allegations Do Not Support The Existence Of A Fiduciary Relationship

Plaintiff advances the conclusions that State Street acted as its agent to execute FX transactions and that State Street breached a fiduciary "duty of loyalty" or "duty of disclosure" arising from that supposed agency relationship. (Compl. ¶¶ 105-13.) In support of these conclusions, ARTRS relies only on catch-phrases (such as the notion that it "reposed a high degree of trust in State Street" (*id.* ¶ 46)) and additional conclusions (that SSBT, as custodian, owed a fiduciary duty with respect to FX (*id.* ¶¶ 111-12)). These baseless assertions do not state a plausible claim for relief. *Iqbal*, 129 S. Ct. at 1949-50. Moreover, even if these assertions were otherwise sufficient, Plaintiff's claim fails because it pleads no facts showing that SSBT knew ARTRS was "reposing" trust, that SSBT had superior knowledge or control over ARTRS or its IMs (which themselves determined with whom and on what basis to trade FX), or that SSBT had accepted any agency or fiduciary duty as to FX execution.

Massachusetts law presumes that a business relationship does *not* give rise to a fiduciary relationship or any fiduciary duties.[14] *See Lefkowitz v. Smith Barney, Harris Upham & Co., Inc.*, 804 F.2d 154, 155 (1st Cir. 1986) ("a simple stockbroker-customer relationship does not constitute a fiduciary relationship"; affirming dismissal of breach of fiduciary duty claim on motion to dismiss); *See OrbusNeich Med. Co., Ltd., BVI v. Boston Scientific Corp.*, 694 F. Supp. 2d 106, 116 (D. Mass. 2010) ("Business relationships or arms length transactions do not in general rise to the level of a fiduciary relationship.") (citations omitted); *McIntyre v. Okurowski*, 717 F. Supp. 10, 11 (D. Mass. 1989) (accord; granting motion to dismiss breach of fiduciary duty claim) (citations omitted); *In re Vincent*, 381 B.R. 564, 574 (D. Mass. Bankr. 2008) ("Massachusetts courts have viewed a bank's relationship to its customers as one … which imposes no duty to counsel or make disclosures to the customer.") (citation omitted); *Snow v. Merchants Nat'l Bank of New Bedford*, 309 Mass. 354, 360-61 (1941) (bank's purchase and sale of securities for customers not fiduciary in nature; bank not required to disclose profit or commissions on transactions).

Accordingly, Massachusetts courts have repeatedly held that a plaintiff cannot, merely by claiming to have reposed trust and confidence in a defendant, transform an ordinary business relationship into a fiduciary one. *See In re Vincent*, 381 B.R. at 574 (allegations that plaintiff bank customer placed trust in defendant bank failed sufficiently to allege existence of fiduciary duty); *Superior Glass Co., Inc. v. First Bristol Cnty. Nat'l Bank*, 380 Mass. 829, 832-33 (1980) (stating, in context of relationship between bank, acting as lender and owner of property, and

[14] According to the choice of law provisions in the parties' custody contracts, Arkansas law governs Plaintiff's individual contract-based claims. (Hornstine Decl. Ex. A § 13; Ex. E § 13; Ex. F § 13; Ex. G § 13.) Based on the allegations of the Complaint, State Street understands that Plaintiff contends that Massachusetts law applies to Plaintiff's purported class claims and that Arkansas law applies to ARTRS's individual breach of contract claim.

construction subcontractor, that one party cannot unilaterally transform business relationship into fiduciary relationship by reposing trust and confidence in another); *Nat'l Shawmut Bank of Boston v. Hallett*, 322 Mass. 596, 602 (1948) (holding, in context of suit between creditor and debtor, that reposing confidence in business relationship does not make it fiduciary in nature).

In any event, Plaintiff's claim to have reposed trust and confidence in State Street is implausible. ARTRS's sophistication as an investor and asset manager is self-evident. ARTRS exists to oversee the activities of some of the most sophisticated IMs in the world, and ARTRS receives advice and counsel from those IMs and from investment advisors, all at great expense. It does so with a large staff, also assembled at great expense. (Hornstine Decl. Ex. D at 34.) The notion that ARTRS and its IMs abdicated their own responsibility to make or oversee all investment decisions due to "trust" in State Street falls far short of the line separating hopeful conclusion from a plausible entitlement to relief. *See Iqbal*, 129 S.Ct. at 1949-50; *Jackson Nat'l Life Ins. Co. v. Gofen & Glossberg, Inc.*, 1993 WL 266548, at *2 (N.D. Ill. July 15, 1993) (rejecting fiduciary duty claim based on allegations of "great deal of trust" placed in custodian where plaintiff retained control over investment decisions and used outside advisors to "wisely invest" on behalf of policyholders).

Plaintiff's claim also must be dismissed because it has not alleged any facts to suggest that State Street knew that ARTRS would repose trust or confidence in it with respect to FX trading, or that it accepted any fiduciary duty to ARTRS with respect to such trades. *See OrbusNeich*, 694 F. Supp. 2d at 116 (finding no fiduciary duty where "there is nothing to suggest that [defendant] *knew* [plaintiff] was relying on it as a fiduciary.") (emphasis in original); *Patsos*

v. First Albany Corp., 433 Mass. 323, 335 (2001) (mere allegations of trust insufficient to establish fiduciary relationship; defendant's knowledge required).[15]

Plaintiff's factually unsupported assertion that State Street "occupied a superior position" (Compl. ¶ 107) or had "superior knowledge" and "control" relative to ARTRS or its IMs (*id.* ¶ 110), is also insufficient. *See McIntyre*, 717 F. Supp. at 11 (allegations of lack of sophistication and blind reliance insufficient to transform business relationship into fiduciary one). Moreover, the factual allegations of the Complaint are inconsistent with these conclusions. Both ARTRS and its IMs are highly sophisticated entities; either ARTRS or its IMs were responsible for determining with whom and on what basis to execute each FX transaction; and either ARTRS or its IMs, consistent with their responsibility, determined to transact only a minority of their FX trades using the indirect method and to transact many FX trades with third parties. (Compl. ¶¶ 41, 45, 66.) Thus, the Complaint rebuts, rather than plausibly supports, ARTRS's conclusions about superior knowledge or control. *Compare Patsos*, 433 Mass. at 333-35 (considering lack of experience and sophistication of securities investor and relinquishment of total control and discretion over all investment decisions); *Sekerak v. Nat'l City Bank*, 342 F. Supp. 2d 701, 712 (N.D. Ohio 2004) (non-discretionary nature of custodian's role precluded fiduciary duty).

B. The Custody Contracts Did Not Create A Fiduciary Relationship

The custody contracts with ARTRS did not give rise to a fiduciary "duty of loyalty" or "duty of disclosure" with respect to FX execution. (*Compare* Compl. ¶¶ 109-12.) The scope of

[15] At best, ARTRS offers the conclusory assertion that "Defendants understood that Plaintiff and the members of the Class placed their confidence and trust in Defendants to report FX trades accurately." (Compl. ¶ 108.) But, even if the Complaint had plausibly alleged that State Street did not accurately report FX trades, this assertion hardly suffices to allege that State Street knew ARTRS was relying on it as a fiduciary, especially where the parties' contracts created no such duty and did not govern FX execution at all. *See infra* at 15-17.

a contractual fiduciary duty is dependent on the terms of the contract. *See Sekerak*, 342 F. Supp. 2d at 712 (no fiduciary duty where custody agreement did not create such a duty); *Max-Planck-Gesellschaft Zur Förderung Der Wissenchaften E.V. v. Whitehead Inst. for Biomedical Research*, 2010 WL 2900340, at *1 (D. Mass. July 26, 2010) (provisions of contract between sophisticated parties should be enforced). The mere existence of a custody contract does not automatically create a fiduciary relationship. *See Sekerak*, 342 F. Supp. 2d at 712 (custodian bank did not owe fiduciary duty); *Jackson*, 1993 WL 266548, at *2 (accord).

The custody contracts do not require either party to trade FX with the other and thus cannot be read to impose a fiduciary duty on State Street with respect to FX. (*See, e.g.*, Hornstine Decl. Ex. A §§ 2.6, 5.) Indeed, the custody contracts cannot even be read to impose a fiduciary duty with respect to the administrative services actually contemplated by the contracts, such as holding securities, delivery of securities, registration of securities, maintenance of bank accounts, handling income and settlement crediting, payment of fund moneys, et cetera. (Hornstine Decl. Ex. A § 2; Ex. E § 2; Ex. F § 2; Ex. G § 2.) As to these duties, the custody contracts required SSBT to use only "reasonable care." (*Id.* Ex. A § 5; Ex. E § 5; Ex. F § 5; Ex. G § 5.) This agreement defeats any claim that the contracts create a heightened duty of trust or loyalty. *See CIBC Bank & Trust Co. v. Credit Lyonnais*, 270 A.D.2d 138, 139 (N.Y. App. Div. 2000) (dismissing claim arising under New York law against investment bank where contract contradicted existence of fiduciary duty, noting parties' recitation that they were both "sophisticated institutional investor[s]" that acted as counterparties, not fiduciaries); *Sekerak*, 342 F. Supp. 2d at 712 (custodian banked owed no fiduciary duty where not explicit in contract);

see also Gossels v. Fleet Nat'l Bank, 453 Mass. 366, 371 (2009) (bank's duty of ordinary care did not require it to disclose retail rate on foreign exchange transaction or bank's profit).[16]

State Street assumed no fiduciary duty under the custody contracts because the agreements provided that ARTRS and its IMs retained absolute discretion over the fund's activities. *See Patsos*, 433 Mass. at 333 (no fiduciary obligation where customer retains discretion to make investment decisions). The contracts provide that the custodian was to act only at the direction of ARTRS or its IMs in providing any custody service. For example, the custodian could only act upon receipt of "proper instructions" from ARTRS or its IMs. (*E.g.*, Hornstine Decl. Ex. A §§ 2.6, 2.10.)[17] Even the scope of the custodian's ministerial activities as to actions directed by ARTRS or its IMs were often specifically delineated (*e.g.*, permitting SSBT to endorse checks for collection, to surrender securities in temporary form for securities in definitive form, to make payments to itself or others for minor expenses, and to attend to all nondiscretionary details of transfers of securities). The custody contracts also contemplated that ARTRS would monitor the custodian by requiring periodic reports of money received or paid by the fund. (Hornstine Decl. Ex. A § 3; Ex. E § 3; Ex. F § 3; Ex. G § 3.)

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[16] *See also Keene v. New Eng. Mut. Acc. Ass'n*, 161 Mass. 149, 152 (1894) (reasonable care equated with ordinary care); *Hill v. Windsor*, 118 Mass. 251, 256 (1875) (accord); *Zichelle v. Parigian*, 2006 WL 4114290, at *9 (Mass. Super. Dec. 22, 2006) ("reasonable care" means classic negligence standard); *Rosado v. Boston Gas Co.*, 27 Mass. App. Ct. 675, 683 (1989) (duty of reasonable care does not mean "highest" duty); *R.I. Hosp. Trust Nat'l Bank v. Zapata Corp.*, 848 F.2d 291, 293 (1st Cir. 1988) ("reasonable" care means ordinary care). Moreover, because execution of FX transactions is outside the scope of the custody agreements, *see infra* at 34-35, there is no basis in the contracts to imply a fiduciary duty concerning the execution of FX transactions. *See Sekerak*, 342 F. Supp. 2d at 712.

[17] The custody contracts provided that only "upon receipt of Proper Instructions" could SSBT provide the custody-related services delineated in the parties' agreement. (Hornstine Decl. Ex. A § 2; Ex. E § 2; Ex. F § 2; Ex. G § 2.) "Proper instructions" are defined by the contract as "instructions received by the Custodian from [ARTRS], the Investment Manager, or any person duly authorized by either of them." (*Id.* Ex. A § 2.10; Ex. E § 2.10; Ex. F § 2.10; Ex. G § 2.11.)

C. State Street Had No Fiduciary Or Other Duty Of Loyalty Or Disclosure

Plaintiff advances the conclusions that State Street had a duty to disclose its "actual costs" associated with FX trades and "the actual time the trade was executed." (Compl. ¶ 111.) Any such duty did not arise from a fiduciary relationship because State Street had no such relationship with ARTRS. Nor did such a duty arise from the custody contracts. The only reporting requirement in the custody contracts required SSBT to "render to [ARTRS] a monthly report of all monies received or paid on behalf of the Fund and an itemized statement of the securities for which it is accountable under this Contract as of the end of each month, as well as a list of all securities transactions that remain unsettled at that time." (*E.g.*, Hornstine Decl. Ex. A § 3.) Plaintiff does not allege that SSBT failed to satisfy this requirement.

Accordingly, there is no legal or factual basis for Plaintiff's claim that State Street was required to disclose the time at which it executed each trade or its costs associated with FX trading. *See Interactive Intelligence Inc. v. KeyCorp.*, 546 F.3d 897, 898-901 (7th Cir. 2008) (plaintiff alleged undisclosed FX mark up; court held no fiduciary duty or duty to disclose); *Mexico Money*, 267 F.3d at 749 (plaintiff alleged undisclosed FX mark up; court noted no obligation to disclose); *Compania Sud-Americana de Vapores, S.A. v. IBJ Schroder Bank & Trust Co.*, 785 F. Supp. 411, 425-27 (S.D.N.Y. 1992) (plaintiff alleged undisclosed FX mark up; court held no fiduciary duty or duty to disclose); *Gossels*, 453 Mass. at 371 (bank not required to disclose retail rate on FX transaction or bank's profit); *see also Snow*, 309 Mass. at 360-61 (bank owed no duty to disclose profits on transactions to elderly and unsophisticated widow).[18]

[18] The Complaint also pleads facts contrary to Plaintiff's conclusion that ARTRS was unable to determine that State Street marked up interbank rates. (*Compare* Compl. ¶¶ 46, 76.) First, SSBT disclosed that all FX rates were "based on" – and therefore not equal to – market rates. (Compl. ¶ 7); *see infra* at 39. Second, ARTRS concedes that it willingly paid a mark up on directly negotiated FX transactions. (Compl. ¶¶ 41, 72.) Third, at any time ARTRS could have done the analysis referred to in the Complaint – counting the number of trades outside the

III. The Complaint Fails To State A Plausible Claim Under Section 9 Or Section 11 Of Mass. Gen. Laws Chapter 93A

A. None Of The Alleged Conduct Amounts To A Violation Of Chapter 93A, Under Either Section 9 Or Section 11

ARTRS alleges that State Street violated Chapter 93A by "reporting false and fictitious FX rates for standing-instruction FX trades … rather than the actual rates at which State Street had effected those trades" (Compl. ¶¶ 88(b), 97(b)) and by "unfairly and deceptively pricing standing-instruction FX trades for custodial clients such as ARTRS." (*Id.* ¶¶ 88(a), 88(c), 88(d), 97(a), 97 (c), 97(d).) Paragraphs 63 and 76 suggest that what made the reports deceptive was that State Street did not disclose, along with the rates actually charged, the daily range of interbank rates, the daily mid-rate, the time of execution, or what Plaintiff presumes to be State Street's execution cost (*i.e.*, the market rate at the time of execution).[19] These allegations fall far short of stating a claim under either Section 9 or Section 11 of Chapter 93A.

1. There Is Nothing Unfair Or Deceptive About State Street's Indirect FX Pricing Methods Because A Mark Up Or A Mark Down To Market Rates Is Not Unfair Or Deceptive

Courts in Massachusetts and in other jurisdictions have determined that there is nothing unfair or deceptive about a bank trading FX without disclosing the relationship between the rate actually set and rates available (often for larger trades) in trades among interbank market participants. *See Gossels*, 453 Mass. at 373-76 (no false statement or violation of Chapter 93A where bank credited foreign check at retail, not interbank, exchange rate); *see also Mexico Money*, 267 F.3d at 749 (rejecting objections to class action settlement concluding that "failure to disclose the precise difference between wholesale and retail prices" of foreign currency is

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daily range of interbank rates or comparing accurate disclosures of SSBT's rates with the so-called daily mid-rate upon which ARTRS now relies. (*Id.* ¶¶ 41, 66-67, 73-74.)

[19] Obviously, the daily range of rates and the mid-rate are determinable from publicly available information. *See supra* at 18 n.18. There is no duty to disclose time stamps. *See infra* at 38.

ordinary business practice and noting that "[n]othing in th[ese] transaction[s] smacks of fraud"); *McCann v. Lucky Money, Inc.*, 129 Cal. App. 4th 1382, 1393-96 (2005) (rejecting claim under California consumer protection statute for failure to disclose FX mark up and holding that the defendant was just as entitled to charge a mark up for its services as any other merchant for any other commodity).[20]

In *Gossels*, the Supreme Judicial Court rejected a similar Chapter 93A theory arising out of FX pricing. There, a bank customer (Gossels) cashed a check denominated in Euros. Fleet Bank collected the funds from the payor bank in Euros and then, without disclosure to Gossels, exchanged the funds into dollars at a retail exchange rate. It also disclosed to and charged Gossels a $30 processing fee (which it later waived). The difference between the retail exchange rate and the wholesale interbank rate was approximately 3.7% (370 basis points). Gossels claimed, among other things, that Fleet's failure to disclose the difference between the interbank and retail exchange rates violated Chapter 93A. The Court rejected this argument and held that "[n]either the common law nor the UCC requires" this disclosure, and "[t]herefore, there was no violation of G.L. c. 93A." *Gossels*, 453 Mass. at 373. The Court also noted that the bank was not obligated to disclose "that banks were entitled to different exchange rates than customers." *Id.* at 372; *see also Mexico Money*, 267 F.3d at 749 (no fraud by Western Union arising out of nondisclosure of difference between retail and interbank exchange rates).

2. ARTRS's Knowledge Of FX Mark Ups And Mark Downs Defeats Any Conclusory Allegations Of Unfair Or Deceptive Practices

The Complaint alleges that ARTRS received regular reports that set forth the "rate that State Street charged for its FX trades," including "a monthly report of all monies received or

[20] The First Circuit has said that adherence to industry standard or custom is one factor that can support a finding of no liability under Chapter 93A. *See James L. Miniter Ins. Agency, Inc. v. Ohio Indem. Co.*, 112 F.3d 1240, 1251 (1st Cir. 1997).

paid on behalf of the fund." (Compl. ¶¶ 76-77.) ARTRS does not assert that State Street set rates different from those accurately and regularly reported. Instead, it relies on the nonsense conclusion that the accurately reported rates were false because they were set by marking up or down interbank market rates. (*Id.* ¶ 81.) Accurate rate reports are not false or deceptive by virtue of nondisclosure of the relationship between the reported rates and market rates. This is particularly true when the reported rates obviously are not market rates.

ARTRS concedes that it or its IMs regularly agreed to marked up rates for direct FX trades. (*Id.* ¶ 41.) Plaintiff asserts that the rates to which it agreed in advance of execution were on average 3.6 basis points higher than interbank market rates. (*Id.* ¶¶ 41, 62, 66, 72.) Based on this assertion and the pattern of trading by ARTRS and its IMs described in the Complaint, it is utterly implausible that ARTRS or its IMs did not know throughout the Class Period that SSBT was marking up indirect FX rates as well.

Every time ARTRS or its IMs negotiated direct FX rates, they had access to interbank market rates and could see the extent to which they were paying more than interbank market participants were paying. (*Id.* ¶ 36.) If ARTRS or its IMs had truly believed that SSBT's indirect rates were more favorable than direct rates (*i.e.*, had a lower or no mark up), they would not have bothered to negotiate direct rates a majority of the time. (*Id.* ¶ 44.) As the Complaint makes clear, it is more convenient for ARTRS or its IMs to execute indirect FX trades. (Compl. ¶ 44.) Moreover, indirect FX delivers other benefits, including risk mitigation. (Hornstine Decl. Ex. B at 35 ("[SSGM] is taking principal risk when it purchases and sells currency in the foreign exchange market").) Neither ARTRS nor its IMs would have executed direct FX trades with SSBT (let alone 61% of its FX trades with SSBT (Compl. ¶ 66)), or with any third party dealer at

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all, if they believed that indirect FX execution was more cost-effective (or essentially free, as ARTRS suggests). This basic reality renders ARTRS's Chapter 93A claim fatally implausible.

Similarly, ARTRS and its IMs typically would not have executed larger trades directly – and limited their use of indirect FX to relatively small lots – if they believed that indirect FX execution was cheaper by volume than direct FX. (Compl. ¶¶ 44, 70, 72.) That is, if Plaintiff or its IMs believed that indirect FX rates were interbank market rates (with no mark up), and that direct rates carried a "modest" mark up to those rates, they would not have chosen direct FX for any transaction, let alone their larger transactions. (*Id.* ¶¶ 41, 44.) This conclusion is particularly true because indirect FX includes convenience and risk transfer not included with direct FX. (Hornstine Decl. Ex. B at 34; Compl. ¶ 44.)

Rather than trade consistent with the conclusion that indirect FX was cheaper, ARTRS and its IMs traded consistent with the ordinary commercial reality – understood by buyers of all degrees of sophistication – that better prices are generally available for larger purchases. In this regard, these sophisticated purchasers behaved consistently with those who shop at Costco or Sam's Club for other commodities with the goal of saving by buying in bulk. Of course, Costco has no duty to disclose the actual relationship between what it pays for its goods and the prices at which it sells. This is equally true as to FX:

> Money is just a commodity in an international market. Pesos are for sale — at one price for those who buy in bulk (parcels of $5 million or more) and at another, higher price for those who buy at retail and must compensate the middlemen for the expense of holding an inventory, providing retail outlets, keeping records, ensuring that the recipient is the one designated by the sender, and so on. Neiman Marcus does not tell customers what it paid for the clothes they buy, nor need an auto dealer reveal rebates and incentives it receives to sell cars. This is true in financial markets no less than markets for physical goods.

Mexico Money, 267 F.3d at 749; *see also McCann*, 129 Cal. App. 4th at 1392 (retail customers typically pay mark up or spread on FX transactions above market or wholesale rate).[21]

Because the only plausible conclusion is that ARTRS or its IMs knew that there was a mark up on indirect FX transactions, and because SSBT had no duty to disclose the extent of the mark up, ARTRS cannot state a claim under Chapter 93A. *See Twombly*, 550 U.S. at 570 (claim must be plausible to survive motion to dismiss); *Tagliente v. Himmer*, 949 F.2d 1, 7 (1st Cir. 1991) (independently verifiable statements not deceptive under 93A); *Gossels*, 453 Mass. at 375 (rejecting claim under 93A where plaintiff could easily have determined retail currency exchange rates); *see also Mexico Money*, 267 F.3d at 749.[22]

B. ARTRS's Chapter 93A Claim Is Undermined By Its Continued Use Of Indirect FX After Disclosure Of State Street's Pricing Practices

Plaintiff by its conduct also concedes that any nondisclosure concerning indirect FX rates was immaterial in that it did not cause ARTRS any injury. *See Gossels*, 453 Mass. at 372-73. According to the Complaint, after 2008 – when Plaintiff alleges that State Street's FX pricing policies were "revealed" – ARTRS continued to execute indirect FX transactions with State

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[21] Indeed, the average indirect FX trade by ARTRS, which was about $285,000 (Compl. ¶ 66), is about one-twentieth the size of the average interbank trade, which is around $5 million. *See Mexico Money*, 267 F.3d at 745, 749. This size disparity further undercuts ARTRS's claim that it should be entitled to interbank rates.

[22] Nor can ARTRS plead a Chapter 93A claim based upon what amounts to breach of contract allegations. ARTRS's fundamental complaint is that indirect FX was not priced in accordance with the parties' contract. As a threshold matter, this allegation badly misreads the parties' contract, and as a matter of law, State Street's is the only plausible reading of the contract, *see infra* at 34-38. But even if there were a plausible disagreement, any such disagreement does not rise to a Chapter 93A claim. *See*, *e.g.*, *Callahan v. Harvest Bd. Int'l, Inc.*, 138 F. Supp. 2d 147, 166 (D. Mass. 2001) ("A breach of contract without more, does not violate chapter 93A"); *Cahill v. TIG Premier Ins. Co.*, 20 F. Supp. 2d 141, 143 (D. Mass. 1998) (same); *Fireman v. News Am. Marketing In-Store, Inc.*, 2009 WL 3080716, at *14 (D. Mass. Sept. 26, 2009) (same). ARTRS does not even attempt to plead the type of willful or egregious breach of contract claim – "i.e., the breach of contract has an extortionate quality" – that can potentially rise to the level of a Chapter 93A violation. *Atkinson v. Rosenthal*, 33 Mass. App. Ct. 219, 226 (1992).

Street. (Compl. ¶¶ 82-84, 135.) Moreover, ARTRS nowhere asserts that it would not have executed any of the indirect FX transactions in issue if it had known everything about the challenged rate setting methodology that it now knows (and, in fact, knew all along). *See Gossels*, 453 Mass. at 372 (Chapter 93A claim failed where no injury because "[t]he record is devoid of evidence that a different bank would have … applied the interbank rate").

In *Vieira v. First American Title Insurance Company*, the Court dismissed a Chapter 93A claim because the insurer did not have a duty to disclose the availability of a 40% lower rate on title insurance. 668 F. Supp. 2d 282, 291-92 (D. Mass. 2009). There, plaintiffs also failed to allege deception because they failed to allege that they would have acted differently if the insurer had disclosed that they were paying a higher rate. *Id.* at 293. ARTRS's similar attempt to seek "a belated rebate" after accepting an accurately reported rate does not allege a deceptive practice. *Id.* (plaintiff's acceptance of rate charged demonstrates immateriality); *see also Cape Painting & Carpentry Inc. v. Maher*, 2009 WL 321271, at *5 (Mass. App. Div. Feb. 3, 2009) (rejecting Chapter 93A claim for lack of injury where contractor failed to disclose 30-40 percent mark up on labor and materials costs and where plaintiffs "failed to present evidence … that they would not have paid" the mark up if it had been disclosed).[23] Of course, it is unremarkable that ARTRS and its IMs continued to execute indirect FX transactions throughout the proposed Class Period, given that their trading pattern reveals that they have always understood that indirect FX provides a value-added service at a higher cost.

[23] Moreover, *Vieira* dealt with a claim by unsophisticated individual consumers, for whom Chapter 93A provides stronger protections than it offers to the sophisticated businesses such as ARTRS. As discussed below, the Plaintiff cannot meet the higher burden for plaintiffs under Section 11.

C. The Conduct Alleged Does Not Meet The Section 11 Liability Standard

There are, of course, two sections of Chapter 93A under which a plaintiff may seek to plead a claim. It is more difficult to plead and prove a claim under Section 11 than under Section 9 of that statute. Accordingly, it is no surprise that ARTRS improperly attempts to avoid Section 11 to advance a claim under Section 9. But a party may not assert claims under both sections, and any claim by ARTRS could fall only under Section 11.

As a matter of law, ARTRS's allegations that the mark up applied to FX transactions by State Street was inherently unfair do not rise to the level of "egregious rascality" required under Section 11. *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 41-42 (1st Cir. 1998) (to state a claim under Section 11 "the objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce") (quoting *Levings v. Forbes & Wallace, Inc.*, 8 Mass. App. Ct. 498, 504 (1979)); *Lambert v. Fleet Nat'l Bank*, 449 Mass. 119, 127 (2007) ("one engaged in business dealings may need to show greater 'rascality' to prevail on G.L. c. 93A claim than 'less sophisticated party'") (citation omitted). That is to say, "the defendant's conduct must be not only wrong, but also egregiously wrong." *Mass. Sch. of Law*, 142 F.3d at 41.[24]

ARTRS, as previously noted, is an unquestionably sophisticated investor, armed with IMs and consultants who managed to distinguish sensibly among different FX execution methods and to use the relatively low cost method for larger transactions and the higher cost method for smaller ones. (Compl. ¶ 44.) ARTRS is not an interbank market participant, and it had no contractual or other basis to demand (or expect) interbank market rates. *See supra* at 7.

[24] *See also New Eng. Envtl. Techs. v. Am. Safety Risk Retention Grp., Inc.*, 738 F. Supp. 2d 249, 258 (D. Mass. 2010) (Chapter 93A claims between "sophisticated commercial players" must be evaluated under rascality standard); *Fernandes v. Havkin*, 731 F. Supp. 2d 103, 117 (D. Mass. 2010) (Court may also consider "plaintiff's conduct, his knowledge, and what he reasonably should have known" in evaluating Chapter 93A claim).

It knew it was paying a mark up on larger transactions. (Compl. ¶ 41.) That SSBT charged a different mark up on smaller transactions in which it provides additional services and benefits and takes on additional risks is consistent with general commercial reality applicable to currency transactions and is not egregious or even wrong. *See Mexico Money*, 267 F.3d at 749.[25]

D. ARTRS Cannot Recover Under Section 9 Of Chapter 93A Because It Is Engaged In Trade Or Commerce

1. ARTRS Is Engaged In Trade Or Commerce

Plaintiff's alternative claim under Section 9 of Chapter 93A is foreclosed because ARTRS is engaged in a prototypically commercial enterprise. In order to hold that Section 9 applies to this case, the Court would have to hold that an enterprise that exists to manage billions of dollars by investing it in worldwide securities markets using dozens of private investment advisors is somehow not engaged in commerce. *See Cont'l Ins. Co. v. Bahnan*, 216 F.3d 150, 156 (1st Cir. 2000) ("section 9 affords no relief to persons engaged in trade or commerce"); *see also* Mass. Gen. Laws ch. 93A, § 9(1) ("Any person, other than a person entitled to bring action under section eleven" may bring an action under Section 9). Plaintiff's attempt to plead under both Sections 9 and 11 makes no sense. *Cont'l Ins. Co.*, 216 F.3d at 156 ("the two sections of chapter 93A that create private rights of action are mutually exclusive").

Chapter 93A creates two avenues for relief that "distinguish[] between 'consumer' and 'business' claims, the former actionable under § 9, the latter actionable under § 11." *Frullo v. Landenberger*, 61 Mass. App. Ct. 814, 821 (2004); Mass Gen. Laws ch. 93A, §§ 9, 11. In other words, Section 9 creates a "a private remedy" for an "individual consumer" while "individuals

[25] *Compare Ahern v. Scholz*, 85 F.3d 774, 798-99 (1st Cir. 1996) (rejecting 93A claim of songwriter where manager deducted fees from songwriter's royalties, even where fees were "commercially unreasonable," because the manager's level of rascality was not sufficient to rise to the level of a violation of 93A where the producer did not conceal the deductions); *Tagliente*, 949 F.2d at 7 (rejecting 93A claim where property seller falsely said property had great access to highways but buyer could have easily verified information).

acting in a business context in their dealings with other business persons" must bring any Chapter 93A claim under Section 11. *Manning v. Zuckerman*, 388 Mass. 8, 10 (1983); *Lantner v. Carson*, 374 Mass. 606, 610 (1978). The dividing line between claims arising under these mutually exclusive provisions depends on whether Plaintiff is a "person who engages in the conduct of any trade or commerce." *Id.*[26]

Here, ARTRS undoubtedly is engaged in trade or commerce when it executes FX trades with SSBT as counterparty because it is a sophisticated entity effecting commercial transactions in a business context. *Id.* at 611 (engaging in trade or commerce means "acting in a business context"); *Frullo*, 61 Mass. App. Ct. at 821 ("a plaintiff who acts in a business context has a cause of action exclusively under § 11"); *see also Linkage Corp. v. Trs. of Boston Univ.*, 425 Mass. 1, 24 (1997) (the "business context" inquiry requires "assess[ing] the nature of the transaction, the character of the parties involved, and the activities engaged in by the parties ... whether similar transactions have been undertaken in the past, whether the transaction is motivated by business or personal reasons and whether the participant played an active part in the transaction.") (citations and internal ellipses omitted).

ARTRS is an institutional investor with assets of $8.8 billion that employs sophisticated IMs and other experts to manage its investments.[27] (Compl. ¶ 14; Hornstine Decl. Ex. D at 9.) As noted in its annual report, ARTRS's "overall investment goal is to achieve, over a period of years, the greatest rate of return for the System with due consideration given to preserving capital

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[26] *See* Mass. Gen. Laws ch. 93A, § 1(b) (defining "trade" and "commerce" to include the sale of any property, commodity, or thing of value).

[27] Allowing a sophisticated entity such as ARTRS to seek relief pursuant to Section 9 would be at odds with the remedial and protective purpose of Section 9. Section 9 is designed to provide a recourse to individual consumers who are harmed by unfair or deceptive business practices, not to allow a sophisticated investor to seek relief under this provision. *See Manning*, 388 Mass. at 12 ("The Legislature originally enacted c. 93A to improve the commercial relationship between consumers and businessmen.").

and its purchasing power." (Hornstine Decl. Ex. D at 41.) By Plaintiff's own description of its activities, therefore, ARTRS is engaged in a commercial activity.

When ARTRS makes its frequent FX trades – either through direct or indirect FX – it buys currency from or sells currency to a counterparty. For instance, in the direct FX context, ARTRS will agree upon a price at which it will deal with SSBT, and both parties act as principals to this trade. (Compl. ¶ 41; Hornstine Decl. Ex. B at 34.) The same is true when ARTRS conducts an indirect FX trade, except that the rate is promptly reported, as opposed to agreed upon in advance. (Compl. ¶ 42; Hornstine Decl. Ex. B at 34.) A repeated pattern – whether by ARTRS itself or through its commercial agent IMs – of buying and selling commodities (foreign currencies) with a principal dealer who executes FX transactions to earn a profit is a quintessentially commercial activity. *See Linkage*, 425 Mass. at 24 (recurrence of active transactions demonstrates entity engaged in trade or commerce).

Moreover, ARTRS buys and sells foreign currency to further its principal objective: to increase the rate of return on its investment portfolio. This is nothing other than commercial activity in a business context, which qualifies as trade or commerce under Chapter 93A. *See Frullo*, 61 Mass. App. Ct. at 821 ("any transaction in which the plaintiff is motivated by business considerations gives rise to claims only under the statute's business section"); *see also Marram v. Kobrick Offshore Fund, Ltd.*, 2010 WL 4457179, at *6 (Mass. Super. Aug. 25, 2010) (applying Section 11 to pension plan's claim of unfair trade practices in connection with the plan's investment in fund).[28]

[28] *See also Kerlinsky v. Fidelity & Deposit Co. of Md.*, 690 F. Supp. 1112, 1117 (D. Mass. 1987), *aff'd*, 843 F.2d 1383 (1st Cir. 1988) ("[a]ll that is required for a plaintiff to fall within the ambit of § 11 is some transaction in a business context."); *Lantner*, 374 Mass. at 610 (noting that "93A creates a sharp distinction between a business person and an individual who participates in

2. ARTRS Cannot Plead A Section 9 Claim Premised On Conclusory Allegations That It Is A Not-For-Profit Entity

Even if ARTRS is a "not-for-profit" entity engaged in a "core mission" of "investing and building retirement funds for public employees," the commercial nature of both the "core mission" and the activities at issue here is clear and determinative. (Compl. ¶ 96.)[29] ARTRS nowhere even advances the conclusion that it does not engage in trade or commerce. Its status as a non-profit entity says nothing about whether it does so, because non-profit entities plainly may engage in commercial activities. *Compare Linkage*, 425 Mass. at 23 (stating that a party's "status as a 'charitable' corporation is not, in and of itself, dispositive of the issue whether c. 93A applies" and finding that Boston University could not avoid Chapter 93A liability as a non-profit where it was engaged in the business of operating a satellite educational facility) (citation omitted) *with Trs. of Boston Univ. v. ASM Commc'ns, Inc.*, 33 F. Supp. 2d 66, 77 (D. Mass. 1998) (Boston University not engaged in trade or commerce as an institution of higher learning that purchased term papers as part of its investigation into cheating at the school).[30]

Most of the cases that have focused on non-profit status have done so to consider whether the non-profit can be held liable under Section 11 as a participant in trade or commerce, not to

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commercial transactions on a private, nonprofessional basis"); *Cook & Co., Inc. v. Matrix Risk Mgmt. Servs., LLC*, 2011 WL 241966, at *9-10 (D. Mass. Jan. 24, 2011).

[29] ARTRS offers nothing more than this conclusory assertion in its Complaint as to why Section 9 would apply in this case. Such perfunctory recitation of legal conclusions must be disregarded. *Iqbal*, 129 S. Ct. at 1949-50.

[30] The same is true of organizations established by statute, like ARTRS. *See Bolden v. Liquor Liab. Joint Underwriting Ass'n of Mass.*, 2000 WL 1473569, at *5 (Mass. Super. June 29, 2000) (applying Chapter 93A to a "creature of statute"). Indeed, the Massachusetts Legislature has acted statutorily to abrogate older decisions that suggest that entities created by statute necessarily are not involved in trade or commerce. *Compare Wheatley v. Mass. Insurers Insolvency Fund*, 456 Mass. 594, 595 (2010) (explaining that *Barret* and *Poznik* were overturned by the Legislature) *with Poznik v. Mass. Med. Prof'l Ins. Ass'n*, 417 Mass. 48, 52-53 (1994) (defendant was "'statutorily mandated, nonprofit' association" whose transactions were "motivated by legislative mandate, not business or personal reasons" and, therefore, not engaged in trade or commerce) *and Barrett v. Mass. Insurers Insolvency Fund*, 412 Mass. 774, 776-77 (1992) (to similar effect).

consider whether a non-profit engaged in commercial activities can bring a claim as a plaintiff under Section 9. *See, e.g.*, *Mass. Sch. of Law*, 952 F. Supp. at 890 n.4. These cases, which seek to protect state agencies and charities that do not act with business motivations from being sued as marketplace actors, do not apply to ARTRS – an entity that exists principally to pursue the marketplace activities for which it was organized. ARTRS's status as a sophisticated commercial actor with the benefit of millions of dollars worth of advice annually from a stable of sophisticated advisors who act on behalf of ARTRS to execute commercial transactions also weighs against permitting it to take advantage of Section 9, which was created to protect individual consumers to which ARTRS bears no resemblance. *See In re Erickson Ret. Cmtys., LLC*, 425 B.R. 309, 316 (Bankr. N.D. Tex. 2010) ("The Michigan Retirement System Entities are *sophisticated commercial entities*" and should be bound strictly by their contracts) (emphasis added).[31]

According to Arkansas law, the "financial objective of the Arkansas Teacher Retirement System is to establish and receive contributions that expressed as percentages of active member payroll will remain approximately level from generation to generation of Arkansas citizens," and to invest those assets. *See* Ark. Code. Ann. § 24-7-401. As part of those activities, ARTRS and its IMs over the years made well more than 10,000 FX trades and has bought or holds nearly $9

[31] The decision in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, 491 F. Supp. 2d 20, 80-82 (D. Mass. 2007) does not support Plaintiff here. In that case, the Court noted that the line between Section 9 and Section 11 depended on whether the plaintiff is engaged in a business context in the transaction at issue. *Id.* at 81 (citing *Lantner*, 374 Mass. at 610; *Begelfer v. Najarian*, 381 Mass. 177 (1980)). The Court then pointed out that, while not dispositive, the status of a non-profit as a charity influences this analysis, stressing that the plaintiff was a charity "not motivated by the desire to make money" from the purchases of the drugs at issue. *Id.* ARTRS, by contrast, exists to make money by engaging in quintessentially commercial transactions. Moreover, the Court's holding depended in large part on the fact that two other courts had previously decided that the plaintiff was not engaged in trade or commerce for Chapter 93A purposes. *Id.*

billion worth of securities and other assets. ARTRS is not seeking to avoid Chapter 93A liability by asserting that it is a non-commercial actor, but rather seeks to bring a claim in its commercial capacity. Because ARTRS's core mission is commercial in nature, and because the activities challenged are commercial in nature, ARTRS cannot sue under Section 9.

3. Plaintiff Cannot Rely On the Attorney General's Regulations Because These Regulations Do Not Apply To Business-to-Business Claims

Claimants such as ARTRS who fall under Section 11 of Chapter 93A are foreclosed from relying on regulations promulgated by the Attorney General's Office. The regulations cited by Plaintiff (Compl. ¶¶ 88(e), 97(e)) only apply to claims arising under Section 9, which, as noted above, are not available to ARTRS.[32] The Supreme Judicial Court, and this Court, have held that the disclosure requirements embodied in the Attorney General's regulations "attach[] only to transactions involving private consumers, and not to business to business transactions." *In re First New Eng. Dental Ctrs., Inc.*, 291 B.R. 229, 241 (D. Mass. 2003) (citing *Knapp Shoes Inc. v. Sylvania Shoe Mfg. Corp.*, 418 Mass. 737 (1994)); *see also J.E. Pierce Apothecary, Inc. v.*

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[32] These regulations provide that "unconscionable" and "oppressive" acts violate Chapter 93A and that "[f]ail[ure] to disclose, to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction" is a violation of Chapter 93A. 940 Mass. Code Regs. 3.16(1-2). But even if ARTRS were able to rely on these regulations, which it cannot, they do not help Plaintiff establish a viable claim because ARTRS never pleads that it would have acted differently had it known about the indirect FX mark up. *See supra* at 23-24 (citing *Vieira*, 668 F. Supp. 2d at 291-92 (rejecting Chapter 93A claim alleging deception under Attorney General Regulations where plaintiff did not plead it would have acted differently, thus rendering the alleged nondisclosure immaterial)); *Denbesten v. Safari Motor Coaches, Inc.*, 2007 WL 1297710, at *3 (Mass. App. Ct. May 3, 2007) (rejecting Chapter 93A nondisclosure claim where "the plaintiffs failed to offer evidence that they would not have entered the transaction if they had known of" problems with vehicle, noting that Attorney General's regulations "add[] little, if anything, to the provisions of [G.L. c. 93A] ... itself"); *Schrier v. Banknorth, N.A. Mass.*, 2007 WL 609847, at *2 n.5 (Mass. App. Ct. Feb. 28, 2007) (finding no violation of Chapter 93A under Attorney General's regulations where bank failed to tell customer he could have earned more interest in a different bank account because the plaintiff's inaction after he learned of the higher interest rates available undermines his claim that he would have acted differently).

Harvard Pilgrim Health Care Inc., 365 F. Supp. 2d 119, 145 (D. Mass. 2005). Accordingly, ARTRS lacks standing to pursue a claim under the Attorney General's regulations.

IV. The Negligent Misrepresentation Claim Must Be Dismissed

The Complaint fails to allege adequately four of the required elements of a negligent misrepresentation claim. To state a negligent misrepresentation claim, a plaintiff must allege that the defendant (1) in the course of his business, (2) supplied materially false information for the guidance of others, (3) in their business transactions, (4) causing and resulting in pecuniary loss to those others, (5) by their justifiable reliance on the information, and that the defendant (6) failed to exercise reasonable care or competence in obtaining or communicating the information. *Gossels*, 453 Mass. at 371-72; *DeLuca v. Jordan*, 57 Mass. App. Ct. 126, 136-37 (2003). Each of Plaintiff's four failures alone mandates dismissal.

First, the Complaint fails to allege any actionable misrepresentation. ARTRS frames its negligent misrepresentation claim as one of pure omission based on the theory that disclosures to ARTRS omitted "material information about the actual cost to State Street of the purchases and sales of foreign currency, and omitted to state the actual time the foreign currency was purchased or sold by State Street." (Compl. ¶ 117.) However, in a case involving FX pricing, the Supreme Judicial Court recently confirmed that "bare nondisclosures" are not actionable as negligent misrepresentations. *See Gossels*, 453 Mass. at 372 (citing *Swinton v. Whitinsville Sav. Bank*, 311 Mass. 677, 679 (1942)). Here, ARTRS's negligent misrepresentation claim is entirely based on an inactionable alleged omission.

Second, ARTRS fails to allege reliance or materiality. ARTRS does not plead reliance but instead asserts an incorrect legal conclusion that "reliance is presumed."[33] (Compl. ¶ 119.)

[33] ARTRS's attempt to "presume" reliance may be an effort to repurpose *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 153-54 (1972), a securities fraud case brought

In fact, actual reliance is required. *See Gossels*, 453 Mass. at 372; *Mass. Sch. of Law*, 142 F.3d at 41 (absent reliance, claim of negligent misrepresentation must be dismissed); *Epstein v. C.R. Bard, Inc.*, 2004 WL 1598912, at *4 (D. Mass. July 19, 2004) (dismissing complaint where plaintiff alleged no facts to support reliance allegations). Moreover, as noted earlier, ARTRS does not allege that it would have done something different if it had the information it claims should have been disclosed, and instead acknowledges that it continued to use indirect FX services after this information was made available to it. *See Schrier*, 2007 WL 609847, at *2 n.5. Thus, the Complaint does not allege that any omitted information was material.[34] (Compl. ¶¶ 41, 117.) *See Zimmerman v. Kent*, 31 Mass. App. Ct. 72, 77-78 (1991) ("material" fact required for negligent misrepresentation claim means one important to determining choice in transaction).

Third, Plaintiff's assertion that State Street failed to exercise reasonable care or competence in obtaining and communicating the FX rates it reported to ARTRS because it did not report "information about the actual cost to State Street of the purchase and sales of foreign currency" (Compl. ¶¶119-20) lacks any factual basis. State Street had no duty to disclose this information. *See supra* at 18.

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against the United States under Rule 10b-5 in which the Supreme Court held that "[in cases] involving primarily a failure to disclose, positive proof of reliance is not a prerequisite to recovery." *Id.* This effort falls short for two reasons. First, nothing in *Affiliated Ute* suggests that this holding applies outside the realm of securities fraud cases. *See Merck & Co., Inc. Sec., Deriv. & "ERISA" Litig.*, 2009 WL 331426, at *5 (D.N.J. Feb. 10, 2009) ("this Court is not persuaded that principles of securities law apply in ERISA cases"). Second, the *Affiliated Ute* presumption only applies to pure omissions cases, which are not actionable under Massachusetts law. *See Gossels*, 453 Mass. at 372.

[34] Nor does Plaintiff make any showing that such "presumed" reliance is *reasonable*. As demonstrated above, ARTRS and its IMs knew about the FX mark up, *supra* at 20-23. *See Mass. Laborers' Health & Welfare Fund v. Philip Morris, Inc.*, 62 F. Supp. 2d 236, 243 (D. Mass. 1999) (dismissing misrepresentation claim relating to tobacco usage for failure to plead reasonable reliance because health hazards about tobacco were well-known) (citations omitted).

Finally, any allegation that State Street's omission caused ARTRS injury is belied by the fact that, by using the undisputed FX rate information SSBT reported to ARTRS on a monthly basis, ARTRS could have conducted the same calculations pleaded in the Complaint and reached the same conclusions (however invalid) and by the fact it continued to use SSBT's FX services after the pricing policies were "revealed." *See supra* at 23-24.

V. ARTRS Has Not Stated A Claim For Breach Of Contract

Plaintiff's custody contract is between ARTRS and SSBT. Plaintiff does not state a claim for breach of contract because it does not allege that anyone at ARTRS sought to obtain a rate cap from SSBT, reached agreement with anyone from SSBT in this regard, or understood that it had obtained one; and because the contracts' terms cannot plausibly be interpreted in the manner in which Plaintiff suggests.

A. SSBT Had No Contractual Obligation To Trade FX With ARTRS

ARTRS makes a series of bald assertions regarding its custody contracts: (1) that "[o]ne of the services State Street agreed to provide to ARTRS pursuant to the custody contracts is the purchase and sale of FX" (Compl. ¶ 128); (2) that those contracts "provided that State Street would execute FX transactions for no additional fees" (*id.* ¶ 6); and (3) that the contracts "did not authorize additional fees for executing FX transactions" (*id.*). In truth, the contracts do not require State Street to execute even a single FX trade with ARTRS, and the numerous fee schedules attached to the custody contracts over time have no relevance to the rates for execution of FX transactions.[35] *Ray v. Am. Airlines, Inc.*, 2008 WL 2323923, at *12 (W.D. Ark. June 2, 2008) (dismissing breach of contract claim under Arkansas law where "complaint fails to allege sufficient facts regarding Defendant's failure to comply with specific terms" of contract).

[35] The custody contracts are between SSBT and ARTRS. State Street Corporation and SSGM LLC are not even parties to the agreements. (Hornstine Decl Exs. A, E-G)

Plaintiff relies on one reference to FX included in each of the contracts themselves. (Compl. ¶ 128.) In fact, this language does not require SSBT to execute FX with ARTRS. Instead, the language addresses a custodial function: paying money per the instructions of ARTRS or its IMs to settle transactions, including FX transactions. *See supra* at 15-17. This language did not create an obligation to execute FX transactions (Compl. ¶¶ 6, 128), because Plaintiff's interpretation is contrary to the plain language of the contract. *See Pittman v. Pittman*, 139 S.W.3d 134, 136 (Ark. App. Ct. 2003) (rules of contract construction require court to look to plain meaning of contract terms); C*&A Constr. Co., Inc. v. Benning Constr. Co.*, 256 Ark. 621, 622 (1974) (accord); *Chrysler Fin. Co., LLC v. East*, 2003 WL 21228295, at *3 (Ark. App. Ct. May 28, 2003) (accord); *Davenport v. Bd. of Trs. of the Univ. of Ark. at Pine Bluff*, 2011 WL 9000095, at *4 (E.D. Ark. Mar. 14, 2011) (dismissing breach of contract claim where plaintiff "has not set forth specific allegations showing how the University is in breach of any contract between it and him").

B. Plaintiff's Reliance On Fee Schedules Is Absurd

ARTRS asserts that the 1998 fee schedule – appended to a contract that is silent as to FX rates (and does not require FX execution) – prohibited execution of FX transactions at rates in excess of market rates. (Compl. ¶ 132.) The fee schedule, however, does not address FX rates, and instead addresses the only custody service required pursuant to the contract as to FX: settling FX trades (whether executed with SSBT or a third party).

The fee schedule at issue lists about a dozen "Transaction Fees" that ARTRS might pay on a transaction-by-transaction basis for transactions processed by SSBT as custodian. For example, ARTRS would pay $1 per interfund transfer and $100 for each "Group E International Trade" (after the first 35 trades). These plainly are processing fees arising from custodial activities. As to FX trades, the schedule recites, "*No Charge* will be assessed for foreign

exchange executed through a third party. Foreign Exchange through State Street – *No Charge*." (emphasis in original). (Hornstine Decl. Ex. H.) This language also refers to a processing charge and does not set a rate cap. *See Chrysler*, 2003 WL 21228295, at *3 (court must read contract clauses in context of whole agreement, not just particular words and phrases in isolation).

The first sentence of the clause can only refer to a processing charge. SSBT plainly had no ability to dictate what third party FX providers would charge relative to interbank rates; and it has no role in third party FX transactions other than settling (*i.e.*, processing) them. Under ordinary contract interpretation principles, the second sentence of the clause has the same meaning: SSBT would not charge a processing fee for FX executed with SSBT. *See Pittman*, 139 S.W.3d at 137 (considering "syntax" of section in which contract terms appeared). This interpretation of the 1998 fee schedule is confirmed by review of the subsequent fee schedules and contracts.

The 2001, 2004, and 2009 contracts are themselves indistinguishable from the 1998 contract as to FX. They do not require FX execution and limit the custodian's duties to settlement processing. The 2001 fee schedule contains a similar list of Transaction Charges, but the sentence from the 1998 fee schedule upon which ARTRS relies is entirely omitted. (Hornstine Decl. Ex. I.) This is because the sentence was not required given that SSBT would assess no processing charge for any FX trade, whether by SSBT or some third party. Of course, ARTRS never explains either the deletion of the two words upon which it relies to posit the supposed earlier agreement or how any fee cap could persist without these words. Accordingly, the 2001 fee schedule shows clearly that Plaintiff's hindsight interpretation of the 1998 contract

is implausible. The other intervening fee schedules prior to 2009 are in this regard the same as those in 2001. (Hornstine Decl. Exs. J-M.)

The 2009 contract and fee schedule show why the clause upon which Plaintiff relies was included in the 1998 fee schedule and omitted from all of the other schedules. In 1998, SSBT agreed that there would be no processing fee for any FX transaction. After 1998 and until 2009, the parties chose another way to memorialize the same conclusion – silence. In 2009, however, ARTRS agreed to pay a processing fee for third party FX transactions, and SSBT agreed to waive that fee only as to FX transactions done with SSBT. They memorialized that agreement using language in the 2009 fee schedule similar to the 1998 fee schedule language: "A third party FX charge of $25 will be applied for all foreign exchange trades not transacted through State Street. Transaction costs for all foreign exchange trades transacted through State Street will be waived." (Hornstine Decl. Ex. N.) This represents the only real change in this regard since 1998.[36]

Because none of the custody contracts or fee schedules imposed any obligations with respect to FX execution rates, and because Plaintiff never asserts that any one at ARTRS sought, expected, or believed contemporaneously that it had obtained an agreement concerning FX execution rates, the breach of contract claim must be dismissed. *Davenport*, 2011 WL 9000095, at *4; *Quinn v. Ocwen Fed. Bank FSB*, 470 F.3d 1240, 1245 (8th Cir. 2006) (applying Arkansas law and affirming dismissal of breach of contract claim on grounds that plaintiffs failed to show

[36] Plaintiff's strained argument that because the fee schedules in effect from July 1, 2001 through June 30, 2009 "do not mention FX trading" at all, then somehow the parties "contemplated that State Street Bank shall not be compensated for the purchase or sale of foreign exchange over and above the annual flat fee" fails on its face. The only plausible reading is that FX trading was not covered by the contracts and that any processing fee during that period was waived for both FX trades with State Street and any third party. (Compl. ¶ 133.)

existence of valid contract). Indeed, if such an agreement had been made it would not have been memorialized using the words of the 1998 fee schedule.

C. ARTRS's Custody Contracts Did Not Require Disclosure Of Execution Times Or The Amount Paid For Currency Sold To ARTRS

The Complaint alleges, without any factual basis, that State Street was somehow obligated to provide ARTRS monthly reports that showed "the time-stamp of the actual time of the trade" and "the actual price at which State Street paid for the purchase or sale of foreign exchange." (Compl. ¶ 139.) The contracts say no such thing.

The only reporting requirement in ARTRS's custody contracts relative to FX required SSBT to "render to [ARTRS] a monthly report of all monies received or paid on behalf of the Fund and an itemized statement of the securities for which it is accountable under this Contract as of the end of each month, as well as a list of all securities transactions that remain unsettled at that time." (*E.g.*, Hornstine Decl. Ex. A § 3; Compl. ¶ 138.) The Complaint does not allege that SSBT failed to do so. In fact, the Complaint acknowledges that SSBT sent ARTRS periodic reports that "showed ... the rate that State Street charged for its FX trades."[37] (Compl. ¶ 76.)

D. Plaintiff Cannot Plead A Breach Of Contract By Relying On The Investment Manager Guides

Throughout its Complaint, Plaintiff refers to IM Guides. These documents cannot contribute to a breach of contract claim. Plaintiff does not, and cannot, allege that the IM Guides were part of ARTRS's custody contracts with SSBT. Reference to these documents, therefore, does not support a breach of contract claim because the documents are not part of the contracts.

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[37] Plaintiff's own allegation that 53% of the indirect FX rates reported to ARTRS were outside the range of the day, (Compl. ¶¶ 62, 73), belies its allegation that "[n]othing in the FX rates State Street actually reported ... indicated that those rates included hidden and unauthorized mark-ups (or mark-downs)." (Compl. ¶ 9.) *See also Gossels*, 453 Mass. at 379 (currency exchange rates not "secret" where information publicly available to customer).

Ingersoll-Rand Co. v. El Dorado Chem. Co., 283 S.W.3d 191, 197 (Ark. 2008) (contract does not include terms contained in separate document not incorporated by reference).

In any event, the IM Guides do nothing other than support State Street's assertion that ARTRS knew that it was not paying interbank market rates for indirect FX. The IM Guides stated that FX transactions "are priced *based on* the market rates at the time the trade is executed." (Hornstine Decl. Ex. O at 37.) Based on "is synonymous with 'arising from' and ordinarily refers to a 'starting point' or a 'foundation.'" *McDaniel v. Chevron Corp.*, 203 F.3d 1099, 1111 (9th Cir. 2000) (citations omitted) ("based on" language in retirement plan allowed benefit to be calculated using either a set back or set forward as long as standard mortality table served as starting point or foundation for calculation.) Indeed, Plaintiff acknowledges that these rates were "derived" by "adding (on purchases) or subtracting (on sales) 'basis points' or 'pips' from the actual FX rate." (Compl. ¶ 69.)[38] In addition, the November 2009 IM Guide, which Plaintiff contends "explained the pricing of FX trades" (*id.* ¶ 7), specifically explained that "[i]nter-bank rates are normally used as wholesale reference prices for foreign exchange transactions and mark-ups or mark-downs are customarily applied when banks price transactions with institutional investor clients." (Hornstine Decl. Ex. B at 34.) Rates marked up from market rates are "based on" market rates.[39]

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[38] Plaintiff's allegations that State Street's indirect FX rates were "unrelated to the market-based rates" (Compl. ¶ 8) and "invented" (*id.* ¶ 63) or "fictitious" (*id.* ¶ 73) are merely another permutation of its allegation that State Street "derived" indirect FX rates from the market rate. (*id.* ¶ 69.)

[39] *See Sturm Ruger & Co. v. Chao*, 135 Fed. Appx. 431, 435 (1st Cir. 2005) ("on basis of" in Occupational Safety and Health Act of 1970 means "arising from," a "starting point" or "foundation" and conferred discretion on OSHA to require additional information); *Petri v. Gatlin*, 997 F. Supp. 956, 966 (N.D. Ill. 1997) (contract provision requiring rates to be "based on" a monthly market price obligated defendant "only to charge rates which bore some relation to the monthly market price, not to charge rates that were identical to the lowest monthly market price.").

VI. ARTRS's Claims Are Barred, In Part, By Statutes of Limitations

The applicable statutes of limitations bar Plaintiff's claims at least to the applicable limitations period.[40]

A. ARTRS Was On Notice Of Its Purported Claims

Massachusetts provides a 3-year statute of limitations for tort claims and a 4-year period for claims under Chapter 93A. Mass. Gen. Laws ch. 260, §§ 2A, 5A. Arkansas provides a 5-year period for breach of contract claims. Ark. Code Ann. §16-56-111(b). In Massachusetts, a tort claim accrues when the plaintiff is injured. *Koe v. Mercer*, 450 Mass. 97, 101 (2007). Similarly, in Arkansas, a claim accrues when there is a complete and present cause of action. *Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guar. Co.* 114 S.W.3d 189, 198 (Ark. 2003) ("Cause of action accrues the moment the right to commence an action comes into existence, and the statute of limitations commences to run from that time.").

ARTRS alleges that it suffered an injury as to every indirect FX trade from 1998 until 2009. Thus, its tort claims and Chapter 93A claims accrued upon execution of each trade and were extinguished except as to trades executed within three or four years, respectively, prior to the filing of the Complaint on February 10, 2011. ARTRS's contract claim based on the 1998 contract (and to the extent a claim is asserted, based on the 2001 and 2004 contracts) is barred by the statute of limitations. All of the fee schedules, except for the 2009 fee schedule, fall beyond

[40] A statute of limitations defense can be considered on a Rule 12(b)(6) motion if "the complaint and any documents that properly may be read in conjunction with it show beyond doubt that the claim asserted is out of time." *See Rodi v. S. New England Sch. of Law*, 389 F.3d 5, 17 (1st Cir. 2004); *Matos v. First Nat'l Bank*, 2010 WL 3327725 (Mass. Super. June 16, 2010) (granting motion to dismiss fraudulent misrepresentation claim and 93A claim because limitations period had run). As noted above, *see supra* at 13 n.14, State Street understands from the Complaint that ARTRS contends that Massachusetts law applies to its class claims and Arkansas law applies to its contract claim.

the limitations period or are silent as to FX (and thus inapplicable).[41] (Hornstine Decl. Exs. H-N.) Thus, Plaintiff's contract claim prior to the date of the 2009 contract and fee schedule is barred by the Arkansas statute.

B. The Statutes Of Limitations Have Not Been Tolled

In advancing claims that are up to thirteen years old, ARTRS ignores its actual knowledge that a large number of its indirect FX trades were at rates outside the daily range of interbank rates. (Compl. ¶ 62.) When coupled with ARTRS's allegation that a simple calculation reveals whether an FX provider is charging rates in excess of interbank market rates, it is obvious that ARTRS was on notice of its claims when it received its regular reports from SSBT that included the actual FX rates charged. (*Id.* ¶¶ 35-40, 62, 70, 77.) Accordingly, the statutes of limitations have not been tolled.

To avoid this result, ARTRS asserts the conclusion that it could not reasonably have detected its claims at any time during the Class Period. (*Id.* ¶ 9.) Although Massachusetts tolls the statute of limitations until the plaintiff knew or should have known about the existence of a claim, plaintiffs seeking the benefit of tolling must plead and prove that they did not know, and "in the exercise of reasonable diligence, they should not have known" about the claim. *Albrecht v. Clifford*, 436 Mass. 706, 714-15 (2002) (upholding summary judgment for defendants and finding Chapter 93A claim to be time-barred); *Patsos*, 433 Mass. at 328. Because according to ARTRS it had all the information necessary to calculate the mark up or mark down on its FX trades shortly after each trade was made (Compl. ¶¶ 41, 62, 70, 77), its claims were not tolled under the so-called "discovery rule."

ARTRS also has not made out a claim for fraudulent concealment. Under Mass. Gen. Laws ch. 260, § 12, the statute of limitations may be tolled if a fiduciary affirmatively prevents

[41] *See also supra* at 35-35 & n.36.

an injured party from learning the facts that give rise to the cause of action. *See Salinsky v. Perma-Home Corp.*, 15 Mass. App. Ct. 193, 197 (1983) ("In Massachusetts mere silence is not ordinarily a fraudulent concealment. There must be some affirmative act of concealment of the cause of action."). This tolling theory does not apply because State Street did not owe any fiduciary duty to ARTRS, *see supra* at 12-18, and because it has pleaded no facts whatsoever to suggest that State Street acted to intentionally hide Plaintiff's potential cause of action. (Compl. ¶¶ 76-79.) Instead, SSBT accurately reported rates to ARTRS.

C. Plaintiff's Defense That The Statutes Of Limitations Cannot Run Against Its Contract Claim Fails

Finally, Plaintiff attempts in vain to circumvent the dismissal of the untimely portions of its breach of contract claim by invoking the Arkansas common law doctrine that limitations periods do not run against the state (*nullum tempus occurrit regi*). (Compl. ¶ 141.) In fact, under Arkansas law, where a public plaintiff is "seeking to enforce a contract right, or some right belonging to it in a proprietary sense," it "may be defeated by the statute of limitations." *Ark. Dept. of Envtl. Quality v. Brighton Corp.*, 102 S.W.3d 458, 469 (Ark. 2003) (finding that Arkansas environmental department not subject to statute of limitations where it sought to "enforce environmental regulations intended to improve the environment for the benefit of the public" on behalf of the entire public) (citations omitted); Howard W. Brill, 1 Arkansas Law of Damages § 13:4 (5th ed. 2010) (statute of limitations "may bar a government's action … if the government is merely enforcing a contractual or proprietary right.")

Here, even if ARTRS is an arm of the state, ARTRS's contract claim against State Street represents only its own proprietary interests and not the interests of the State of Arkansas or its citizens as a whole. *Compare City of Stamps, Ark. v. Alcoa, Inc.*, 2006 WL 2254406 (W.D. Ark. Aug. 7, 2006) (under Arkansas law, personal trespass and negligence claims asserted solely on

behalf of a municipal plaintiff, and not the public, not subject to *nullum tempus*). As such, Plaintiff cannot invoke *nullum tempus* as a bar to Arkansas's five-year statute of limitations for contract claims.

VII. ARTRS Does Not State a Claim Against State Street Corporation Or SSGM LLC, Because Neither Played Any Role In FX Transactions

ARTRS improperly asserts claims against two distinct corporate entities – State Street Corporation and SSGM LLC. State Street Corporation is SSBT's parent. SSGM LLC is a subsidiary of State Street Corporation that is separate and distinct from SSGM, which is a division of SSBT. Neither State Street Corporation nor SSGM LLC traded FX with ARTRS, and the Complaint does not allege a single fact to suggest otherwise.

Plaintiff's refusal to distinguish between State Street Corporation, SSBT, and SSGM LLC cannot surmount the strong presumption that corporations are separate. It was SSBT that was a party to the custody contracts with ARTRS, and it was the SSGM division of SSBT (not SSGM LLC) that executed FX trades with ARTRS. (*See also* Hornstine Decl. Exs. A, E-G.) The Complaint nowhere alleges facts suggesting involvement by State Street Corporation or SSGM LLC in any relevant activities. The only allegations in the record are to the contrary. (Compl. ¶ 82 ("State Street advised custodial clients that it would post on its website, my.statestreet.com, 'current mark-ups and mark-downs used by *State Street Global Markets* for [standing-instruction] foreign exchange transaction requests.'") (emphasis added); *id.* ¶ 135 ("*State Street Bank* informed ARTRS of 'current mark-ups and mark-downs used by *State Street Global Markets* for [standing-instruction] foreign exchange transaction requests.'") (emphasis added); Hornstine Decl. Ex. C at 37 (noting that SSGM is responsible for FX trading).)[42]

[42] *See Riccio v. Ford Motor Credit Co.*, 238 F.R.D. 44, 47-48 (D. Mass. 2006) (disregarding, for purposes of motion to dismiss, allegations in complaint where they were contradicted by documents attached to complaint).

Massachusetts law rarely permits plaintiffs to hold corporations liable for the acts of subsidiary (or sister) corporations. *My Bread Baking Co. v. Cumberland Farms, Inc.*, 353 Mass. 614, 620 (1968) (veil piercing impermissible unless (1) the parent corporation exercised pervasive control over its subsidiary resulting in some fraudulent or injurious conduct, or (2) that there was confused intermingling among the activities of the parent and subsidiary); *Platten v. HG Bermuda Exempted Ltd.*, 437 F.3d 118, 128-29 (1st Cir. 2006) (accord). ARTRS, however, pleads no facts which, if proved, would permit such an outcome. Accordingly, the Complaint should be dismissed as to State Street Corporation and SSGM LLC. *See Platten*, 437 F.3d at 129 (upholding dismissal of action against affiliated corporate entities under Rule 12(b)(6) where plaintiffs failed to make sufficient allegations of pervasive control and confused intermingling); *Dorn v. Astra USA, Inc.*, 1997 WL 258491, at *3 (D. Mass. April 2, 1997) (similar).

CONCLUSION

For all of the above-stated reasons, Defendants respectfully request that the Court dismiss the Complaint with prejudice.

RESPECTFULLY SUBMITTED,

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Date: June 3, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document, filed through the ECF system, will be sent electronically to the registered participants of record as identified on the Notice of Electronic Filing on June 3, 2011.

/s/ Adam J. Hornstine
Adam J. Hornstine

EX. 45

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

No. 1:11-cv-10230-MLW

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated,
Plaintiffs

vs.

STATE STREET CORPORATION, et al,
Defendants

****

For Hearing Before:
Chief Judge Mark L. Wolf

Motion to Dismiss

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, May 8, 2012

****

REPORTER: RICHARD H. ROMANOW, RPR
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P R O C E E D I N G S

(Begins, 11:00 a.m.)

THE CLERK: Civil Action 11-10230, Arkansas Teacher Retirement System versus State Street Corporation, et al. The Court is in session. You may be seated.

THE COURT: Good morning. I'm sorry to have kept you waiting while I was organizing my thoughts.

All right. Would counsel please identify themselves for the Court and for the record.

MR. GOLDSMITH: Good morning, your Honor. David Goldsmith, Labaton Sucharow, for the plaintiff, Arkansas Teacher Retirement System, and the class. Also with me today, your Honor, is Mr. George Hopkins, Executive Director of the Arkansas Teacher Retirement System.

THE COURT: Thank you.

MR. CHIPLOCK: Daniel P. Chiplock, Lieff Cabraser Heimann & Bernstein, on behalf of plaintiff and the proposed class.

MR. THORNTON: Michael Thornton, Thornton & Naumes in Boston, on behalf of the plaintiff.

THE COURT: All right.

MR. RUDMAN: Jeff Rudman, if you please, your Honor, for the State Street defendants.

MR. PAINE: Bill Paine for the same.

MR. HORNSTINE: Adam Hornstine as well.

THE COURT: Okay.

We're here in connection with the defendants' motion to dismiss under Rule 12(b)(6). It's my hope that I'll decide the motion today. I'm familiar with the submissions.

As an overview, I'll tell you that, in my tentative view, it would be appropriate to dismiss the case with regard to State Street Corporation, which I understand is the parent of State Street Bank and Trust. It doesn't, at the moment, appear to me that the allegations are sufficient to state a plausible claim that the corporate veil ought to be pierced.

I would hope the parties could, by agreement, resolve the question of whether State Street Global Markets, LLC is a proper defendant or whether there's a different entity that's just called State Street Global Markets that's a subsidiary of State Street Bank and Trust. Basically if the wrong entity's been named, I'd permit an amendment to name the right entity. But you should clean that up.

It appears to me that the remaining elements of the motion to dismiss any or all of the claims against State Street Bank and Trust and State Street Global

Markets are not meritorious. There's a thread that, in my present conception -- and we can take them up claim by claim, you know, that runs through all of this, um, but there were custodial agreements between the parties, um, and that custodial agreement said that State Street Bank and Trust would get compensation at the rate set forth on the fee schedules. Um, the first fee schedule, in 1998, said there would be no charge for FX transactions. The rest were silent. But ***Patsos*** teaches me that while there may not -- while there wasn't, as I view it at the moment, a general fiduciary duty, there was a transactional fiduciary duty and that involved the duty to disclose the compensation that State Street was getting in connection with the FX transactions pursuant to standing instructions.

In the elements of the different claims, breach of fiduciary duty, negligent misrepresentation, and Chapter 93A, this may most likely be a Section 9 claim, but that may require some factual development, um, anyway, for the breach of contract. And for the Massachusetts claims, it seems to me it's adequately alleged that the statute of limitations didn't start running until 2009 when the fraudulent concealment is adequately alleged, which was the time you know of the injury that triggers the running of the statute.

The breach of contract claim was governed by Arkansas law and I don't think it's fully developed the jurisprudence on when it starts running. But if my tentative views are sustained today, um, then we have time to figure out the statute of limitations issues on breach of contract.

So that's a brief overview and it's a tentative view, but I think it would make sense for you to give me whatever overview you want of the case and then to take up each of the claims one at a time. I try to organize along the order that I think the defendant presented the claims, the first one being the breach of fiduciary duty.

But in any event, um, it's the defendants' motion, you know where I'm starting, and we'll see where we end up.

MR. RUDMAN: Well, thank you, your Honor. And may I speak from here, if it's okay?

THE COURT: Absolutely.

MR. RUDMAN: Let me change what I was going to say to you in light of your overview.

And the first point I would make to you is this case is really about ***Twombley*** and ***Iqbal*** and ask how plausible is it that these folks had no idea of what they were doing or buying or selling? Remember, the

plaintiffs' entire theory boils down to the assertion that State Street, a principal broker -- not an agent broker, a principal broker, engaged in a for-profit business, a currency exchange, and had a duty to give them, essentially in perpetuity, free trades in these small-op indirect transactions. Your Honor pointed out the only thing they have to hang their hat on and that thing is the reference to "no charge" in the first of the fee agreements.

THE COURT: I didn't view it as the only thing, I just thought it was one worth mentioning. And let me just see if I understand the allegations. I think they allege that in 2009, for custodial services, they paid State Street something like $50,000?

MR. RUDMAN: Yes, and they don't say what's unreasonable about that, and they don't say why, over and above that, they get a pop-up toaster, in effect, in the form of free currency trades.

(Laughs.)

THE COURT: Go ahead.

MR. RUDMAN: And here's why I'd like to press the point, if you please, and if I can restrict this to the texts that are floating around -- and may I approach the bench? Here is a chart that is tethered to the implausibility point, why they say that --

THE COURT: Did you give this to the plaintiffs?

MR. RUDMAN: I did. I did.

THE COURT: And you could also -- well, Mr. Hornstine probably could put it up on the presenter and then everybody can see what we're talking about.

MR. RUDMAN: All right. I'm not going to take you in much detail through that document, it's a chalk for the convenience of the Court, and I don't suppose my friends would welcome this as a convenience, but at least they have a copy.

THE COURT: Well, let him put it up.

(On overhead.)

MR. RUDMAN: Is it up?

MR. HORNSTINE: It's up.

MR. RUDMAN: The two points --

THE COURT: Do you have another one? I'll give it to my law clerk.

MR. RUDMAN: I'm sure I do. I usually do.

THE COURT: I thought you would.

(Hands up.)

MR. RUDMAN: Thank you so much.

I have two purposes in offering the chart. First, you will see that it asserts throughout the complaint that the FX transaction should have been essentially

free. Notice that word "essentially." Even they don't --

THE COURT: Where is it?

MR. RUDMAN: In the very top dark "read" bullet line. "Plaintiff asserts throughout the complaint that indirect FX should have been essentially free." They don't say and they don't rely on anything for the proposition it should have been utterly free. They say, "We could have charged them on the small-op nonrounded transactions the same markup we gave the bank of England." That's what they're saying, that they should have got the real, true interbank rate.

THE COURT: Where do they say that in the complaint?

MR. RUDMAN: If I may? If I could direct you to the bullets in this chart. What I tried to do was gather in one convenient place the most convenient references to the points I'm trying to make orally this morning and you will see that I focus principally on Paragraphs 8, 43, 48, 57, 63 and 74, and then what I have tried to do is show you, in similar fashion, pulling right from the complaint -- and this is not from anything broader than that, but why that is so utterly, utterly implausible. So even they don't say it should be absolutely free.

THE COURT: Well, let me ask you this. Is "essentially free" your word or a word that I find in the amended -- in the complaint?

MR. RUDMAN: I will own up to responsibility for the "essentially."

THE COURT: All right.

MR. RUDMAN: But I do think it is a fair reading that they say, "Oh, if you had given us the same rate as the Bank of England got, then no problem." All right?

The other document -- the only other document I plan to impose upon you for, if you please, sir, is the Hornstine declaration and there are pieces of that declaration that I want to draw your very, very specific attention to. That's a bulky voluminous --

THE COURT: Hold on just a second. (Pause.) Okay. I have it.

You're talking about this?

MR. RUDMAN: I think that's -- it certainly is the right size and --

THE COURT: Is there only one Hornstine?

MR. RUDMAN: There's only one Hornstine.

THE COURT: Then this is it. Go ahead.

MR. RUDMAN: All right. So I will accept responsibility for the "essentially," but I don't think

I'm wrong and I could have rewritten the sentence to say "There was no problem charging the true interbank rate." All right? Point 1.

Point 2. Remember, your Honor, that this pension plan was a $9 billion enterprise, it had blue chip Gucci Gulch advisors, UBS, Wellington, so forth and so on, and they knew -- they knew that on 61 percent of the 10,000 trades they did, they weren't getting the same rate the Bank of England gets, they were getting a rate that was 3.6 one hundredths of 1 percent above an average of the day.

THE COURT: What were those, the trades that they gave specific instructions on?

MR. RUDMAN: No, the trades on which we just say "Go buy," those are the negotiated trades. Yes, in that sense the --

THE COURT: The negotiated trades?

MR. RUDMAN: Yes, the negotiated trades.

THE COURT: So there you say they knew they were paying for the negotiated trades?

MR. RUDMAN: Correct.

And the idea that there's something hidden about what the rates are for currency transactions or what we were charging is not even remotely true. With respect to the indirect trades where -- now, here's the

extortion.

THE COURT: Okay, what's an "indirect trade"?

MR. RUDMAN: The "indirect trade" is no negotiation, no setting things in advance, you send in a computer ticket. The computer ticket says, "I'd like to buy 100,000 shares in London of Burberry common stock. Please get me the currency." The computer reads the ticket, generates the currency, pays it out where appropriate, and far from concealing it, that day or no later than the next day an entry goes back saying "Here's what's done."

So now you have a highly-sophisticated well-advised pension plan making, during the class period, approximately 10,000 trades, knowing exactly what it's paying by way of a markup on 61 percent of the trades, and thinking, "Yeah, this makes a lot of sense. On the 61 percent of the trades that should be cheap, I'm paying -- I'm paying something, but the others that should be more expensive because they're nuisance, small-fry, small-opt deals, well, that should be free."

If you believe, sir, that these contractual documents, which we put before you and not my friends, if you believe those documents create a right of free-of-charge FX exchange, why did they knowingly, indisputably pay 3.6 one hundredths of one basis point?

They did it all along. Never once did they say to us --

THE COURT: Well, let me ask you this.

MR. RUDMAN: Yes.

THE COURT: And not rhetorically.

Where in the amended complaint does it tell me that they were paying and knew they were paying 3.6 one hundredths of a basis point on the negotiated transaction?

MR. RUDMAN: Is it Paragraph 45? Would you give me just a minute to look?

THE COURT: Sure.

(Pause.)

MR. RUDMAN: Yes, Paragraph 72. "For direct FX" --

THE COURT: Wait a minute. Let me get it.

MR. RUDMAN: Paragraph 72.

(Pause.)

THE COURT: Okay.

MR. RUDMAN: Okay? And now, just so you know -- just so you know what they're paying on the small-fry trade, the indirect FX, as opposed to 3.6 one hundredths of 1 percent, they're paying approximately 18 one hundredths of 1 percent. I actually think it's 17.8 one hundredths of 1 percent, but we're now really slicing and dicing. But the point I would make to you is they

know they're paying something on the big trades, why shouldn't they pay a little more on the lesser trades where they're saving labor? In other words, the reason they negotiate some trades is they have to say to their IM, their Investment Manager, "Don't negotiate for me."

THE COURT: Let me ask you this.

MR. RUDMAN: Yeah.

THE COURT: Where is that in the complaint? And, in other words -- I mean, I'm very interested in this. I almost don't want to interrupt, but I can't help it.

MR. RUDMAN: No, no, no, no --

THE COURT: Anyone can argue that it's implausible, but I have to look at the allegations of the complaint, draw the reasonable inferences in the plaintiffs' favor and --

MR. RUDMAN: Yes.

THE COURT: Do you want to read that or listen to me?

MR. RUDMAN: No, I'm listening. I'm listening, sir. I did not want to --

THE COURT: Well, I would like your undivided attention.

MR. RUDMAN: You do have my undivided attention.

THE COURT: Not if you're reading.

MR. RUDMAN: I'm sorry. I apologize.

THE COURT: I mean, if you want to take a break?

MR. RUDMAN: No, no, sir. I apologize. I mean, I really apologize. I'm sorry.

THE COURT: I have to take the allegations in the complaint as true.

MR. RUDMAN: Yes.

THE COURT: I have to draw all the reasonable inferences in the plaintiffs' favor.

MR. RUDMAN: Yes.

THE COURT: I can rely on the documents that are referenced in the complaint.

MR. RUDMAN: Correct.

THE COURT: And I have to decide whether they made a plausible claim.

MR. RUDMAN: Uh-huh.

THE COURT: You know, when you start telling me about Wellington and, you know, their Investment Manager does this, um, I don't think that's in the amended complaint. And, you know, I've read a lot of cases, you know --

MR. RUDMAN: Right.

THE COURT: -- including ***Gossels***, for example,

which was decided after trial, and I can see that if my tentative views endure and I dismiss the case, you're giving me and the plaintiffs a preview of coming attractions, "Who will be so stupid?" But, you know, you rightly started with the standard because until we get the question right, we can't tell what the answer is for today.

But, you know, if you want to tell me things that aren't in the amended complaint or are reasonable inferences from the amended complaint, then why don't you highlight, you know, that that's what I'm going to get, because not all of this is intuitively obvious to me.

You know, somebody could argue, after I hear it: "You know, we're paying $900,000, these are small things, they told us there would be no charge for FX transactions, and we thought, you know, they were giving us the little ones for free." I -- I mean, would that be implausible to a juror or to me? I don't know.

MR. RUDMAN: Well, it certainly isn't plausible to Judge Easterbrook.

If you look at the ***Mexico Money*** case, Judge Easterbrook accurately describes how the currency market works and he has no trouble blowing through the fog of uncertainty. And at the plaintiffs' --

THE COURT: Well, as I recall, and let me check.

MR. RUDMAN: Sure.

THE COURT: Was ***Mexico Money*** an appeal from a motion to dismiss?

MR. RUDMAN: No, it was a -- I understand there was a more fully --

THE COURT: Well, what was it? It was either summary judgment or trial.

MR. RUDMAN: I thought it was after summary judgment.

Oh, after settlement.

THE COURT: Oh, after settlement.

MR. RUDMAN: There was a more fully-developed record.

THE COURT: Okay. Precisely

MR. RUDMAN: All right. But here's what I'm trying to -- with respect to the record, and I'm trying to stick to this complaint, one, and the paragraphs that are listed on this green chalk I'd like you to focus on, and I'd like you to focus on the Hornstine affidavit, and I'd like to walk through with you, if you please, that affidavit and the certain key portions just quickly. But let me try to pick off what I think should be the low-hanging fruit.

There's no dispute that we were a principal broker/dealer, they don't claim that they have an agency agreement with us -- but, yes, where they're a custodian, but what is it that makes us a fiduciary? They have put before you nothing that says the contract deems us a fiduciary.

The language that you have by way of a standard for our care is reasonable care. That's commercial speak, that's not, um, fiduciary speak. They are attended by their own advisors and all they say, in utter conclusion, and without a single supporting fact, is "We knew that they regarded us as fiduciaries."

THE COURT: Yeah, but actually that's not what influenced me, what influenced me was, I think, maybe Footnote 15 in ***Patsos***.

MR. RUDMAN: Yes.

THE COURT: As I understand it, um, State Street didn't have the authority to do discretionary trading, and that's why I said I didn't, at the moment, think there was a general fiduciary duty, but I thought that in ***Patsos*** the SJC was saying that in every case, um, essentially a broker has a transactional fiduciary duty, not --

MR. RUDMAN: That's the agent.

THE COURT: Can I finish? I was waiting for

Mr. Paine to finish talking to you.

MR. PAINE: I apologize, sir.

THE COURT: "For nondis" -- this is just so I can be transparent and you can tell me if you think this is a misunderstanding. It says: "For nondiscretionary accounts, each transaction is viewed singularly. The broker is bound to act in its customer's interest when transacting business for the account. But all duties to the customer cease when the transaction is closed." And then it has a footnote noting that, in another case, in another jurisdiction, the Court suggested that: "The duties associated with nondiscretionary accounts," which I took to mean fiduciary duties, include the following, and the fifth one was "the duty not to misrepresent any fact material to the transaction."

And just to spin this out, um, I, coming in, have tentatively reasoned a couple of things. One, you have written agreements that say, "We're going to charge you the fees on the written schedules," and the 1998 schedule said, "No charge for FX transactions," but the subsequent schedules were silent on that, um, and there's no charge for compensation. And so it seemed to me that they had a plausible argument that they thought there was no compensation being charged for these smaller transactions, it was part of the 800,000 or

$900,000 they were paying, and, um, State Street had a duty to tell them that it was actually taking compensation and in terms of this spread. That was one of the -- you know, some of the thinking on fiduciary duty. And also the fiduciary, under some of the negligent misrepresentation cases, 93A cases, you have an affirmative duty to disclose that's different than in the bare nondisclosure cases and you have this half-truth principle that if you say something you have to be reliable in what you say, and if you at one time told them you weren't charging and didn't tell them you were changing, then maybe they'd survive on that theory, too.

MR. RUDMAN: May I push back?

THE COURT: Absolutely. That's why I said I want you to -- well, you'll do it anyway. But, yes, you may.

MR. RUDMAN: You know, in my old age I've become reasonably obedient, I think, sir.

THE COURT: I know. I've become mellow, so --

MR. RUDMAN: Okay, it's a draw. So fair enough.

Point one, we were nobody's agent. We are a principal broker engaged in making money in the commodities markets. There is no language of agency, no language of fiduciary duty, none of it.

Second, there is no dispute from this complaint that all this stuff about free FX notwithstanding, they knew they were paying on 61 percent of their trades.

Third, on these small-fry trades, remember they get a ticket from us showing what we charged. These folks know enough about the currency market to say, "Oh, on these trades you're charging us 3.6 percent -- or hundredths of a percent above the inter-day average." It's not as though there's some big secret. There are simply currency trades.

Now you say there is one reference to "free of charge." If I could contextualize that for you, okay, it's very important, and I'd like to direct your attention starting to 2.6 percent of the contracts.

THE COURT: Wait. Wait. Wait.

MR. RUDMAN: Sorry.

THE COURT: Which exhibit is the Hornstine --

MR. RUDMAN: I'm sorry. The Hornstine affidavit, it is Exhibit A, and it says Section 2.6.

THE COURT: 2.6?

MR. RUDMAN: 2.6.

THE COURT: Because I was focusing on Section 4. Okay. 2.6.

(Reads.)

THE COURT: Okay, I have it.

MR. RUDMAN: All right.

If you look in the complaint, one of the first paragraphs the plaintiff relies upon is Section 2.6, to argue that this creates a pricing obligation for FX. If you read Section 2.6 percent, it's got nothing whatsoever to do with that.

The section says that the custodian may pay out fund monies when it receives proper instructions from ARTS or the IMs -- and there's no dispute about the existence of the Investment Managers, okay, for several purposes including for FX trades.

THE COURT: Where's the reference to FX trades?

MR. RUDMAN: If you look at Section 2.6, you will see that one of the things for which it may pay out money is "foreign currency trades." And if I could read down just --

THE COURT: I have it. That's E?

MR. RUDMAN: Yes, that's right. And what it says is "Only upon proper receipt -- only upon receipt of proper instructions and written agreement as to security procedures for payment order, which may be standing instructions or may as otherwise be authorized within this contract, the custodians shall pay out or direct its agents or subcustodians to pay out monies of

the account in the following cases," and then it says, "for the purchase or sale of foreign currency." That language they used to try to suggest there's a pricing mechanism built into this contract.

THE COURT: Well, I -- all right. And then you're going to tell me about Paragraph 4?

MR. RUDMAN: I don't know which paragraph --

THE COURT: Paragraph 4's on Page 9 and it says "Compensation of Custodians." The one that I've been focused on.

MR. RUDMAN: Yes.

THE COURT: It says: "The custodians shall be entitled to compensation for its services and expenses as custodian set forth in a written fee schedule between the parties hereto until a different compensation shall be in writing and agreed upon between the system and the custodian."

Now, here what are we looking at, the 2008 contract? Is this the first one?

MR. RUDMAN: This is the first one.

THE COURT: It's says "2008."

MR. RUDMAN: No, the first one is 2001, I believe.

THE COURT: Oh, I'm sorry, 1998.

MR. RUDMAN: 1998.

THE COURT: I misspoke. Okay. So this is 1998. Then, I thought, that the corresponding fee schedule is Exhibit H, right?

MR. RUDMAN: Right. I'm coming to that.

THE COURT: Well, that's what I want to get to. It says "Foreign Exchange," "No charge will be assessed for foreign exchange executed to a third party. Foreign exchange through State Street, no charge."

MR. RUDMAN: Good. Can I just respond to your last point about custodians and then come to that document? Because if I may, with very great respect, you are reading that to say that there should be no charge for FX as opposed to what it really means, which is that certain small-bore charges, like charges for shipping and handling, will not be charged.

THE COURT: Well, see, I thought, um, on that first, um, to the extent the contract is unambiguous, it tells me, on this one, that you're not going to charge him a penny.

MR. RUDMAN: No, sir. But if --

THE COURT: Well, let me finish.

MR. RUDMAN: I'm sorry.

THE COURT: Let me finish.

MR. RUDMAN: Sorry.

THE COURT: If it's unambiguous, it communicates to me that you're not going to get any compensation for this. This is a service you're providing as a custodian without any additional charge. If it's ambiguous, under Arkansas law, similar to Massachusetts law, um, it's a matter of fact, and there can be parol evidence as to what the meaning of that was, what the understanding of it was between the parties. Maybe there was some discussion about what it meant, but that would make it not susceptible to being resolved on a motion to dismiss. And so that was my thinking about that.

MR. RUDMAN: All right. Could I suggest there's a third choice? There's unambiguous, ambiguous, and so implausible as to flunk ***Twombley***, and that is the burden of my argument to you today.

And now -- well, first of all, let's just start with the custodian. The custodian's only duty in this context is to settle, trade and pay the money. It doesn't say anything about what the custodian is charging or not charging.

THE COURT: How does the complaint tell me that?

MR. RUDMAN: You just read what the custodian's duties are.

THE COURT: One of the custodians -- well, where did I just read it?

MR. RUDMAN: You just read it to me a minute ago. I was just standing here.

MR. PAINE: It was in 2.6, your Honor, 2.6(e).

THE COURT: Yeah, "The purchase and sale of foreign exchange." So that's one of the duties and in Paragraph 4, it says: "The compensation for the custodian's duties will be set forth in the fee schedule in writing."

MR. RUDMAN: (To Mr. Paine.) Do you want to speak about it?

MR. PAINE: Do you mind, your Honor?

THE COURT: Go ahead. He's paying you a great compliment.

MR. PAINE: He doesn't usually like to let me talk, and there's a good reason for that, but this one time I would appreciate yours and his indulgence.

The point here is that Arkansas hired State Street to be their custodian. A custodian is a provider of administrative services. Okay? A custodian is not a principal dealer who executes for an exchange. This contract sets forth a list of custodial duties in Section 2, "We hold securities," "We deliver securities," "We make payments pursuant to proper

instructions." Okay?

So if you look at Pages 1 through 8 in Sections 2.1 through 2.12, you see the list of the things that Arkansas hired State Street to do. Not on that list is "Execute a foreign exchange transaction with me." This contract does not require State Street to execute a single FX contract with Arkansas.

THE COURT: See, that -- that argument, which I didn't find is clearly made in the papers, and maybe I misunderstood, but it occurred to me, that arguably State Street was not acting as a custodian. However, it's -- at the moment I would say that at most that creates an ambiguity that can't be resolved on the motion to dismiss.

And, you know, you're telling me how this industry operates. You know, I look at this as, you know, somebody who's worked for the government for the last thirty years and -- and I don't know -- and I don't even know if Judge Easterbrook knows or he just thinks he knows how these industries work, but it has to be in evidence. It has to be -- well, let me just finish.

MR. PAINE: Yes.

THE COURT: So I've got a contract that says, you know, the custodian -- you know, that makes a reference to "foreign exchange," but doesn't spell it

out as clearly as you just did -- and you may be right, but as clearly as you just did, that when State Street is executing trades it's not doing it in its capacity as a custodian. I mean, that's plausible to me, too.

But when it says here: "Compensation for the custodian, you know, shall be as set forth in the written fee schedule," it could embrace -- if it's ambiguous and doesn't clearly cover these trades, um, it could embrace these trades. Somebody's going to have to -- the parties are going to have to explain their understanding. Maybe some expert would testify on the custom in the industry. But this is a very early stage.

MR. RUDMAN: But we have a list, if you --

THE COURT: Well, let him finish and then you can come back.

MR. RUDMAN: Sorry, Judge.

MR. PAINE: And I -- well, thanks, Jeff.

MR. RUDMAN: That's okay.

THE COURT: No, he was going to let you do it, but I ordered him, and he says he's more obedient now.

MR. PAINE: Thank you.

So -- well, what I guess I would say to you, in response to your argument -- to your analysis, is that the contract is not ambiguous in this regard, um, and I think that if you look at 2.6(a) through (h), you will

see that what 2.6 is saying with respect to a whole array of categories of fund payments that might be paid, um, by the custodian, that what the custodian is doing is providing the administrative service of transferring money pursuant to instructions. It's not --

You know, take a look at, you know, 2.6(c). Um, if State Street as custodian -- and that's on Page 5, your Honor. If State Street as custodian gets a proper instruction, which is defined as an instruction from an Investment Manager or of Arkansas, to pay any expense or liability, including interest, taxes, accounting, et cetera, then it will pay it. Um, if you look at -- if you look at the other ones, you'll see that this list, including (e), is a -- is a list of the kinds of administrative payment actions that the custodian will take upon proper instruction, and I do think it is a fair argument to read this provision, in light of the allegations, um, of the complaint, as a clear statement that the -- that the activities in 2.6 are custodial and administrative in nature and not, um, you know, the actions of a principal dealer buying and selling its own currency.

Again I did say it before, but I think it bears repeating, that this contract does not require us to buy or sell any currency to Arkansas and it doesn't require

Arkansas to buy or sell any currency from us. Instead, the way this works, and this is fairly comprised within the complaint, is that Arkansas hires an Investment Manager, which is a fiduciary, which has the responsibility to decide how stuff is invested, and that's all assets, including currency assets, and that the Investment Manager makes a decision. If they decide that they want to directly negotiate with the Bank of England, an FX trade, that's up to them. It is State Street's responsibility as custodian to settle that trade, meaning we pay them the dollars, they pay us the euros. If they decide that they want to deal with the separate division of State Street that provides FX execution, then the custodian will transfer money from State Street's account to Arkansas' account and back in order to settle that trade, um, you know, pursuant to proper instructions.

So back to --

THE COURT: No, I understand the argument.

MR. PAINE: Okay. Thank you.

THE COURT: Go ahead.

MR. RUDMAN: So may we turn to Exhibit H to the Hornstine declaration.

THE COURT: Yes.

MR. RUDMAN: And the words "there is no

charge." All right?

If you look at all -- if you look at the language that is there at Exhibit H, you will see what they're setting forth, it's a $1 charge for interfund transfers, a $7.50 fee for wire transfers, $900 for plan accounting, and so on, and the only mention of FX comes in the other charge or section of this schedule, which are all these little fixed costs basically, and it says "There will be no charge assessed for foreign exchange executed through a third party," like no shipping, no handling, "and there is no charge for foreign exchange through State Street," meaning no shipping, no handling, but it doesn't mean it's free. And then -- then that language goes away altogether until about 2008 or 2009.

So this very valuable hard-bargained-for right to free FX disappears. And through all that period of time, they know, they absolutely know that they're paying on the larger round-lot trades and they're paying about 3.6 one hundredths of 1 percent. Because of language that basically appeals or applies to fixed fees and charges that goes away after 1998, they go on paying currency exchange to State Street, so how could anyone possibly think that this is all on the house? And when they talk to you in sort of dramatic fashion about how expensive the custodial fee was, they don't tell you

what's wrong about it or what's unfair about it. And the "gouging," so called, is they're not getting the interbank rate and they're not the Bank of England and they know they're not the Bank of England.

So I submit to your Honor that it just makes no sense to assert that the no charge for FX eliminates any charge for FX over a 9-year period when they know they're paying for FX and they know they're paying it on 61 percent of the 10,000 trades they do. What they are offering you is just implausible in the extreme. And there's no way you can get from no one of these fixed charges, $1, $9, $900, to some rate-setting obligation. The rate setting comes from what's the markup on the trades in the open market as reflected on the ticket.

THE COURT: I thought the ticket didn't disclose the discrepancy between the trade and essentially the commission that State Street was taking by not giving the full amount to this big client of its?

MR. RUDMAN: Correct, but what is publicly available are the average daily rates for this currency. This is not shrouded in mystery.

THE COURT: Okay. How does the complaint tell me it's publicly available?

MR. RUDMAN: They know it's publicly

available. That's where they got the 3.6 percent from.

THE COURT: No -- I mean, I -- well, a couple of things. For example, in ***Gossels***, it was after trial, they decided it after trial, and the SJC reversed the Appeals Court in part because it found the undisputed evidence showed that the bank had a dedicated telephone number that Gossels could have called to find out what he was being charged. You know, they -- you know, they alerted customers to the fact that customers weren't getting 100 percent and gave them a mechanism to find out.

I'm wondering what is sort of almost indisputably comparable to that, you know, that I can draw from that?

MR. RUDMAN: Getting a ticket showing what you were charged. They don't dispute they didn't know what they were charged, and they don't dispute that and they wanted to --

THE COURT: No, I think they --

MR. RUDMAN: They make the rhetoric, "Of course it's hidden," but they've got a ticket.

THE COURT: It shows what they were paid.

MR. RUDMAN: Yeah.

THE COURT: But not what compensation.

MR. RUDMAN: If you can go and look at the

publicly-available data for any particular day and see what the --

THE COURT: How do I know from the complaint that there's publicly-available data every day?

MR. RUDMAN: Could you look at Paragraph 73, if you please, your Honor.

THE COURT: Since you asked me so nicely, I'll be happy to do it.

(Pause.)

THE COURT: Okay. I read it.

MR. RUDMAN: You read it.

I don't see how much clearer the admission could be that they knew what the numbers were. They say, "2217 trades, or 53 percent, fell entirely outside the forward-adjusted range of the day." "These 2,217 FX trades, with the total volume exceeding $200 million, added trading costs on average of 64.4 basis points over the day's mid rate, an enormous hidden and unauthorized markup."

How is it hidden if they can recite it to you with that kind of exactitude in their complaint? Using the above example on a purchase of 10 million euros, an undisclosed fee of 64.4 basis points would result in a $64,400 State Street profit on that single transaction.

And again let's talk about Mr. Gossels by way of

comparison. He didn't get a ticket the next day, there was a phone number he could call. Mr. Gossels didn't come with Investment Managers who were his fiduciary. Not only that, what we're really talking about, as I've indicated before, is 17 one hundredths of 1 percent that is so extortionate. The markup in the ***Gossels*** case is 370 basis points -- 370 basis points or roughly 20 times what State Street was charging somebody attended by a bevy of institutional advisors.

So the idea they didn't know, couldn't know, didn't get a ticket, is just not true and the complaint gives it away. And there is no dispute that they knew what they were paying on all these direct FX transactions, meaning the 3.6 one hundredths of a basis point.

How can they say to you that, with respect to this no-fee language, that they relied upon it and yet went on and on and on and on paying on direct FX? If they believed their own puff, they wouldn't say that to you. And at the very end when they do, in some cases, reinstate the charge for indirect, the fee that goes to that indirect cubbyhole is $25. It's exactly what I said it is, a shipping and handling charge. That's all it is, and that's all that the other enumerated charges are.

There is no language in this case that can plausibly be construed to say that we ever gave these folks a promise of free FX. I'm sorry?

THE COURT: No. What are you sorry about?

MR. RUDMAN: I thought I was interrupting you.

THE COURT: No, I let you finish for once. I thought you were finished.

This is very helpful and every case is unique. Some cases do get dissolved on motions to dismiss and ***Iqbal*** and ***Bell Atlantic*** are supposed to make that somewhat more common. However, um, can you point -- um, there are many cases cited, but can you point me to one in which a motion to dismiss -- where the defendant prevailed on a motion to dismiss in circumstances that you think are comparable to the circumstances here?

MR. RUDMAN: Well, let me try the 93A claim for just a second in that regard.

THE COURT: Well, there's a whole bunch of claims and if any of them, you know, survive, you know, you've got to do discovery.

So, you know, like what's the best case for you on a motion to dismiss?

MR. RUDMAN: Well, I may ask one of my friends at counsel table to see if they have a suggestion. But while they're looking for that --

THE COURT: No, let them look.

MR. RUDMAN: All right. But could I offer you --

THE COURT: No, no, let me stop and think, so I can keep my question.

MR. RUDMAN: Okay.

(Pause.)

THE COURT: All right. Here, they can look while you --

Oh, you've got it?

MR. PAINE: Um, I'd go for -- if I've got to pick one, I would go for the ***McCann vs. Lucky Money, Inc***. case, which is intermediate --

THE COURT: Here, I've got it here. Let me go get it. I actually thought it --

MR. PAINE: It sustains a demurrer, I think.

MR. RUDMAN: It does sustain a demurrer.

(Pause.)

THE COURT: All right. Let me just check something.

(Pause.)

THE COURT: So ***McCann*** is a dismissal --

MR. RUDMAN: -- on a motion to dismiss a demurrer arising under the California unfair competition laws. And, if I may? It does rely on Judge

Easterbrook's decision in ***In re Mexico Money*** --

THE COURT: Hold on just one second.

(Pause.)

THE COURT: Okay. Go ahead.

MR. RUDMAN: It says -- it relies -- they called the complaint "absurd."

THE COURT: Where -- what page do you think?

MR. RUDMAN: I don't have the page cite in front of me. They do rely on Judge Easterbrook's ***Mexico Money*** case, which is 267 F.3d 743, and they call the decision -- they call the plaintiff's theory "absurd." But they go off on a slightly different ground, if you please.

THE COURT: Well, let me take a look at it. I thought this was a case -- "where the retail rates were publicly posted prior to engaging in a transaction." And maybe yours is similar. But hold on just a second.

(Pause.)

THE COURT: Well --

MR. RUDMAN: Judge, it's similar in this sense, if you please.

THE COURT: Go ahead.

MR. RUDMAN: Their whole pitch, that we just read to you, is it's outside the interbank rates, and the interbank rates are very public.

THE COURT: How do I know that from the complaint?

MR. RUDMAN: Well, you know it from the paragraph I just read to you in terms of how much they know about, um, what they were being overcharged. And if I could -- if I could, I'd direct your attention to Paragraph 36 of the complaint, "Every time, um, ARTS" --

THE COURT: Just one second.

(Pause.)

THE COURT: Go ahead. Paragraph 36?

MR. RUDMAN: Paragraph 36. And then I'm going to direct your attention to Paragraph 62 and a couple of other paragraphs. I'm looking now, if you please, sir, at the third bullet point in the second half of the chalk I handed to you at the beginning, because I've tried to anticipate, as best I could, the "Where do I find this in the complaint?" question. Okay?

The language I'm directing your attention to is: "Every time ATRS or its IM has negotiated direct FX rates, they have access to interbank market rates through services such as EDS and Reuters and could see the extent to which they were paying more than interbank participants were paying." That's Paragraph 36.

THE COURT: Okay. (Reads.) That's not what Paragraph 36 says. Is that the way you characterized

this?

MR. RUDMAN: That's what is the reasonable -- and I did not mean to say it was a quote.

THE COURT: Oh, all right.

MR. RUDMAN: And it doesn't appear in quotes on my chart. What it is is a reference to what is a reasonable inference to draw from Paragraph 36. And if you please, your Honor, I just read to you, I think, from Paragraph 73 how specific, how particularized their knowledge was.

The other thing I would say to you is that if you look at the ***Lucky Money*** case, ***Lucky Money*** says: "There is no statutory obligation to disclose the rate at which the bank purchases foreign currency or disclosed its profit on the FX spread." The Court also noted that ***Lucky Money*** --

THE COURT: Wait. Wait. I know you feel you're on a roll, but you want me to read this. I'm looking -- are you able to tell me which page? No. You're reading from your brief?

MR. RUDMAN: I was reading, your Honor, from my notes.

MR. HORNSTINE: Your Honor, the page in which the quotations appear are Pages 1397 and 1398, cited to the Cal App. 4th version.

THE COURT: 1397 and 1398. Here, hold on a second.

(Pause.)

THE COURT: All right. Well, the fact that there's no statutory obligation in California, um, doesn't really go to the fiduciary duty analysis under ***Patsos*** in Massachusetts law.

MR. RUDMAN: If I -- a couple of points on that. The Court also noted that "***Lucky Money*** owed no fiduciary duties to customers in a purely commercial transaction." And that is at page -- it's at paragraph -- at Page 1398.

THE COURT: But is ***Lucky Money*** California law?

MR. RUDMAN: It is California law.

THE COURT: You're in Massachusetts.

MR. RUDMAN: Well, or -- but let me talk to you -- if the issue is to match up the California law on consumer protection, which is what law --

THE COURT: Here, why don't we do this. I have to -- it's conceivable that some claims would survive somewhere. I started where you started, in your briefs, at fiduciary duties. You know, ***Patsos*** tells me -- you tell me you weren't acting as a custodian --

MR. RUDMAN: Well, I didn't say --

THE COURT: I didn't finish. I don't want to argue with you, I want to expose my thinking, so you can address it.

MR. RUDMAN: Okay.

THE COURT: You've argued that you weren't acting as a custodian, if I understand it right, and that's why that fee schedule is irrelevant. State Street was acting as a broker. I read ***Patsos*** to say that even when you have no discretion, you have, um, transactional fiduciary duties.

MR. RUDMAN: If you're an agent broker.

THE COURT: Well, let's look and see where that is.

MR. RUDMAN: This is very -- your Honor, the word "broker" embraces a multiplicity of sins and commissions. We are a principal broker. It is inconceivable that we owe these folks a fiduciary duty.

THE COURT: It's inconceivable?

MR. RUDMAN: And implausible.

THE COURT: Where does -- where does ***Patsos*** make the distinction you're arguing?

MR. RUDMAN: I'm looking now -- I do know that the broker in ***Patsos*** was. You could tell from the text. Yeah, here: "Courts in other states have not" --

THE COURT: Where are you reading?

MR. RUDMAN: I'm so sorry. I'm reading from Page 849, just at the bottom of 848, possibly.

THE COURT: Okay. Go ahead.

MR. RUDMAN: "Courts in other states have not been of a single mind whether fiduciary duties adhere in every relationship between a stockbroker and his customers. Some had suggested the resolution I'm questioning turns on whether the brokers and customers deal at an arm's length," and then it goes on and on and on. Then it says: "There was a general agreement, however, that the scope of the stockbroker's fiduciary duty is a factual issue that turns on the manner in which investment decisions have been reached out and transactions executed for the account and some have suggested that the resolution of that question turns on whether the broker and the customer dealt at arm's length." Here it's much better --

THE COURT: You didn't keep reading.

MR. RUDMAN: I'm sorry?

THE COURT: No, then go down to 9 and 10. It says: "In determining the scope of a broker's fiduciary obligations, courts typically look to the degree of discretion a customer entrusts to his broker. Where the account is nondiscretionary, meaning the customer makes the investment decision and the stockbroker merely

receives and executes a customer's order, the relationship does not -- the relationship generally does not give rise to a general fiduciary duty." Okay. That's where I started. But then if you go to the next page, it says: "For nondiscretionary accounts, each transaction is viewed singularly, the broker is bound to act in the customer's interest when transacting business for the account and that all duties for the customer cease when the transaction is closed." And underneath there's Footnote 15 here. Let's see where that came in. They talk about the Court suggested that "duties associated with a nondiscretionary account include the duty to refrain from self-dealing or refusing to disclose any personal interest the broker may have in the particular recommended security," and then the one I focused on at the outset, "the duty not to misrepresent any fact material to the transaction."

MR. RUDMAN: First -- oh, I'm sorry.

THE COURT: And I thought that, in this context, an omission could be a misrepresentation.

MR. RUDMAN: First, there is -- there's no misrepresentation, we disclose on the cost. Second, and much more important, ***Patsos*** is about a stockbroker. In this case the client, Arkansas, has dozens of stockbrokers, dozens of advisors advising him.

Generally speaking, we get our orders from the one person who does owe him a fiduciary duty, which is their own broker, maybe. We are a principal broker. We just do not owe these folks a fiduciary duty and there is no language of fiduciary obligation anywhere in the contract.

THE COURT: Here, let me ask you this, since the plaintiff hasn't had a chance to argue yet.

Is there anything important you haven't said yet?

MR. RUDMAN: I don't think we focused hard enough on ***Gossels***. I'd be pleased to submit --

THE COURT: No, go ahead. Go ahead.

MR. RUDMAN: Could I turn to ***Gossels***? First of all, the bidding they asked here is really whether there should be a claim for treble damages under Section 9 as opposed to just an institutional business-to-business claim?

THE COURT: okay. What's the difference between 9 and 11, the treble damages?

MR. RUDMAN: The treble damages is the key difference.

THE COURT: Yeah. Go ahead.

MR. RUDMAN: And the important thing, your Honor --

THE COURT: And, you know, one thing to keep

in mind, as a practical thing --

MR. RUDMAN: Yes, sir.

THE COURT: -- even when there's a violation of Section 9, it's unusual to get multiple damages. I mean, people come in -- I think many lawyers, when they bring these cases, they think "If I win a 93A claim, I'll get multiple damages." The last time I had to look at this closely, um, there was a pretty high burden to get more than actual damages.

MR. RUDMAN: Yes. But the point I would make to you is the SJC has spoken on this topic. Okay? And could I just describe for you the ***Gossels*** case with some level of particularity?

THE COURT: Yes.

MR. RUDMAN: Please keep in mind the plaintiff knew full well that State Street makes money on direct or negotiated FX and its Investment Managers voluntarily choose to pay a margin on the trades that they do directly. So in this context how can it be unconscionable for State Street to make money on indirect trades? As I'm trying to show you, there's no representation that all these indirect trades are on the house while all the FX trades or the direct trades are charged for.

So what is the 93A claim all about? Plaintiff is

not really saying that charging 18 one hundredths of 1 percent of more than a wholesale rate is necessarily unfair. How do you say such a miniscule profit margin could possibly be unfair? What the plaintiff is saying is that any departure from the interbank rate is unfair even though it has no right, no reason to expect that it will be afforded the interbank rate. The plaintiff then says: "Also, though, it's unfair to hide this microscopic profit." As I've showed you, I think from Paragraph 73, and I forget now, there's nothing hidden about it, that these plaintiffs knew what they were getting.

Plaintiff alleges somehow it was unfair for State Street, someone with business of buying and selling currency for its own account, to make a profit on FX. Again, any trade that wasn't done for free or any trade done at the unconscionable markup of 0.18 -- 18 hundredths of 1 percent, was just wrong. And if you look at the facts in ***Gossels***, that poor man gets a check for reparations from the Nazi government or from people who are compensating victims of the Nazis. It's enormous. There's no way he necessarily would have known what he was overcharged. That's just not, not, not the way the world works here.

And Judge Easterbrook, who is the most eloquent

judge, I think, on this topic says that: "Failure to disclose the precise difference between wholesale and retail prices of foreign currency is an ordinary business practice and there is nothing fraudulent about adding such a markup." And in any event -- and in any event, these plaintiffs say to you, in a sort of a groveling way, "You should give us a break. We're a charity. We're entitled to the most expansive reading of 93A."

THE COURT: Well, they're not going to -- whether they're a charity, um, according to Judge Saris's thoughtful framework, is relevant to whether Section 9 or Section 11 applies, but once it's determined which applies -- and I actually didn't think it was going to be essential for today's purposes, um, but they don't get a break because they're a charity, the law -- the law applies equally to everybody.

MR. RUDMAN: Yeah, but if I may? In Judge Saris's case she found that the Taft-Hartley plans weren't seeking to make money. If you look at 93A, they talk about "transactions" and "commodities." Currency is just a commodity. These people were engaged in a heartland -- a heartland of currency transactions to make money and they're fighting about a trivial spread.

A last point and then I'll cede the microphone, if

I may?

Do you know with whom Arkansas is doing its FX trading today?

THE COURT: Is it in the complaint?

MR. RUDMAN: Nope.

THE COURT: Then why should I know, for present purposes?

MR. RUDMAN: Because --

THE COURT: Oh, because they're doing it with you?

MR. RUDMAN: Correct.

THE COURT: And so they wouldn't and so it shows no reliance, you say. But it's not in the complaint.

MR. RUDMAN: But there's nothing that stops you from asking them, if you please.

THE COURT: Well, no, there is, the rules. I have to decide the case based on the allegations and the reasonable inferences.

You know, if we were at summary judgment, you could add that evidence and, you know, they -- if they prevail today maybe they've achieved an expensive pyrrhic victory.

MR. RUDMAN: Well, what they've done is foisted upon us the burden of showing you fairly soon

that there is no way this case is maintainable as a class or at least I would be hard-pressed to believe it's maintainable as a class.

THE COURT: The -- that question has occurred to me, but I haven't -- but that's not where we are now.

MR. RUDMAN: So let me close with three --

THE COURT: And it's not a class action at the moment.

MR. RUDMAN: No, it's not.

THE COURT: You know, if you ever -- after I decide the motion to dismiss, if the case is not gone, um, then we'll talk about a schedule and the schedule will include time for you to talk about whether you want to settle the case the way -- because, you know, here you've got a customer who pays you $900,000 a year, and State Street's probably paying Wilmer Hale more than that, and it can't be great business to be litigating your big customers.

MR. RUDMAN: No, it's not great business.

THE COURT: But you're totally entitled to get a ruling on whether this case survives this stage.

MR. RUDMAN: Could we do this, if you please? Could we, one, submit to you some case law on a principal broker's duties?

THE COURT: No. No. No. I'm going to decide

the matter today.

MR. RUDMAN: All right. Thank you, your Honor.

THE COURT: Okay.

MR. GOLDSMITH: Good afternoon, your Honor. David Goldsmith, Labaton Sucharow, for the plaintiff, Arkansas Fund, and the class. Mr. Rudman made quite a number of points and I will do my utmost to respond to them all. And as the Court wishes, if you would like me to respond in any particular order, I'm happy to do that. But I will proceed.

The concept of free FX, I think, your Honor, is a little bit misleading. Arkansas never thought that the standing instruction trades, that the Custody FX trades, "Custody FX" being their brand name, would be free. Arkansas paid hundreds of thousands of dollars a year for a suite of services pursuant to the custodial contracts. Arkansas understood that Custody FX would be included in that suite of services. It's called "Custody FX" for a reason.

State Street marketed this service to custodial clients and only its custodial clients, um, intimated that it would save time and effort under the guise of a fiduciary, we would argue, and there was never any sense that it would just be free and on the house, there was a

lot of money paid. Arkansas, as your Honor indicated, is not a charity, it's a public pension fund. It paid hundreds of thousands of dollars a year out of their accounts in order to have these services.

There's a distinction, your Honor, between the negotiated trades and the standing instruction or Custody FX trades. Defense counsel makes a very big point that if you knew that you were paying 3.6 basis points on the negotiated trades, then how could you possibly think that you weren't paying on the -- on the standing instruction trades? Well, there's a number of reasons why we believe that we get the best and most competitive rate. The contracts -- the custody contracts supported that, your Honor, with the fee schedules and the like --

THE COURT: You'd get the best and most competitive rate on what?

MR. GOLDSMITH: The best and most competitive. You'd get the same rate, your Honor, that State Street got when it transacted. So there would not be a spread in which State Street would be making money because every penny of that spread, your Honor, because of the nature of the transaction, comes directly out of the pocket of Arkansas and all of the other custodial clients.

THE COURT: But if -- I'm sorry. You said you knew that you were paying some rate on the negotiated trades?

MR. GOLDSMITH: Some very small reasonable markup because you were -- because the traders were literally on the phone with each other. You had equal bargaining power and you had transparency. Those two elements, your Honor, were missing in the Custody FX scheme and that's how State Street was able to take advantage of that imbalance of information and imbalance of power in order to reap these ill-gotten gainful --

THE COURT: In the standard --

MR. GOLDSMITH: In the standing instructions.

THE COURT: In the standing instructions.

MR. GOLDSMITH: On the standing instructions, right.

This case is really not about the negotiated trades, your Honor, except that it shows the tremendous disparity in the markups that were applied on both. You have 3.6 basis points, a small markup. You have a sophisticated IM calling another sophisticated institution, a bank perhaps. They would get on the phone, dicker with one another with live -- or -- and there would be a confirmation a short time thereafter and they would come to an agreement on this small

markup. That was considered to be a reasonable amount of money on a negotiated transaction. It could be a very large transaction, it could be a smaller transaction, we don't know.

On the standing instruction trades, you had a huge markup and our analysis, which by the way could not have been done reasonably at the time or during the class period, it was done obviously by a consultant that our client hired in order to do that. You have an enormous disparity. You have 17.6 percent, um, in terms of the standing instruction -- excuse me, the basis points on the standing instruction trades. So State Street charged five times as much on the standing instruction trades as they did for the negotiated trades. And when you isolate those trades, your Honor, that were outside the interbank range of the day, you had a 64 basis point, um, average deviation. So 18 times.

Now, why was it reasonable for State Street to charge 18 times as much on the Custody FX trades? When Arkansas would call State Street on the phone and have a trade, you'd have on average a 3.6 basis point, um, markup. Arkansas -- it was reasonable for Arkansas to believe that they would do no worse, at least with the Custody FX trades as with the, um, negotiated trades. You have a custody contract that has a large annual fee,

it has provisions that involve, in black and white, the purchase and sale of foreign exchange, and that any compensation, your Honor, is limited to what's in the fee schedules and the fee schedules, as your Honor noted, say "no charge." And there could be differences with the processing and the like and we can go back and forth on that, but as your Honor --

THE COURT: Oh, I'm sorry. Go ahead.

MR. GOLDSMITH: But any ambiguity on that, your Honor, means that there has to be discovery.

THE COURT: I mean, that -- is it your argument that the contracts referring to the fee schedule, um, meant that for the standing instruction trades there would be no specific or additional compensation to State Street because that is something that was covered by the custodial fee generally?

MR. GOLDSMITH: Correct, your Honor. The Custody FX service, we allege, was part of the custodial relationship. The custodial relationship involved a number of things, a number of services, a number of activities, and Arkansas paid a lot of money every year in order to have it. And if they wanted to have an additional fee, that should have been disclosed. It was not.

The Investment Manager Guides, the IM Guides,

there were many of them published during the class period before November of 2009. It assured that, um, FX trades would be priced based on the market rates at the time the trade is executed. So -- and that didn't happen with the standing instruction trades. And we now know, because of the November 2009 IM Guide, which came out just before the end of the class period, that their methodologies were nowhere in the realm of pricing the trades based on market rates at the time the trades were executed. We will prove that --

THE COURT: Just so I understand it --

MR. GOLDSMITH: Sure.

THE COURT: Are the Investment Manager Guides -- you say are guides that were given to people like Arkansas Teacher so that they could give it to their investment advisors?

MR. GOLDSMITH: I believe that's correct, your Honor. They were -- at a minimum, they were published and given to all the Investment Managers.

THE COURT: Who are the Investment Managers?

MR. GOLDSMITH: The Investment Managers are these --

THE COURT: Is that like Wellington and --

MR. GOLDSMITH: Yes, sir, like Wellington and so --

THE COURT: So they weren't State Street employees?

MR. GOLDSMITH: No. No. No, sir.

THE COURT: That's what I'm trying to get at.

MR. GOLDSMITH: No, sir. Arkansas did not -- like most pension funds, Arkansas did not manage their accounts themselves. That's not their wheelhouse. Um, Mr. Hopkins does not sit there every day looking for stocks to pick and stocks to sell, he has other things on his plate. So Arkansas, like most other pension funds -- and I want to say all other public pension funds, hires a number of Investment Managers, has an agreement with them where they can trade -- they have control over their accounts and they can trade on their behalf. Arkansas did no internal, um, securities trading. And so all the talk about sophistication, I think the context for that is important, your Honor, because Arkansas is not an FX trader, Arkansas relied and trusted State Street to handle these services properly.

Arkansas gave $9 billion -- put $9 billion in the custody of State Street. I mean, one cannot -- I think one can't say that you don't have any kind of expectation of trust or confidence when you put $9 billion of public school teacher money with such a large

institution as State Street. You know, this isn't someone walking off the street into the, um -- into the Western Union, your Honor, or the money transmitter, or the Logan Airport currency exchange kiosk, and that is what ***Gossels*** and ***McCann*** and ***Mexico Money*** are all about. And I'd like to address those three cases because I think those three cases are important and Mr. Rudman, I thought, you know, appropriately had a chance to discuss those and I'd like to discuss those now.

Gossels, your Honor -- here's what happens in ***Gossels***. So State Street argues that ***Gossels*** stands for this sort of hard-and-fast rule that a bank is entitled to charge a markup on an FX trade to make a profit without any disclosure. Your Honor, it does not stand for that proposition at all. The reason the bank -- a Fleet Bank prevailed on a 93A claim was because there was actually no markup applied in that case and there was no disclosure issue or no disclosure defect in that case.

As your Honor noted, first of all, that case was decided on a full evidentiary record after a bench trial, and that fact is important here, not a motion to dismiss. And with regard to the markup, what happened was Deutsche Bank, which was a German bank that was able to handle the euros check that Mr. Gossels received, all

Deutsche Bank did was to transfer euros to Fleet Bank after deducting a small euro transaction fee and then Fleet Bank, your Honor, converted the euros to dollars using a retail rate. And so it's not the case that Fleet bought euros at one rate and then sold the euros to Mr. Gossels at a different rate and pocketed the difference without disclosing. There was no markup -- there was no markup there. It may be true that Fleet, your Honor, could have received a lower rate from Deutsche Bank had it purchased the euros from that bank, but that just didn't happen there. So all records show that there was no markup at all, let alone an excessive markup, which we allege, your Honor.

Now, ***Gossels*** argued that the retail rates were hidden. It came out in the record -- it came out that, um -- excuse me. The SJC decided that the appellate court made a mistake and didn't see in the evidentiary record that there was a telephone line, um, where that information could be provided.

So here, though -- so you don't have a disclosure and you don't have a markup. Here it's the reverse. You have huge undisclosed markups and you don't have any disclosure of that fact, of rates, markups, until November of 2009, by State Street. So --

THE COURT: I'm sorry. Until when?

MR. GOLDSMITH: November of 2009.

THE COURT: That's after the California litigation?

MR. GOLDSMITH: Right. That's correct, your Honor.

So after the -- so in October of 2009, California somehow figured this all out and they sued and the Attorney General of California -- and it was then, I think, Mr. Brown, um, filed a case and it was unsealed and just a few weeks later State Street filed a new-and-improved Investment Manager Guide that contained a wealth of new facts and new disclosures and new explanations that it never ever provided before to anyone about, "Oh, don't worry, Arkansas, or other custodial clients, this is how we do it," and they finally explained their methodologies. And for the very first time, your Honor, they say, "By the way, we're principals, so you don't have any kind of expectation of fiduciary duty from us." "By the way, we're a principal, we're not who you think we are." So that's essentially -- it's essentially what happened here. And then they draw these distinctions between State Street Bank and State Street Global Markets and say, "Wait a second, it's not State Street Bank that's the custodian, it's actually State Street Global Markets that executes

the trades," and basically they do this huge, you know, scrambling and backing and filling, as we allege, after the -- after the, um, the California complaint comes out. And then, your Honor, they decide to -- they decide finally to disclose all the markups and all the markdowns on a website.

And low and behold, in 2010, the next year, it turns out -- and there was a study that was commissioned on this business, that trading costs on standing instruction trades went down by 63 percent.

THE COURT: Is that in the complaint?

MR. GOLDSMITH: Yes, sir. It is, sir. Um, and you can see -- and so what you can see is that it must be that the markups were reduced.

And one thing that's interesting, your Honor, is that Judge Easterbrook, in the ***Mexico Money*** case, noted that one of the -- part of the, um, relief that was granted -- that was agreed to in that settlement was that -- um, was that the Mexico Money company agreed to disclose the FX spreads, it agreed to disclose to customers what was -- how it was making money off of those FX spreads, and Judge Easterbrook himself noted that such disclosure would promote competition that would narrow the spreads. He said, "That's not an outcome to be sneered at." And that's exactly what

happened here. As you know, for State Street, however, they didn't do it voluntarily, they were forced by California -- by the litigation, your Honor, to disclose the markups and trading losses dropped significantly there as a result.

Now, ***McCann*** concerned the profit made by money transmitters, the same basic factual scenario as ***Mexico Money***. So all the court in ***McCann*** did, your Honor, was just simply follow the quite sweeping factual assertions by Judge Easterbrook in ***Mexico Money*** that were not based on a record, and I think as your Honor suggested it was based on the learned judge's own sense of how the market works. That's not -- those assertions --

THE COURT: I'm not so learned. I mean, I just don't -- I don't think I know. When I'm in court I usually know things based on what I'm taught by the lawyers and the experts and the witnesses. We don't have that at this stage yet.

MR. GOLDSMITH: Well, that's right, your Honor. As the Court has said, there's no basis to accept any of that today, and we would dispute it anyway.

And what I would like to mention about ***McCann***, your Honor, and I think it's very important, is that the plaintiffs there -- and I believe counsel for the

defendants here mentioned this, is they sort of claim it under the California Unfair Competition Law, which is similar to the Chapter 93A issue, your Honor, and that claim was dismissed.

Here, however, in a case, um -- in a case called ***Local 39 vs. Bank of New York***, there were reasons -- yeah, it's part of our submissions, your Honor.

THE COURT: Okay, then I'll get it. I have it here. I just haven't read it.

(Pause.)

MR. GOLDSMITH: Hold on, your Honor.

THE COURT: What's it called?

MR. GOLDSMITH: It's called -- well, I'll give the short name. It's called -- it's got a long pension --

THE COURT: Yeah, what's the first name?

MR. GOLDSMITH: ***International Union of Operating Engineers***.

THE COURT: Okay.

MR. GOLDSMITH: ***vs. the Bank of New York, Mellon Corporation***.

THE COURT: I have it.

MR. GOLDSMITH: Yes, sir. Okay. We submitted this as supplemental authority, but this case actually was litigated by my able colleague, Mr. Chiplock.

This is a very recent decision, um, denying a motion to dismiss and this is a decision by Judge Alsup in San Francisco, um, and the case is against Bank of New York alleging, really for all intents and purposes, the same FX pricing scheme, um, the same, um, alleged unfair deceptive practices that we allege here.

And what happened there, in ***McCann***, your Honor, is that the court there upheld a California Unfair Competition Law claim based on those allegations, which are really quite analogous to our allegations here. The Court said a number of things. The Court said that any supposed convenience of standing instruction FX trading was outweighed by the enormous financial cost of those trades and a loss of trust between the bank and their custodial clients. That happened here. We allege the same thing. Judge Alsup also noted there that the bank was misrepresenting the FX trades at which the bank was transacting. And here we allege that the rates that were, um -- that were, um, disclosed to the Arkansas Fund and other custodial clients, in periodic statements, um, that they hid the very substantial embedded, um -- they concealed the very substantial markups that were undisclosed and were at variance with the representations made in the contracts and the IM Guides.

So in ***McCann*** and ***Mexico Money*** and ***Gossels***, you know, there were no misrepresentations, there were no disclosure problems that might have set those cases on a different course. Here you have a deception, um, that is -- that is -- that would take this case really away from those three. You know, there the defendants essentially there did what they said they would. Um, here, we allege that they did not.

Now, one other point that was made was the publicly-available nature, apparently, of interbank rates and the defendants argue that you knew the whole time that whenever you got a rate, that it was outside the range because you could have looked at any point. That again is a pure factual assertion that, respectfully, can't be credited today. And the defendants, in fact, have said a number of times in their submissions -- and we don't dispute this particular assertion, that there is no single interbank rate for a given currency at any time. The FX market simply is not as integrated as say the equity markets where you always know what the price of any stock is at any, you know, closing date. You don't have the kind of ability to look up rates as a fait accompli in that way. And the analysis that we did was based not on, um, interbank rates that were looked up on Bloomberg and

Reuters -- which usually charge fees, by the way, for that access, but by a consultant with a proprietary database who has experience in the FX markets, has a proprietary database of more than 2 million trades, and that was the source which of course was done in preparation for the complaint and not done at the same time.

So the -- and I think there's a problem with the argument that Arkansas could have looked at the same time. We allege that State Street was -- we allege that State Street and Arkansas had a -- they had a relationship of trust and confidence and State Street -- and I think it's quite improper for State Street to kind of turn the tables on their clients and say "You should have known what we were doing because every time you got a monthly statement that was this big and had hundreds and hundreds of lines in the copy, you should have taken that statement, you should have walked over to the computer terminal and spent your entire day trying to figure out the numbers and so forth." So I think the argument should be taken in that context.

And not all of the trades, your Honor, were done outside the range of the day. For trades that were done within the range of the day, and what happened actually as we learned from --

THE COURT: What's the range of the day?

MR. GOLDSMITH: Oh, I'm sorry, your Honor. "Range of the day" is the interbank range of the day. So you have a high or low every day. And what our analysis -- one thing our analysis shows, as alleged in the complaint, is that more than half of the standing instruction trades that were taken, um, on behalf of Arkansas, went outside the range of the day. We use that undisputed fact to show the enormous disparity in the markups and to show how there was no relationship at all between those trades and those interbank market rates.

Now, State Street says, "Well, that's meaningless, you're Arkansas, you're not the Bank of England, you're not entitled to interbank rates as a matter of course. And that might be correct, that they might not be entitled to interbank rates for every trade as a matter of course, but there's nothing to say that if you have a trade at a price at one point within the interbank range of the day, you can have a reasonable markup and still be within the interbank range of the day. But it simply does not follow that you can blow-out the range, to use a colloquialism, and constantly charge Arkansas a huge, average 64.4, um, percent -- excuse me, basis point markup on all of those trades.

And there's no basis -- Arkansas was not a small client, Arkansas traded on standing instructions alone approximately $420 million a year on average. This is not someone walking up to the kiosk, this is not someone transmitting money, this is a lot of money at stake. And to go outside the range on a regular basis, more than half the time, without disclosure, we allege, your Honor, that that's unfair and unsettling.

And there was never any disclosure, in particular, that State Street was acting as a fiduciary. And we don't know how -- as a principal. As a principal. I apologize.

THE COURT: This distinction is not obvious to me. What's the difference between an agent and a principal in this context?

MR. GOLDSMITH: As I understand it, your Honor, when State Street asserts that they were a principal, it means that essentially they were at arm's length --

THE COURT: So they were -- I'm sorry. Go ahead.

MR. GOLDSMITH: Yeah, and almost in competition with the counterparty, with their client. So they're saying, "Too bad, Arkansas, you should have known that I was trying to make as much money off of you

as possible, and if you didn't know that, it's your fault because you could have gone to some computer terminal and looked up a whole bunch of code." That's really the argument here, your Honor, if I could just, you know, say it like that. And especially here at the pleading stage, I respectfully suggest that that's an argument you should not credit.

THE COURT: But that would be a factual issue, whether they were an agent or a principal, I suppose, at best from your perspective.

MR. GOLDSMITH: That's correct, your Honor, it is a factual issue and there's a lot of issues that go along with that. And I'm no expert on the principal/agent relationships.

But there's a question of who are they a principal to, are they a principal to the Arkansas fund or are they a principal to a counterparty when they bought from the Bank of England at the interbank rate? How did that operate? And even if they were a principal in terms of execution, there's no license there, your Honor, to price the trade however you want. So just because you're a principal doesn't mean, without disclosure, that you can say, "Arkansas, I'm going to give you a rate that's 18 times the usual, um, negotiated trade." So it shows the disparity there.

And just on that, your Honor, defense counsel talked about the markups being tiny and that there's no spread and -- I'm sorry, he didn't say there's no spread, he said the spread was narrow and that this is .00008 percent. Well, the 3.6 basis point average markup on the negotiated trades, State Street was just fine with that when they were doing negotiated trades. So State Street is accepting of a markup on negotiated trades of that basis point amount.

If you multiply that by 18, that's money. The average standing instruction trade, your Honor, and defense counsel were talking about a "small fry" and "small bore" and a "tiny lot" and all that stuff. The average standing instruction trade was $284,000. That's -- that's not nothing, even in a nonbillion dollar fund. It's actually a lot when you think of the fact that a lot of the standing instruction trades --

THE COURT: It's a lot more money than a federal judge makes in a year.

MR. GOLDSMITH: Sadly.

A lot of the standing instruction trades, your Honor, were repatriations of dividend payments and interest. "Repatriation" simply means changing the money back from foreign currency into the base currency or U.S. dollars. $284,000 is a substantial amount of

money. You can't walk up to a Logan Airport currency kiosk and change $284,000. You can't walk into a Mexico Money transfer service and try to remit $284,000, I don't think. If you take $10,000 out of the bank, they have to report it to the federal government under the Patriot Act.

So I think to try to suggest that these were tiny trades that were -- you know, that require a lot of energy and a lot of work for State Street that would justify a high markup is simply not true. In fact, I would suggest, your Honor, that there was less work involved in the Custody FX trades than there were in the negotiated trades. In negotiated trades, you have to have a trader on the other end of the phone line, you have to have overhead, you have salary, you have benefits, you have to pay that person.

The Custody FX trade was highly automated. They referred, in the November 2009 Guide, to their -- the dividend and interest, um, trades, as "automated." They used a computer. So there's no operational distinction, as we understand it, that would permit them to charge 18 times as much than -- on the standing instruction trades than on the negotiated trades.

They talk about the plausibility. So they argue to your Honor that, "We knew we were, um -- that we were

paying a minor markup on the negotiated trades," and so it's implausible that they didn't know that they were marking up standing instruction FX trades as well. I suggest, your Honor, that one thing doesn't follow the other. "Standing instruction" means you have a set procedure for pricing that was followed each time. Custody FX clients were led to believe that State Street profited from the overall custodial relationship. Custody FX was part of that relationship. Negotiated trades was a different animal with transparency and live bargaining power.

THE COURT: Well, why would you pay anything for negotiated trades if you thought it was part of the suite of services you got for free from your custodian?

MR. GOLDSMITH: Well, our understanding -- and again, your Honor, all of the trading that was done was done by the Investment Managers. They may have believed that they could get a better rate in a negotiated trade than a standing instruction trade because of a relationship they had.

THE COURT: How are they going to get better than zero?

MR. GOLDSMITH: I don't know if they knew. I think they were duped in the same way. And there was an assumption that we would do no worse with a negotiated

trade. So there's no reason to -- we had no reason to suspect that we would be gouged in a standing instruction trade relative to a negotiated trade where there were no additional sources.

And the assertions about convenience and risk mitigation again are, um -- are facts that are rejected, um, that cannot be accepted for their truth, and frankly, you know, we disagree with those.

THE COURT: All right.

MR. GOLDSMITH: The contracts. I'm trying to make sure I'm covering the waterfront, your Honor.

THE COURT: Yeah, we've got about five more minutes now and then I have to stop and perform some Chief Judge duties for about an hour, so we won't finish until after lunch. But I hope we can finish your argument shortly.

MR. GOLDSMITH: I'll try. I will do so, your Honor.

The contracts. Um, Section 2.6, your Honor, states clearly that it authorized -- that State Street was authorized, "upon receipt of proper instructions, which may be standing instructions," and it says that in black and white, "to pay out monies for the purchase and sale of foreign exchange or foreign exchange contracts for the account of the fund." That embraces standing

instruction FX and it embraces it on its face and is not simply a processing fee, but it embraces all the aspects of a trade including the markup or markdown. That is Article 2 of the contract. It lists the "duties of the custodian with respect to property held by the custodian," and that is one of the duties. And as your Honor has noted, the Section 4 of the contract limits any compensation to, um -- to the written fee schedule.

And there's no argument here that these markups and markdowns were not -- did not result in compensation. State Street had hundreds of millions of dollars in FX revenue every year.

Now, the argument about the fee schedules, there's a different way you can look at it, because in both of the two fee schedules that your Honor has focused on today, the first one and the last one, there was a section of those, um -- of those fee schedules that concerned transaction fees and those were transaction fees for trades in -- of the securities of foreign countries. So it stands to reason that --

THE COURT: Wait. Tell me this again? Which exhibits are you looking at?

MR. GOLDSMITH: Sure. Um, Exhibit H.

THE COURT: Okay, I have H. Go ahead.

MR. GOLDSMITH: So your Honor has seen on Page

3 the "No charge" language?

THE COURT: Right.

MR. GOLDSMITH: And the heading there says "Other charges only if applicable." But on Page 1 of the document, there's a heading called "Transaction Fees."

THE COURT: Wait a minute.

(Pause.)

THE COURT: Okay.

MR. GOLDSMITH: And if the "No charge" language, your Honor, referred solely to nominal per-trade processing fees, then that provision rationally should have been part of the "Transaction Fees" category, which is about that, per-trade processing fees, per-international trade processing fees, rather than the "Other charges." So it's by no means clear.

THE COURT: All right.

MR. GOLDSMITH: The fiduciary duty point, your Honor. Your Honor mentioned the ***Patsos*** case. We agree that that's the leading case.

(Pause.)

MR. GOLDSMITH: Sorry, Judge. What the ***Patsos*** case says, your Honor, is that there's -- that the relationship between a financial institution and its

client, whether it's ordinary or fiduciary, is intensely factual, it's not easily determined at the pleading stage, and there's three principal considerations, according to the SJC, in that case, the degree and discretion of customer interest, the special level of trust and confidence, and the disparity of the relationship. I would submit, your Honor, that this case fits into those three considerations perfectly, despite the assertions of principal and the fact that State Street is not a stockbroker in the traditional sense.

A custodian with $9 billion -- holding $9 billion in trust, a State Street Bank and Trust Company -- not just State Street Bank, a State Street Bank and Trust Company. State Street was in control of all aspects of the Custody FX trades, your Honor, and that included the timing and setting of rates. Arkansas and other clients placed their trust in State Street to do it right.

The methodology that was finally disclosed in November of 2009 is consistent with that. You have a level of trust and confidence. There's no question that custodial clients repose trust and confidence. State Street had far superior knowledge. And the complaint alleges, quite clearly we think, an abuse of the relationship that was occasioned by the disparity of

power and knowledge. You have an imbalance of knowledge, you have a lack of transparency that is distinct -- that is distinct from the negotiated trade side, and we would argue, your Honor, that a fiduciary relationship exists here or at least that we sufficiently alleged that a fiduciary relationship exists.

THE COURT: Well, this has become, in some respects, more complicated rather than more clear because of the extent that State Street argues that it wasn't acting as a broker or agent for Arkansas, but it was buying for its own account and selling, you know -- you were selling at some rate where you knew they were enriching themselves. But that would be a factual issue for --

MR. GOLDSMITH: They knew they were enriching themselves, your Honor. We did not know.

THE COURT: Do you have much more?

MR. GOLDSMITH: I have one more point and I appreciate the Court's time.

THE COURT: Sure. Go ahead.

MR. GOLDSMITH: Just on fiduciary duty. Very quickly.

The custodial contract, it's been known that -- that it got set forth a reasonable care standard. Um,

the fiduciary relationship here is not dependent on the language of the contract, it's based on the nature of the relationship, and I think what's important to mention is that State Street has insisted more than once -- I believe it was Mr. Paine's argument, that the custodial agreements have nothing to do with FX trade executions, that that's totally a separate thing, and that we can't rely on that. So you can't say that -- that there's no fiduciary duty because a reasonable care standard wasn't met.

And unless the Court has any other questions?

THE COURT: No, I think we're going to stop for now. I want to take a look at some of these cases more closely, but I'm not going to be able to do that for about an hour.

Why don't you come back at 2:15 and, in the interim, I'd like you to confer on this issue of State Street Global Markets, State Street Global Markets, LLC.

Do I understand correctly that it's the defendants' position that State Street Global Markets would be an appropriate defendant, but not LLC?

MR. PAINE: Um, well, what we'd be happy to represent to the Court is that all of the FX trades that were executed between anybody related to State Street

and Arkansas were executed by the State Street Global Markets division of the bank. So the only defendant is State Street Bank and Trust Company. State Street Global Market, LLC is a subsidiary of the parent that did not deal with Arkansas.

THE COURT: All right.

MR. GOLDSMITH: Your Honor, I'm more than happy to confer and to work out any kind of scrivener's error. It sounds like a minor issue to me.

THE COURT: Okay. I mean, it sounds like, if I understand it right, they're saying that Global -- that State Street Global Markets is not an independent legal entity that's subject to suit, that if you sue State Street Bank and Trust, that includes claims arising out of the conduct of State Street Global Markets.

MR. PAINE: Correct.

THE COURT: We'll talk about it.

MR. GOLDSMITH: I understood.

MR. RUDMAN: Your Honor, after lunch can I have two minutes of rebuttal with respect to my friend's commentary?

THE COURT: Yeah, you can have two minutes.

MR. RUDMAN: I can.

THE COURT: All right. I'll be back at 2:15

or as soon thereafter as I'm ready for you. The Court is in recess.

(Lunch recess, 1:00 p.m.)

(Resumed, 2:20 p.m.)

THE COURT: Good afternoon. Were you able to reach some agreement with regard to this State Street Global Markets issue?

MR. PAINE: Yes. We've agreed that State Street Global Markets, LLC should be dismissed without prejudice.

MR. GOLDSMITH: If I could add just one minor footnote to that, your Honor?

I believe that -- we did consult during the break. I believe Mr. Paine made representations to the Court about whether State Street Global Markets, LLC had any involvement in FX trading with respect to the plaintiff, the Arkansas Fund, and we would ask for some reassurance that that -- that the same is true with regard to other custodial clients, um, of State Street so that the members of the class, um, also would not have -- or file any claims against that particular entity.

MR. PAINE: It is a true statement that State Street Global Markets, LLC has nothing to do with indirect FX application and therefore nothing to do with

the trades at issue in the complaint either with Arkansas or any other member of the putative class.

THE COURT: All right.

MR. GOLDSMITH: Thank you.

MR. FRANKLIN: Okay. So State Street Bank Global Markets, LLC is dismissed without prejudice and if something arises in the future, it just -- an amendment required by justice will be permitted.

And we haven't discussed it. I told you I don't see a proper basis for keeping State Street Corporation in the case under the Massachusetts standards alleged by -- or stated in the ***My Bread*** decision, for example. Okay?

MR. GOLDSMITH: Understood.

THE COURT: All right.

Mr. Rudman, you wanted two minutes?

MR. RUDMAN: Very briefly.

First, your Honor, you've asked consistently and fairly throughout oral argument, "Where is this in the complaint?" Did you ever hear from my friend where in the complaint you found the allegation that State Street accepted these fiduciary duties? Where did you say we were told that they were relying on us and we said, "Yes, we understand that"? All you were told is that a principal dealer can be a fiduciary for this pension

plan. That's not even, if I may, close to right.

You did hear, however, that State Street caused these IM guidelines to be distributed to the IMs who were working for Arkansas, in other words, the folks who really are the fiduciaries here, the folks who are the agents here. And if you look at the Hornstine affidavit, Exhibit O, at Page 37, you will find the following language: "FX transactions" -- now, this is a quote, not a paraphrase. "FX transactions are priced based on the market rates at the time the trade is executed." That's what happened here. The trade -- the prices were based -- based on the rates, they weren't the rates.

THE COURT: And at best that's -- I noticed that, too, and anticipated that argument. At best that's ambiguous and potentially misleading because somebody might misconstrue that to mean you're going to get the rate, um -- the market rate at the time the trade is executed. But hold on a second.

That's O, right?

(Pause.)

THE COURT: All right. Well, I don't want to use up your two minutes.

MR. RUDMAN: No, all I was going to say is let me suppose with you that therein lies the ambiguity.

What that means is that somebody at this pension plan and across this class could have believed this pension plan was to be treated as though it was the Bank of England. That's the implausibility that lies at the heart of this case.

And if I may, Judge, and I'm going to sit down. If I could appeal to your 18th century ways and the Tory within, you ought to join with Dr. Johnson and say, "Here, sir, incredulity must take a stand and this case, which is so utterly implausible, should be dismissed." Thank you, sir.

(Pause.)

THE COURT: All right. This is a case in some respects -- which in some respects the argument has complicated rather than clarified the analysis in my mind, but my tentative view endures.

I am allowing the motion to dismiss the claim against State Street Corporation, the parent of State Street Bank and Trust, that the allegations are not sufficient to state a plausible claim to pierce the corporate veil. The issue of the claims against State Street Global Markets, LLC are being dismissed without prejudice and pursuant to the agreement of the parties. For the reasons I'll describe, I'm denying the motion to dismiss any and all of the claims against State Street

Bank and Trust.

This is a case or a matter where the definition of the question is decisive. In denying the motion to dismiss, I'm not making any prediction concerning the merits of the claims or the likelihood that the plaintiff will be able to prove any or all of them. That's not, as the lawyers know, the judge's proper role at this point. Rather I'm required to take all of the allegations of the complaint as true, draw all reasonable inferences in the plaintiff's favor.

I may consider documents sufficiently referenced in the complaint. The documents that have been submitted and can properly be considered and in fact were submitted by the defendant include or are the following.

One, the four custodian contracts between Arkansas Teacher and State Street during the relevant period. Two, seven fee schedules executed by Arkansas Teacher and State Street during the relevant period which governs State Street's fees for various custodial banking and related services under the custodian contracts, although what those services are is a matter that's in dispute. Three, examples of State Street Investment Manager Guides which contain comprehensive information about State Street's custody practices and

services for Investment Managers and clients. These documents are not disputed and are both essential to the plaintiff's claim and sufficiently referred to in the complaint to be considered on a motion to dismiss.

I have to decide whether the plaintiff, with regard to each count essentially, has stated a plausible claim for relief. This is the standard of ***Iqbal*** and ***Bell Atlantic***. It's a higher standard than was applicable previously. Among other things, "bald assertions, unsupportable conclusions are not sufficient," as the First Circuit said in ***In re Citigroup***, 535 F.3d 45 at 52. While a higher standard than before ***Bell Atlantic*** and ***Iqbal***, it's still a very friendly standard to the plaintiff and it is the standard I've applied in reaching my conclusions.

In this case the plaintiff, Arkansas Teacher Retirement System, filed this putative class action against defendants State Street Corporation, State Street Bank and Trust Company, and State Street Global Markets, LLC, I believe. The plaintiff alleges the defendants engaged in deceptive acts and practices in connection with foreign currency exchange or FX transactions executed on behalf of their custodial bank clients including the plaintiff. In essence, plaintiff contends that State Street charged clients inflated FX

rates when they bought foreign currency and deflated FX rates when they sold foreign currency and pocketed the difference between the rates it paid to conduct those transactions and the rates it charged its clients.

Arkansas Teacher asserts class claims under Sections 9 and 11 of the Massachusetts Consumer Protection Act, Mass. General Laws Chapter 93A, and further asserts class claims for breach of duty of trust and negligent misrepresentation. Plaintiff also asserts an individual claim for breach of contract. The asserted class period is January 2, 1998 to December 31, 2009. The -- there is an amended complaint on which I focused in deciding the motion to dismiss.

The defendants' motion to dismiss alleges that the plaintiff has failed to state a claim for breach of trust because State Street owed no fiduciary duty to the plaintiff. Second, that plaintiff has failed to state a claim under either Section 9 or Section 11 of Chapter 93A. Third, that the plaintiff has failed to allege elements of a negligent misrepresentation claim. Four, that the plaintiff has failed to state a claim for breach of contract. In addition, defendants contend that plaintiffs' claims are partially time barred by the applicable statutes of limitation and, as I said earlier, that State Street Corporation and State Street

Global Markets, LLC are not defendants as to whom a plausible claim has been stated.

Some of the key alleged facts include the following. Arkansas Teacher executed four custodian contracts with State Street during the relevant period. This custodian contracts were dated September 15, 1998, July 1, 2001, June 29, 2004, and June 30, 2009. Each custodian contract provided that the agreement shall be construed, um, and the provisions thereon interpreted under and in accordance with the laws of the State of Arkansas to the extent not preempted by federal law.

Custodian contracts authorize State Street to pay monies out of Arkansas Teachers' account for FX transactions. That, for example, is Section 2.7(e) of the 2009 custodian contract. Each custodian contract also specified, in substantially the same language, that State Street's compensation would be determined by a separate fee schedule. Each contract said: "The custodian shall be entitled to compensation for its services and expenses as custodian set forth in a written fee schedule between the parties until the parties agree in writing on a new fee schedule or compensation."

Pursuant to the custodian contracts, Arkansas Teacher and State Street executed seven fee schedules

effective September 15, 1998, July 1, 2001, July 1, 2004, July 1, 2007, April 1, 2008, and November 1, 2008, as well as July 1, 2009. The fee schedules, in essence, provided State Street with annual flat fees and set forth categories of ancillary services for which State Street was permitted to charge additional fees. The first fee schedule for 1998 provided, quote, "No charge will be assessed for each foreign exchange executed through a third party. A foreign exchange through State Street, no charge," end quote. The next five fee schedules were silent as to cost, fees or charges for FX transactions. The 2009 schedule stated a third party FX charge of $25 would be applied for all foreign exchange trades transacted through State Street. I'm sorry. "A third-party FX charge of $25 would be applied for all foreign exchange not transacted through State Street. A transaction cost for all foreign exchange trades transacted through State Street will be waived."

The defendant now argues that the fees that I just referenced and described were for shipping-and-handling-types of ministerial charges and did not cover compensation for executing FX transactions. The defendant now argues that State Street is operating as a third party at arm's length in dealing with the FX transactions at issue here, those conducted pursuant to

standing instructions.

At best this creates an ambiguity about the meaning of the relevant contracts. Under Arkansas law as described in cases like ***Keller***, 877 Southwest 2d 90 at 95, if there's an ambiguity, it is necessary to have discovery and then parol evidence is admissible for the -- to permit the factfinder, ultimately a jury, to determine the meaning of the contract. If I determine that the contract is ambiguous, a jury will ultimately decide the meaning of the contract, whether the statement that there's no charge for each foreign exchange transaction -- that State Street would receive no compensation for its actions as a broker in those transactions? Which is what the plaintiff alleges.

But in any event, the contract is certainly plausibly susceptible to be interpreted the way the plaintiff alleges it should be interpreted and at this point I am doing that even if, on more consideration, I might find that it's ambiguous.

In addition to the custodial contracts and fee schedules, during the relevant period State Street issued at least fifteen different Investment Manager Guides to custodial clients and outside Investment Managers. The Investment Manager Guides contain comprehensive information about State Street's custom,

practices and services, including details on procedures, requirements and costs for various transactions. According to the complaint, in the Investment Manager Guide issued between July of 2003 and January of 2009, State Street stated that it, quote: "State Street foreign exchange transactions are priced based on market rates at the time the trade is executed." I note that although not pled in the complaint, the next sentence is: "Rates must be obtained directly from State Street Global Markets."

Examples of these Investment Manager Guides show that although they describe various services or procedures relating to FX trades, they provide no specific information regarding cost or pricing of FX transactions. The defendant argues that the statement that "FX transactions are priced based on market rates at the time the trade is executed" does not mean that the customer, Arkansas Teacher, is given those market rates. But again, at best, there's an ambiguity that will need to be resolved after discovery.

The complaint alleges that State Street charged the plaintiff and other custodial bank clients hidden fees for standing instruction FX trades during the class period by adding or subtracting basis points, or hundredths of a percentage point, to FX rates when

reporting standing instruction FX trades to clients. According to the complaint, when a custodial client requested that State Street execute an FX transaction, the trade would be executed, but trade information that did not reflect the actual rate that State Street received or paid to conduct the transaction would be entered into State Street's computer system. The complaint asserts that State Street charged clients inflated FX rates when clients bought foreign currency and deflated FX rates when clients sold foreign currency via standing instruction FX transactions and, as I said earlier, pocketed the difference. These additional charges are frequently referred to as "markups" or "markdowns." The defendants do not dispute that the markups or markdowns occurred.

The complaint asserts that the plaintiff did not agree to the markups or was not aware of them during the relevant period because financial reports State Street sent to Arkansas Teacher showed only the rate that State Street charged for each standing instruction FX trade and did not include any information such as the interest -- such as the interbank FX rates at the time each trade was executed that would have allowed the plaintiff to determine he was being charged these extra costs. The plaintiff states that he only became aware of State

Street's standing instruction FX practices after a lawsuit was filed on October of 2009 by the Attorney General of California. A California lawsuit made substantially the same allegations as the allegations made in this case asserting that State Street wrongfully charged California pension plans markups on standing instruction FX trades.

All right. The plaintiff has alleged a plausible claim for breach of fiduciary duty. There is a plausible claim that the defendant was acting as a broker for the plaintiff, not as a third party negotiating with Arkansas Teacher at arm's length for its own benefit. The defendant did not have the discretion to decide what trades should be made, therefore it did not have a general fiduciary duty to Arkansas Teacher, essentially as explained by the Supreme Judicial Court of Massachusetts in ***Patsos*** at 433 Mass. 323 at 333. However, for nondiscretionary accounts, as plaintiffs allege the account here to be, each transaction is viewed singularly, but "the broker is bound to act in the customer's interest when transacting business for the account," the SJC went on to say that in ***Patsos***. This is sometimes called a "transactional fiduciary duty." This duty includes, among others, the duty not to misrepresent any fact

material to the transaction, the Supreme Judicial Court indicated in ***Patsos*** at 333, Note 15. Where as here a fiduciary duty exists, the Supreme Judicial Court has indicated, in the context of analyzing statute of limitations defenses, that the fiduciary has a "duty to disclose adequate information" to apprise a plaintiff that it has a cause of action. The Supreme Judicial Court wrote this in ***Patsos*** at 329 quoting and citing ***Demoulas,*** 424 Mass. 501 at 519. The plaintiffs adequately allege the defendants violated this plausibly alleged fiduciary duty.

In addition, even in the absence of a fiduciary duty, a half truth is an actionable misrepresentation. If a party said something, it must "speak honestly and divulge all relevant material facts," as the Mass. Appeals Court said in ***Golber***, 46 Mass. Appeals Court 256 at 258.

In this case, it is plausibly alleged that defendant State Street entered into custodial agreements that may plausibly be interpreted as providing the custodian would receive the compensation stated in a written fee schedule between the parties. The only relevant fee schedule which references FX transactions, the 1998 fee schedule, stated there would be no charge for FX transactions. The other agreements are silent, I

believe, as to FX transactions.

As I indicated, the Investment Managers Guides did not disclose that State Street was making money on the standing instruction FX transactions. The plaintiff could have plausibly believed that there was no extra charge for the FX services, but rather that they were covered by the substantial custodial fee that was being paid.

This may not prove to be a strong claim. I do recognize that it's discernable from the complaint that the plaintiff was paying and knew it was paying something for negotiating the transactions and, um, I'm sure I, if we get that far, and the jury will hear repeatedly "How can they honestly say they weren't paying for standing instruction transactions? If they thought those were free, why negotiate a rate?" But this, as I said earlier, is not a point at which the Court decides even whether the evidence is sufficient for a jury to reasonably find for the plaintiff. There is no evidence, there are only allegations.

So I find that the alleged facts and the reasonable inferences drawn from them state a plausible claim for a breach of fiduciary duty. I find that cases like ***Gossels***, 453 Mass. 366 are distinguishable. For example, ***Gossels*** was decided after a trial, not on a

motion to dismiss. Among other things, the Supreme Judicial Court found that it was undisputed -- or there was undisputed testimony that customers would call a dedicated phone number to get the daily retail currency exchange rate that the bank allegedly kept secret. The plaintiff here alleges that while an expert, until today, using a proprietary database was able to retroactively figure out what the daily retail -- what the daily exchange rates were, um, that couldn't have been done in real-time by Arkansas Teacher. It is plausible, as the plaintiff argues, that comparable information, that is, information comparable to the information available to Mr. Gossels was not available to Arkansas Teacher.

I have now -- I have, since we took the lunch break, read or reread ***Mexico Money***, 267 F.3d 743, ***McCann***, 29 Cal. Reporter 3d at 437, and ***International Union*** at 2012 Westlaw 476526. I note that the rates in ***Mexico Money*** and ***McCann*** were also publicly available. The plaintiffs -- the plaintiff class knew what rate it was getting in advance. Those cases involve individuals dealing retail with businesses that took dollars from individuals of the United States and converted them into foreign currency for the benefit of their families and others. Different laws were being applied, none of them

were decided under the laws of Massachusetts, and in none of those cases did the courts -- in ***Mexico Money*** and ***McCann*** there was no finding of breach of fiduciary duty. Or to be more precise, there's no finding of the existence of a fiduciary duty.

I do recognize that ***McCann*** was dismissed, ***Mexico Money*** was a class action, and it's not even clear what the evidentiary basis for some of the factual conclusions were to me. A motion to dismiss claims that are similar to the claims in this case was more recently denied in a federal court in California in ***International Union***.

I find that the plaintiff has also stated a plausible claim for negligent misrepresentation, as the Mass. Appeals Court said in ***Nota***, 45 Mass. Appeals Court 15 at 19. That's usually an issue of fact. As I described earlier, a half truth can be a negligent misrepresentation, as indicated by ***Golber***. The cost of the transactions in this case could plausibly be material. Those costs could reasonably cause a large investor to change custodians or negotiate a more favorable rate with State Street. It is also plausible that the plaintiff could have relied on being told that all of the defendants' compensation would be according to the fee schedule entered into between the parties.

As I noted earlier, the 1998 fee schedule said there was no charge for FX transactions.

I also find that the plaintiff has stated a plausible claim for a violation of Mass. General Law Chapter 93A. However, it's -- it is not possible for me, at this point, to determine whether this case should proceed under Section 9 or Section 11. That's going to require further factual development and argument to decide.

Judge Saris set out what I think are the applicable standards in ***In re Pharmaceutical Industry***, 491 F. Supp. 2d 20 at page 80. If the facts demonstrate the plaintiff is a nonprofit entity whose investment activities were performed in accordance with its legislative mandate in furtherance of its core mission, Section 9, the consumer provision which provides for treble damages in certain extreme cases, would apply. If not, it would be viewed as a big business and Section 11 would be the applicable provision.

This may make a difference not just for whether treble damages or up to treble damages are available, but also for the applicable standard. It appears to me at the moment that under Section 9 a mere failure to disclose a material fact may violate Chapter 93A. That's how the First Circuit in ***V.H.S Realty***, 757 F.2d

411 at 417, interpreted, and I think correctly interpreted, the Supreme Judicial Court's decision in ***Slaney***, 366 Mass. 688 at 784.

In addition, even if we're under Section 11, it appears that if as I had found is plausibly alleged there is -- or State Street had a fiduciary duty to disclose, then a material omission would violate Chapter 93A, Section 11. This may or will need more work by all of us, but as stated in 52 Mass. Practice Series, Section 4.19 at Page 202, um, it may be that under Massachusetts law, quote: "There probably is a general duty of disclosure in Section 9 cases and in Section 11 cases there probably must be a duty to speak before disclosure is required."

Moreover -- although this hasn't been expressly alleged as a separate count by the plaintiffs, um, for Section 9 and 11, a violation of the implied covenant of good faith and fair dealing violates Chapter 93A. And my colleague Judge Saylor discussed this in ***Speakman***, 367 F. Supp. 2d 122 at 141, citing many cases.

I recognize that Sections 9 and 11 have been held to be and are mutually exclusive. However, the defendants' claim that it's Section 11 that should apply here rather than Section 9, or the plaintiffs' claim to the opposite, turns on facts. I have to know more about

Arkansas Teacher's business. And I'm going to defer at least until a motion for summary judgment and perhaps trial deciding which applies here. That's the approach that was taken in ***Lorazepam and Clorazepate***, which I'll spell later for the Court Reporter, at 295 F. Supp. 2d 30 at 43 to 44, a 2003 District of Columbia case.

I also find that a plausible claim has been stated for a breach of contract. Arkansas law governs this claim under the contract. As I indicated earlier, I must apply the plain meaning of the contract as a matter of law if it's unambiguous. If the Court finds the contract is ambiguous, the meaning of it is a question of fact for the jury, which can consider parol evidence -- or the factfinder, which can consider parol evidence. That's ***Keller*** cited earlier.

In this case, the custodial case, State Street is entitled to compensation for services as set forth in the fee schedule. The fee schedules, um, state that State Street will receive no compensation for FX transactions, or at least one of them in 1998 says that, the rest were silent. As I said earlier, I now understand there may be an ambiguity as to whether that covers the standing instruction FX transactions, um, completely or only relates to administrative fees. There seem to be competing sections of the fee

schedules, I assume probably drafted by State Street, but taking undisclosed compensation could be found a breach of an unambiguous agreement or if there is, and I'm now inclined to think there may be, an ambiguity, factual developments require it. The one thing I can conclude now is that the agreement does not unambiguously provide that the fee schedules do not cover standing instruction FX transactions. If State Street, you know, believed it was authorized to take the kind of compensation it took, um, it could have spelled it out clearly and we wouldn't be here today.

With regard to the statute of limitations issues, Massachusetts law governs all but the breach of contract claim. The statute of limitations is three years for all but the Chapter 93A claim, it's four years for the 93A claim, and five years for the breach of contract claim under Arkansas law. As I said, in this case the plaintiff has adequately alleged violations of Massachusetts law were fraudulently concealed in violation of a fiduciary duty to disclose. In view of the fiduciary duty to disclose that's alleged, the statute of limitations began running when the plaintiff had actual knowledge of the injury, as the Supreme Judicial Court held in ***Demoulas***, 424 Mass at 519. This is generally a factual issue.

There were a number of cases that have held, including -- well, a factual issue decided by a finder of fact. Some of the cases noting this are ***Genereux***, 577 F.3d at 360, ***Albrecht***, 436 Mass. at 714 and 715, and ***Patsos***, 433 Mass. at 329.

It is alleged that the defendant fraudulently concealed compensation it was taking for 1998 to 2009. The plaintiff alleges it had no notice of its injury until 2009 when a suit was filed in California making a comparable claim and the defendant revised its Investment Manager's Guide to disclose the compensation it was taking for FX transactions. This case was filed in 2011, therefore the Massachusetts claims at this point, at this motion to dismiss point, um, cannot be found to be time barred.

Nor is the five-year -- nor does the five-year statute of limitations on the Arkansas -- under Arkansas law for the contract claim bar all of the plaintiffs' claims. The briefing doesn't educate me to understand that with discovery the tolling rules apply to the contract claim under Arkansas law. The parameters of that -- for that decision won't affect discovery as far as I can tell. There's at least five years worth of claims that would be in the case and the statute of limitations under Arkansas law wouldn't be a good

waiver.

As I said, the complaint does fail to state a plausible claim against State Street Corporation on a piercing-the-corporate-veil theory under ***My Bread***, 353 Mass. 614 at 619, therefore that claim is being denied, and by agreement the claim against State Street Global LLC -- I'm sorry. I am dismissing -- I'm allowing the motion to dismiss with regard to State Street Corporation and the parties have agreed that State Street Global, LLC will be dismissed without prejudice.

I will enter a very conclusory order saying, in effect, "For the reasons just described, the motion to dismiss regarding State Street Bank and Trust is denied." The transcript will be the record of the decision, at least initially. Um, I encourage you to order it.

And since we're all here, although I failed to order you to confer about a schedule, I do want to see you to talk about setting up a scheduling conference. If you've got your clients here, then bring them back.

Okay? The Court's in recess.

MR. RUDMAN: Does your Honor want us to stay here?

THE COURT: I want you to come back and see me in the jury room.

MR. RUDMAN: Oh, okay. Thank you, sir.

THE COURT: In a few minutes.

MR. RUDMAN: I'm sorry. I didn't understand that.

(Ends, 3:15 p.m.)

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the foregoing record is a true and accurate transcription of my stenographic notes, before Chief Judge Mark L. Wolf, on Tuesday, May 8, 2012, to the best of my skill and ability.

/s/ Richard H. Romanow 05-17-12

_____

RICHARD H. ROMANOW Date

EX. 46

05/08/2012	33	Chief Judge Mark L. Wolf: ORDER entered granting in part and denying in part 18 Motion to Dismiss For the reasons described in detail in court on May 8, 2012, it is hereby ORDERED that: 1. Defendants' Motion to Dismiss (Docket No. 18) is ALLOWED to the extent that the claims against defendant State Street Corporation are DISMISSED and, by agreement of the parties, the claims against defendant State Street Global Markets, LLC are DISMISSED without prejudice. The Motion to Dismiss is DENIED with regard to the claims against defendant State Street Bank & Trust Company. 2. By July 13, 2012, representatives of the parties and their counsel shall meet at least once to discuss the possibility of settling this case; report, jointly if possible but separately if necessary, concerning whether they have reached an agreement to do so; and, if not, report whether they both wish to engage in mediation, either privately or before a magistrate judge. 3. If case is not settled and there is no agreement to engage in mediation, by August 30, 2012, the parties shall respond to the attached Notice of Scheduling Conference. 4. If necessary, a scheduling conference shall be held on September 18, 2012, at 3:00 p.m. Representatives of the parties with settlement authority shall attend. (Attachments: # 1 Notice of Scheduling Conference) (Hohler, Daniel) (Entered: 05/09/2012)

EX. 47

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, ET AL. Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY AND STATE STREET GLOBAL MARKETS LLC AND DOES 1-20 Defendants.	)	C.A. No. 11-cv-12049-MLW **FILED UNDER SEAL**

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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PRELIMINARY STATEMENT

Defendants State Street Bank and Trust Company ("State Street") and State Street Global Markets, LLC ("LLC") submit this memorandum in support of their motion to dismiss the Amended Class Action Complaint ("Complaint") pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim. The Complaint should be dismissed for lack of jurisdiction because Plaintiffs have suffered no injury-in-fact as a result of any conduct challenged in the Complaint; and because they lack standing to bring claims on behalf of any pension plans other than their own plans, or on behalf of collective funds in which their own plans did not invest. In addition, certain claims should be dismissed for failure to state a claim.

FACTS AND ALLEGATIONS OF THE COMPLAINT

A. State Street

State Street provides a range of services to institutional investors through a number of separate divisions. State Street's Investor Services Division ("IS") provides custody services. (*See, e.g.*, Affidavit of Mark Curran ("Curran Aff.") ¶ 4.)[1] As custodian, IS "holds securities on behalf of investors" and performs various administrative functions at the direction of the client or

[1] Because defendants challenge Plaintiffs' Article III standing under Federal Rule of Civil Procedure 12(b)(1), Defendants may "proffer[] materials of evidentiary quality" to "controvert[] the accuracy (rather than the sufficiency) of the jurisdictional facts asserted by the plaintiff." *Valentin v. Hospital Bella Vista*, 254 F.3d 358, 363-64 (1st Cir. 2001); *see, e.g.*, *Fishman Haygood Phelps Walmsley Willis & Swanson, L.L.P. v. State Street Corp.*, No. 09-10533, 2010 WL 1223777, at *7 (D. Mass. Mar. 25, 2010) (dismissing ERISA case for lack of standing for failure to show injury). "Thus, the plaintiff's jurisdictional averments are entitled to no presumptive weight; the court must address the merits of the jurisdictional claim by resolving the factual disputes between the parties." *Valentin*, 254 F.3d at 364. In conducting this inquiry, the court enjoys "broad authority" to consider extrinsic evidence "in order to determine its own jurisdiction." *Id.* at 364; *see, e.g.*, *Gill v. United States*, No. 05-10309, 2009 WL 3152892, at *3 (D. Mass. Sept. 25, 2009) (in deciding a motion to dismiss under Rule 12(b)(1), court may "'make such factual findings as are necessary to determine its subject matter jurisdiction'" (quoting *Rivera-Flores v. Puerto Rico Tel. Co.*, 64 F.3d 742, 748 (1st Cir. 1995))).

the client's investment manager, including "the guarding and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities." (Complaint ("Cmplt.") ¶ 51.) State Street's custodial clients include pension plans, such as the three plans in which Plaintiffs allegedly are participants. (*Id.* ¶ 52.)

State Street Global Advisors ("SSgA") is a division of State Street that is an investment manager. Among other things, SSgA manages collective investment funds, which are investment vehicles consisting of pooled assets that are similar to mutual funds. (Affidavit of Robert Dempsey ("Dempsey Aff.") ¶ 4.) Some pension plans designate SSgA-managed collective funds as permitted plan investments. (*See* Dempsey Aff. ¶ 4.)

State Street Global Markets ("SSGM") is a division of State Street that acts as a principal dealer in foreign currency. (Affidavit of Catherine M. Hayes-Duffy ("Hayes-Duffy Aff.") ¶ 4.) Investment managers for State Street custody clients are permitted to cause their clients to trade foreign currency with SSGM. (*Id.* ¶ 6.) No other State Street entity executed foreign exchange transactions with State Street custody clients during the putative class period of January 1, 2001 through the present (the "Class Period"). (*Id.*)

LLC is a legal entity distinct from State Street,[2] which does not execute foreign exchange transactions with custody clients of State Street. (*See* Hayes-Duffy Aff. ¶ 5.)[3]

[2] LLC and State Street are both subsidiaries of State Street Corporation. (Hayes-Duffy Aff. ¶ 5.)

[3] As the Complaint acknowledges, State Street has represented that foreign exchange trading between State Street and its custody clients is executed by the SSGM division of State Street (not LLC). (Cmplt. ¶ 15.) Plaintiffs nevertheless name LLC as a defendant, apparently because of mistaken assumptions not logically supported by factual allegations, and their own admitted confusion. (*See id.*)

B. The Plaintiffs And The Plans

Plaintiff Michael T. Cohn ("Cohn") is an alleged participant in the Citigroup 401(k) Plan (the "Citi Plan"). (Cmplt. ¶ 11.) Plaintiff Arnold Henriquez is an alleged participant in the Waste Management Retirement Savings Plan (the "WM Plan"). (*Id.* ¶ 10.) Both the Citi Plan and the WM Plan are defined contribution retirement plans (the "defined contribution Plans"). (*Id.* ¶¶ 10, 11.)[4] Plaintiffs William R. Taylor ("Taylor") and Richard A. Sutherland ("Sutherland") are alleged participants in the Retirement Plan of Johnson & Johnson (the "J & J Plan"). (*Id.* ¶¶ 12-13.) The J & J Plan is a defined benefit plan. (*Id.* ¶ 13.)

Although Plaintiffs allegedly participate only in the Citi, WM and J & J Plans, they purport to bring claims on behalf of all pension plans for which State Street served as custodian or manager of collective trust investments.

1. The Defined Contribution Plans

During the Class Period, State Street's IS division acted as custodian and/or a directed trustee of the Citi Plan and the WM Plan pursuant to written agreements with those plans.[5]

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[4] A "defined contribution plan" is "a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account." 29 U.S.C. § 1002(34); *see, e.g.*, *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439 (1999). By contrast, a defined benefit plan, with certain exceptions not relevant here, is "a pension plan other than an individual account plan." 29 U.S.C. § 1002(35). It "consists of a general pool of assets rather than individual dedicated accounts." *Hughes Aircraft Co.*, 525 U.S. at 439.

[5] *See* Duncan Aff. ¶ 7, Ex. B at ¶ 4.2 ("Defined Contribution Plan Trust Agreement Between Citigroup Inc. and State Street Bank and Trust Company" (effective December 8, 2008) [hereinafter, the "Citi Plan Agreement"] & Curran Aff. ¶ 6, Ex. A at ¶ 4.2 ("Defined Contribution Plans Master Trust Agreement Between Waste Management, Inc. and State Street Bank and Trust Company" (effective January 1, 1999) [hereinafter, the "WM Plan Agreement," and together with the Citi Plan Agreement, the "defined contribution Plan Agreements"]. Prior to December 8, 2008, State Street was appointed by the Citi Plan's named fiduciaries as custodian of Citi Plan assets (but not trustee) in a custody contract dated January 1, 1999. (*See* Duncan Aff. ¶ 6 & Ex. A ("Custodian Contract Between Citigroup, Inc., Citibank, N.A. and State Street Bank and Trust Company" [hereinafter, the "Citi Custody Agreement"]).) Under the terms of the custody contract, State Street was appointed to perform certain administrative

Those agreements expressly specified the limited nature of State Street's custodial responsibilities that may be taken without direction from an investment manager or third party. (*See, e.g.,* Citi Plan Agreement ¶ 4.2 ("Administrative Powers of the Trustee")).

More specifically, under the Citi Plan Agreement, as custodian, State Street's powers were purely administrative in nature, and had nothing to do with foreign exchange. (*Id.* ¶ 4.2 (employ agents and subordinate trustees, register securities, and perform other ministerial acts)). As custodian, State Street was not permitted to take any action in connection with the purchase or sale of plan assets without express instructions of an investment manager, a plan participant or the plan administrator. (*Id.* ¶ 4.1.) Absent such instructions, State Street as custodian was not permitted to purchase or sell plan property (*id.* ¶¶ 4.1(a) & (b)), including "foreign exchange and contracts for foreign exchange." (*Id.* ¶4.1(m).)

Although the Citi Plan Agreement contemplates that State Street might be appointed investment manager for plan assets pursuant to a separate written agreement (*id.* ¶¶ 3.5, 4.1), any instruction given as investment manager would not be in State Street's capacity as custodian. The WM Plan Agreement likewise reflects that State Street as custodian had no fiduciary responsibility for foreign exchange trading. (*See* WM Plan Agreement ¶¶ 4.1, 4.1(o), 4.2.) That is, as the Complaint concedes, it is the custody client or the investment manager of given assets (including currency assets) that was responsible for the foreign exchange trading of the defined contribution Plans. (Cmplt. ¶¶ 45-46, 57, 67.)

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functions only upon receiving "proper instructions" from the plan's managing fiduciaries. (*Id.* § 2.) The agreement did not permit State Street to exercise "discretion" in performing these functions except within narrowly drawn limits. (*See id.* § 2.11.) Thus, the custody agreement specified no fiduciary obligations at all. (*See* Citi Custody Agreement ¶¶ 2, 5.)

During the Class Period, the defined contribution Plans' fiduciaries (not State Street) from time to time selected SSgA-managed collective funds as investment options for the defined contribution Plans. (Duncan Aff. ¶ 8; Curran Aff. ¶ 7.) This afforded the defined contribution Plan participants the opportunity to choose these funds as investments for their individual accounts. (Duncan Aff. ¶ 8; Curran Aff. ¶ 7.)[6] Plaintiffs allege that Cohn and Henriquez caused their respective defined contribution Plans to invest assets from their accounts in certain SSgA-managed collective funds (collectively, the "Selected Funds"). (Cmplt. ¶¶ 10, 11 & n.2.) These Selected Funds in turn held units in other SSgA-managed collective funds (the "Sub-Funds"), which in turn may have held units in other such funds (collectively, the "Other Funds"). (Dempsey Aff. ¶ 17 & n.32.)

Plaintiffs do not allege that any foreign exchange transaction was necessary to permit a plan to invest or recoup its investments in SSgA-managed collective funds. Instead, they assert that Selected Funds in which Cohn or Henriquez caused plan assets to be invested (or related Sub-Funds or Other Funds) executed foreign exchange transactions with SSGM or LLC. (Cmplt. ¶¶ 45-46, 57.) In fact, none were executed with LLC. (Hayes-Duffy Aff. ¶ 6.) Plaintiffs do not allege that State Street had any role as investment manager with respect to any assets of the defined contribution Plans other than investments in collective funds managed by

[6] As is the case with a mutual fund, "[n]o Participant [is] deemed to have severable ownership in any individual asset in any [collective fund] or any right of participation or possession thereof." (Dempsey Aff. ¶ 5 & Ex. A, Declaration of Trust § 5.5.) Each fund is "a separate trust and the assets of each [collective fund are] separately held, managed, administered, valued, invested, reinvested, distributed, accounted for and otherwise dealt with as a separate trust hereunder." (Declaration of Trust § 3.1.) Moreover, "[e]very note, bond, contract, instrument, certificate, or undertaking and every other act or thing whatsoever executed or done by or on behalf of any [collective fund is] conclusively deemed to have been executed or done only by or for such Fund." (*Id.* § 3.3.) No collective fund is responsible for any obligations of another collective fund. (*Id.* § 3.3.)

SSgA. (*Id.*) Nor do they allege any basis to infer that they personally suffered injury from any such foreign exchange trading.

[redacted]

The SSgA collective funds made available to defined contribution Plan participants during the Class Period are established as investment trusts. (Dempsey Aff. ¶ 5 & Ex. A, Declaration of Trust § 3.1.) Investors in the SSgA-managed investment trusts receive a beneficial interest in Units that are proportional to their investment in the fund. (*Id.* § 4.1.)[8] Investors are entitled to "withdraw a sum arrived at by multiplying the number of Units withdrawn by the net asset value

[redacted]

[8] These units represent an "undivided proportionate interest in all assets and liabilities of the Fund." (*Id.* § 4.1.)

of each Unit."[9] (*Id.* § 5.3(a).)

2. The J & J Defined Benefit Plan

The J & J Plan is a defined benefit retirement plan. (Cmplt. ¶ 13.) During the Class Period, State Street's IS division provided custody services to the J & J Plan. (Cmplt. ¶ 47.) On January 2, 2001, the J & J Plan's named fiduciary appointed State Street as the J & J Plan's directed trustee. (*See* Connolly Aff. ¶¶ 6-7 & Ex. A & B (J & J Plan Agreement at ¶ 4.2).) Like the defined contribution Plan Agreements, the J & J Plan Agreement provides that, in most respects, State Street performs its custodial services at the direction of the Plan's fiduciaries (not State Street), and sets forth the limited nature of its obligations that might be characterized as fiduciary in nature. (*See* J & J Plan Agreement ¶¶ 4.1, 4.2.) Consistent with Plaintiffs' concession that investment managers or custody clients retain responsibility for foreign exchange

[9]

transactions (Cmplt. ¶¶ 27, 47, 67), the J & J Plan Agreement does not confer any such responsibility on State Street.

The J & J Plan invests its assets in various accounts overseen by investment managers selected by the Plan's named fiduciaries. (*See* Cmplt. ¶¶ 12-13; J & J Plan Agreement ¶ 3.1.) Unlike a defined contribution plan, the J & J Plan pays a specified level of monthly benefits to eligible participants. (*See* Cmplt. ¶¶ 12-13; *see also* Connolly Aff. ¶ 9.) The amount of benefits each participant is entitled to receive is calculated based upon their years of service, not on the value of any individual plan account. (Connolly Aff. ¶ 9; *see* Declaration of Nolan J. Mitchell ("Mitchell Decl.") Ex. A at 14 ("Plan Form 5500").) Those benefits are funded by payments from the J & J Plan's sponsor and not by individual contributions. (*See* Plan 2010 Form 5500 at 14; Connolly Affidavit ¶ 9.)

[redacted] According to its 2010 public filings with the Department of Labor, the market value of the J & J Plan's assets ($7,169,082,110) exceeds the "total actuarial present value of accumulated plan benefits" ($6,343,630,382) by over $800 million. (*See* Mitchell Decl. Ex. A (Plan 2010 Form 5500) at 3, 12; *see also* Connolly Affidavit ¶ 14.) Accordingly, the Complaint does not assert that any participant in the J & J Plan has suffered any injury due to foreign exchange trading with State Street. Plaintiffs Taylor and Sutherland do not even allege that they were entitled to a benefit payment during the Class Period.

3. Plaintiffs' Foreign Exchange "Scheme" Allegations

Plaintiffs' allegation that State Street engaged in a foreign exchange "scheme" during the Class Period is drawn entirely from unsubstantiated allegations in other complaints and materials

incorporated therein, none of which purport to address State Street's foreign exchange pricing practices for ERISA-covered entities. (*Compare* Cmplt. ¶¶18-30 (describing allegations relating to State Street's foreign exchange practices for "*Non-ERISA Clients*"), *with id.* ¶ 31 (asserting "[o]n information and belief" that ERISA custodial clients and collective funds were subject to "this pricing scheme"). Plaintiffs have simply plucked the most inflammatory allegations from each of these sources, with no attempt to reconcile the significant inconsistencies among them. Nor do they address the custody contracts the Complaint incorporates by reference, which plainly establish that State Street as custodian had no fiduciary role with respect to foreign exchange trading. Accordingly, as set forth in more detail below, Plaintiffs have failed to allege any facts to support the allegation that State Street engaged in any foreign exchange "scheme."

ARGUMENT

I. PLAINTIFFS LACK STANDING TO BRING CLAIMS CONCERNING FOREIGN EXCHANGE TRADING BY THEIR PENSION PLANS OR ANY OTHER PLANS.

A. Legal Standard

It is a "bedrock requirement" of Article III of the United States Constitution that federal courts must restrict the exercise of their jurisdiction to actual cases and controversies. *Raines v. Byrd*, 521 U.S. 811, 818 (1997) (internal quotation marks omitted). This standing requirement ensures that "the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Wrath v. Seldin*, 422 U.S. 490, 498-99 (1975) (citation omitted). It also ensures that federal courts will not expend judicial resources on complex matters without "that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult . . . questions." *Simon v. E. Ky. Welfare Rights Org.,*

426 U.S. 26, 38 n.16 (1976) (quoting *Baker v. Carr,* 369 U.S. 186, 204 (1962)). The Supreme Court has repeatedly emphasized that Article III standing is a "threshold question in every federal case." *Wrath*, 422 U.S. at 498; *see also United States v. Hays*, 515 U.S. 737, 742 (1995) (standing is "perhaps the most important" of jurisdictional doctrines).

To establish Article III standing, a plaintiff must show an injury *to himself* that is likely to be redressed by a favorable decision. *Wrath*, 422 U.S. at 498. "Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation." *Simon*, 426 U.S. at 38; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982).

A plaintiff must demonstrate an "injury-in-fact" with respect to each and every asserted claim. *See Lujan*, 504 U.S. at 560. Standing to raise one claim does not confer standing to raise other claims, regardless of whether the other claims are closely related. As the Supreme Court put it, "standing is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996) ("If the right to complain of *one* administrative deficiency automatically conferred the right to complain of *all* administrative deficiencies, any citizen aggrieved in one respect could bring the whole structure of state administration before the courts for review. That is of course not the law." (emphasis in original)); *Blum v. Yaretsky*, 457 U.S. 991, 999 (1982) ("Nor does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject.").

Article III's personal injury requirement applies with equal force when a plaintiff purports to sue on behalf of an ERISA-covered plan. A plan participant "must allege individual injury in order to have standing to sue under ERISA." *Kenney v. State Street Corp.*, 754 F. Supp.

2d 288, 291-92 (D. Mass. 2010) ("[E]ven if a defined contribution plan participant casts his suit against a plan fiduciary as a claim on behalf of the entire plan, it is primarily concerned with *individual* injury." (emphasis added)); *see, e.g.*, *Harley v. Minnesota Mining & Mfg. Co.*, 284 F.3d 901, 908 (8th Cir. 2002) (to same effect as to a defined benefit plan); *In re Boston Scientific Corp. ERISA Litig.*, 254 F.R.D. 24, 32 (D. Mass. 2008) ("'[m]erely because Plaintiffs claim that they are suing on behalf of the respective ERISA plans does not change the fact that they must establish individual standing'" by showing they were personally "harmed" by the alleged breach (citations omitted)); *see also LaRue v. DeWolff, Boberg & Assocs.*, 552 U.S. 248, 254-56 (2008) (suit under ERISA § 502(a)(2) permits defined contribution plan beneficiaries to "recover[] for fiduciary breaches that impair the value of plan assets *in a[n] . . . individual account*" (emphasis added)).

Similarly, the assertion that a claim is brought on behalf of a class does nothing to expand the standing of the named plaintiff. As the Supreme Court has held, "[t]hat a suit may be a class action . . . adds nothing to the question of standing, for even named plaintiffs who represent a class must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent." *Lewis*, 518 U.S. at 357 (internal quotation marks omitted); *Blum*, 457 U.S. at 997 n.11, 1001 & n.13; *Gross v. Summa Four*, 93 F.3d 987, 993 (1st Cir. 1996).

B. Plaintiffs Lack Standing To Bring Claims As To SSgA-Managed Collective Funds

Plaintiffs Henriquez and Cohn have no standing to bring claims on account of foreign exchange trading by SSgA-managed collective funds—the only claims they have alleged in the Complaint—because they have failed to allege, and cannot establish, any injury-in-fact due to those funds having bought or sold foreign currency. *See, e.g.*, *Kenney*, 754 F. Supp. 2d at 291-

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92; *In re Boston Scientific*, 254 F.R.D. at 32. [redacted] Accordingly, Plaintiffs suffered no loss and have no standing to sue. *See Lujan*, 504 U.S. at 560; *In re Boston Scientific*, 254 F.R.D. at 32 (same).[11]

C. Plaintiffs Lack Standing To Bring Claims On Behalf Of The J & J Plan

A participant in a defined benefit plan must allege an individual injury in order to sue under ERISA. *See, e.g.*, *Hughes Aircraft Co. v. Jacobson,* 525 U.S. 432, 439-40 (1999); *Harley*, 284 F.3d at 908. Where a defined benefit plan's "assets [are] more than adequate to pay all accrued or accumulated benefits, then any loss [that occurs is] to plan surplus." *Harley*, 284 F.3d at 906. In that case, participants suffer no individual injury. *Id.* at 907-08; *see Hughes Aircraft*, 525 U.S. at 439-40 ("Given the employer's obligation to make up any shortfall, no [plan] member has a claim to any particular asset that composes a part of the plan's general asset pool. . . . Since a decline in the value of a plan's assets does not alter accrued benefits, members have no entitlement to share in a plan's surplus.").

Accordingly, in order to have standing, participants in defined benefit plans must allege and prove that an individual injury has already occurred or is "imminent"—for example, by showing that the plan is not substantially overfunded. *See, e.g.*, *Harley*, 284 F.3d at 907-08;

[redacted]

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McCullough v. AEGON USA Inc., 585 F.3d 1082, 1085-91 (8th Cir. 2009); *cf. Paulsen v. CNF, Inc.*, 559 F.3d 1061, 1073-74 (9th Cir. 2009) (ERISA plan participants did not suffer a redressable injury because "recovery [of damages], which [would be] payable to PBGC, would not necessarily compel PBGC to increase the benefits paid to the Employees"); *Glanton v. AdvancePCS Inc.*, 465 F.3d 1123, 1125 (9th Cir. 2006) (ERISA plan participants lacked standing to challenge allegedly inflated prices that the plan paid for drugs because the plan sponsors could have used any recovery to replace their own contributions to the plan rather than reducing the participants' copayments).

Plaintiffs Taylor and Sutherland do not allege that their own interests have been or imminently will be affected by foreign exchange trading between any defendant and the J & J Plan. The J & J Plan has timely paid benefits to its participants for the entire period in which they may have been eligible for payments. (Connolly Aff. ¶¶ 11, 13 & Ex. B.) Based on the present value of accumulated plan benefits, the Plan also has an $800 million surplus. (*See* Mitchell Decl. Ex. A (Plan 2010 Form 5500) at 3, 12.) Thus, Plaintiffs have no standing to bring claims addressing such trading. *See David v. Alphin*, No. 07-cv-11, 2008 WL 5244504, at *2-3 (W.D.N.C. Dec. 15, 2008) (dismissing ERISA claims by defined benefit participants for failure to allege "that they were denied their benefits or that their future benefits were in jeopardy"); *Harley*, 284 F.3d at 908 (defined benefit participants bear the burden of proving the absence of a

plan surplus).[12]

D. Plaintiffs Lack Standing To Assert Claims Based On Alleged Trades By Funds In Which They Did Not Invest And Plans In Which They Did Not Participate

In addition to lacking standing to assert any claims with respect to their own plans, Plaintiffs also lack standing to challenge any transactions: (1) involving collective funds that were not selected by any plaintiff; or (2) involving ERISA plans in which Plaintiffs did not participate. (Cmplt. ¶ 70 (purporting to bring suit not only on behalf of their ERISA plans, but also any other ERISA plans for which State Street served as investment manager, trustee, or custodian).) Plaintiffs could not have suffered any injury due to trading by a collective fund in which plan assets from their own accounts were not invested, nor can they have suffered injury as to foreign exchange trading by other ERISA plans in which they did not participate. There is no chance (let alone a likelihood) that any favorable outcome with respect to such trading would yield any recovery for them. Thus, as to such funds and plans, Plaintiffs have alleged no injury-in-fact likely to be redressed and therefore they lack standing under Article III.

The First Circuit has long recognized that, if named plaintiffs lack standing themselves to pursue relief, "they may not seek such relief on behalf of a class." *Britt v. McKenney*, 529 F.2d 44, 45 (1st Cir. 1976) (citation omitted); *Gross*, 93 F.3d at 993 (named plaintiff "cannot maintain an action on behalf of class members to redress an injury for which he has no standing in his own

[12] *See also United States v. Students Challenging Regulatory Agency Procedures (SCRAP),* 412 U.S. 669, 688–89 (1973) (explaining that standing is not an "ingenious academic exercise in the conceivable. A plaintiff must allege that he has been or will in fact be perceptibly harmed . . ., not that he can imagine circumstances in which he could be affected"); *Katz v. Pershing, LLC*, No. 11–1983, 2012 WL 612793, at *12 (1st Cir. Feb. 28, 2012) ("[A] purely theoretical possibility simply does not rise to the level of a reasonably impending threat."); *Maine People's Alliance v. Mallinckrodt, Inc.*, 471 F.3d 277, 284 (1st Cir. 2006) ("To establish an injury in fact based on a probabilistic harm, a plaintiff must show that there is a substantial probability that harm will occur.").

right" (citing *Lewis*, 518 U.S. at 357)).[13]

In cases relating to financial instruments, the First Circuit has recognized that Article III standing depends on the named plaintiff's purchase of the actual instrument that is the subject of the litigation. *See Plumber's Union Local No. 12 Pension Plan v. Nomura Asset Acceptance Corp.*, 632 F.3d 762, 768-71 (1st Cir. 2011) (named plaintiff lacked standing to sue as to securities it did not own); *Gross*, 93 F.3d at 993 (plaintiff lacked standing to bring a securities fraud class action based on alleged misstatements made *after* he purchased securities because they "could not possibly have caused the injury about which he complained"); *Barry v. St. Paul Fire & Marine Ins. Co.*, 555 F.2d 3, 5, 13 (1st Cir. 1977) (plaintiffs lacked standing to sue insurance companies that sold no policy to them, even though "[e]ach of the insurance companies had almost certainly sold such policies to some members of the class."), *aff'd*, 438 U.S. 531 (1978).[14]

More specifically, in *Plumbers' Union,* the First Circuit recently affirmed dismissal of purported class claims brought by a named plaintiff that related to securities he did not own,

[13] "Named plaintiffs in a class action must be able to make out an individual claim." *Kenney*, 754 F. Supp. 2d at 288; *see, e.g., Forsythe v. Sun Life Fin., Inc.*, 417 F. Supp. 2d 100, 119 (D. Mass. 2006) ("[a] plaintiff may not avoid the standing inquiry merely by styling his suit as a class action" but rather must "'show that [he has] personally been injured'" (citation omitted)); *In re Eaton Vance Corp. Sec. Litig.*, 219 F.R.D. 38, 40-41 (D. Mass. 2003) ("The plaintiffs' burden [to show Article III standing] is in no way lessened by the fact that they seek to represent a class.").

[14] *See also Plumbers' Union*, 632 F.3d at 769 (noting that *Barry* held plaintiffs lacked standing as to two companies from which "none of the named plaintiffs ever bought [the challenged] policy"); *Forsythe*, 417 F. Supp. 2d at 119 ("[P]laintiffs may not rely on the rules-based class action procedural device as a method to 'bootstrap themselves into standing they lack' merely because in theory some member of the putative class, if it were to be certified, might have a claim because they owned shares in the other [accused] Funds at the time the suit was brought." (citation omitted)).

ruling that he had "no stake in establishing liability" for these securities. 632 F.3d at 768-71.[15] There, named plaintiffs bought certificates in only two of the eight trusts holding pools of mortgage backed securities, underwritten by a single underwriter. *Id.* at 766-67 & n.2. Nevertheless, they sought to bring claims relating to six other trusts organized by the same defendants, the certificates for which were underwritten by other underwriters. *Id.* Plaintiffs argued that they could bring such claims because all offerings were conducted pursuant to the same registration statements, certain defendants participated in all offerings, and all defendants allegedly acted in concert pursuant to identical misstatements as to all offerings. The First Circuit rejected these arguments and affirmed dismissal of all claims as to the six trusts "whose certificates were purchased by no named plaintiff." *Id.* at 771. [16]

For similar reasons, these cases require dismissal of Plaintiffs' claims related to collective funds in which they never invested. (Cmplt. ¶ 70.) A holder of an undivided portion of an entity holding a pool of assets—whether a trust holding mortgages, a trust or other entity registered as an investment company (mutual fund), or as here a collective fund that is similar to a mutual fund—is not injured when a different entity or fund is alleged to have suffered an injury with

[15] The court in *Plumbers' Union* concluded that the propriety of the named plaintiff's efforts to bring claims related to securities in which he had no interest rested on Article III standing principles, and thus could not be resolved under Rule 23. *Id.* at 770.

[16] Numerous courts in this District and others have reached the same conclusion with respect to holders of interests in a mutual fund seeking to bring claims with respect to other mutual funds with common service providers. *See, e.g.*, *In re Columbia Entities Litig.*, No. 04-11704-REK, 2005 U.S. Dist. LEXIS 33439, at *29 (D. Mass. Nov. 30, 2005) ("Courts in this circuit have held that ownership of shares of a limited number of defendant mutual funds is *not* sufficient to confer standing against all funds, regardless of the similarity of the alleged wrongful conduct[.]" (emphasis in original)); *Forsythe*, 417 F. Supp. 2d at 119-20; *Eaton Vance*, 219 F.R.D. at 40-41; *In re Smith Barney Transfer Agent Litig.*, 765 F. Supp. 2d 391, 398-400 (S.D.N.Y. 2011) (plaintiffs "lack standing for claims relating to funds in which they did not personally invest" (internal quotation marks omitted)); *Hoffman v. UBS-AG*, 591 F. Supp. 2d 522, 530-31 (S.D.N.Y. 2008) (same).

respect to a different pool of assets.[17]

The rule barring individuals from bringing claims related to funds in which they have not invested has been applied in various legal contexts, including under the Securities Act of 1933,[18]

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[17] In *Plumbers' Union*, the First Circuit in *dicta* avoided expressly disagreeing with decisions of the Sixth and Seventh Circuits by supposing that there might be a case in which the named plaintiffs' claims "*necessarily* g[ave] them—not just their lawyers—essentially the same incentive to litigate the counterpart claims of the class members because the establishment of the named plaintiffs' claims *necessarily establishes* those of other class members." *Plumbers' Union*, 632 F.3d at 770 (emphasis added) (citing *Payton v. County of Kane*, 308 F.3d 673, 680 (7th Cir. 2002), and *Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410, 423 (6th Cir. 1998)). That is not the case here, where the facts are indistinguishable from those in *Plumbers' Union*. In this case, as in *Plumbers' Union*, the assets in different collective funds are different. To the extent that the collective funds engaged in foreign exchange transactions at all, they would necessarily have done so at different times and in different amounts. The assets of ERISA plans not invested in collective funds are also distinct from those invested in the collective funds. The ERISA plans also have different managers, and they too would have engaged in foreign exchange transactions (if at all) at different times and in different amounts. Plaintiff will get nothing if holders of interests in different collective funds or different ERISA plans recover. Thus, as in *Plumbers' Union* itself, the named plaintiff lacks the posited identity of interest with other ERISA plans and investors in other collective funds. *See* 632 F.3d at 771 (noting that the "necessary identity of issues and alignment of incentives is not present" because each investment was "backed by loans from a different mix of banks" and the named plaintiffs "have no stake in establishing liability as to misconduct involving the sales of . . . certificates" they did not purchase); *see also Forsythe*, 417 F. Supp. 2d at 118 (plaintiffs may not sue to recover losses in funds in which they did not invest, notwithstanding allegation of identical scheme of misconduct as to common fund trustees, because plaintiffs "may not use the corporate structure of the broader investment company to confer standing"); *Eaton Vance*, 219 F.R.D. at 40-41 (dismissing class action claims as to investment funds plaintiff did not purchase without regard to plaintiffs' allegation that certain common defendants were alleged to have made the same false and misleading statements with respect to all funds).

[18] *Eaton Vance*, 219 F.R.D. at 40-41; *see In re Lehman Bros. Sec. & ERISA Litig.*, 684 F. Supp. 2d 485, 490 (S.D.N.Y. 2010) (dismissing claims relating to 85 of 94 securities offerings because "no named plaintiff has alleged that he or she purchased Certificates in any of the other eighty-five offerings"); *New Jersey Carpenters Health Fund v. Residential Capital, LLC*, No. 08 CV 8781, 2010 WL 1257528, at *4 (S.D.N.Y. Mar. 31, 2010) (dismissing claims relating to offerings that named plaintiffs did not purchase); *New Jersey Carpenters Vacation Fund v. Royal Bank of Scotland Grp., PLC*, 720 F. Supp. 2d 254, 265-66 (S.D.N.Y. 2010) (same); *In re IndyMac Mortgage-Backed Sec. Litig.*, 718 F. Supp. 2d 495, 501 (S.D.N.Y. 2010) (same); *City of Ann Arbor Employees' Ret. Sys. v. Citigroup Mortgage Loan Trust Inc.*, 703 F. Supp. 2d 253, 260 (E.D.N.Y. 2010) (dismissing Securities Act claims relating to 16 of 18 trusts in which the plaintiff did not invest).

the Securities Exchange Act of 1934,[19] and the Investment Company Act of 1940.[20] In these cases, courts repeatedly determined that a plaintiff with a claim with respect to one fund did not have standing to bring the same or similar claims with respect to other funds, notwithstanding that those other funds had similar or common management; and no court in this Circuit has found otherwise. This is because a plaintiff himself suffers no injury from a loss to an investment pool in which he has no interest; and because Rule 23 does not expand a plaintiff's standing. *See* Fed. R. Civ. P. 82 (Rules "do not extend or limit the jurisdiction of the United States district courts"); *see, e.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011) ("[T]he Rules Enabling Act forbids interpreting Rule 23 to "'abridge, enlarge or modify any substantive right.'" (quoting 28 U.S.C. § 2072(b))). This rule applies equally under ERISA; standing doctrine does not vary based on the underlying federal statute that is the subject of the litigation. *Cf. Boston Scientific*, 254 F.R.D. at 32 (dismissing ERISA class action because named plaintiffs suffered no harm related to the subject investment and therefore did not have individual standing).

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[19] *Smith Barney*, 765 F. Supp. 2d at 399-400 (dismissing claims relating to 102 of the 105 mutual funds that the named plaintiff did not own); *Hoffman*, 591 F. Supp. 2d at 530-31 (dismissing Section 10(b) claims because plaintiffs "cannot claim to be personally injured by violations" relating to funds in which they had not invested); *In re AIG Advisor Group Sec. Litig.*, No. 06 CV 1625, 2007 WL 1213395, at *3-6 (E.D.N.Y. Apr. 25, 2007) (dismissing securities fraud claims relating to 3 of 19 mutual funds that plaintiff did not own, because "the named plaintiffs can allege no injury from the purchase or sale of funds they never invested in. . . . They therefore have no standing to ask me to remedy injuries related to those funds." (citations omitted)), *aff'd*, 309 F. App'x 495 (2d Cir. 2009); *In re Salomon Smith Barney Mutual Fund Fees Litig.*, 441 F. Supp. 2d 579, 605-07 (S.D.N.Y. 2006) (dismissing claims relating to 68 mutual funds in which plaintiffs did not invest).

[20] *Forsythe*, 417 F. Supp. 2d at 119-20 (dismissing Investment Company Act claims relating to 60 of 62 mutual funds that the named plaintiff did not own); *Stegall v. Ladner*, 394 F. Supp. 2d 358, 362 (D. Mass. 2005) (dismissing claims relating to 32 of 33 funds that the named plaintiff did not own); *Salomon Smith Barney*, 441 F. Supp. 2d at 604-08 (dismissing claims relating to 68 of 88 mutual funds in which the plaintiffs did not invest).

This same logic also applies to the situation where a pension plan in which a named plaintiff has no interest at all is allegedly harmed by foreign exchange trading. For example, Cohn—a Citi Plan participant—would himself suffer no harm at all to the extent that the J & J Plan executed foreign exchange transactions with SSGM. This is true regardless of whether the other plan is a defined benefit plan or a defined contribution plan.[21] Thus, all Plaintiffs lack standing to sue on account of foreign exchange trades executed by plans in which they did not participate.

II. THE COMPLAINT DOES NOT STATE A CLAIM WITH RESPECT TO FOREIGN EXCHANGE TRADING INITIATED BY INVESTMENT MANAGERS OTHER THAN STATE STREET

Plaintiffs' confusing claims concerning foreign exchange trading with pension plans advised by investment managers other than State Street do not state a claim under ERISA. Moreover, the Complaint lacks an adequate pleaded factual basis to support the conclusion that State Street perpetrated a fraudulent foreign exchange scheme.

A. Legal Standard

To survive a motion under Rule 12(b)(6), the complaint must contain sufficient factual matter, accepted as true, "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "'[N]aked assertions devoid of further factual enhancement' need not be accepted, and '[i]f the factual allegations in the complaint are too meager, vague, or conclusory to remove the possibility of relief from the realm of mere

[21] The result is the same whether the mutual funds are established in separate trusts or as separate divisions of a single trust. *See, e.g.*, *Forsythe,* 417 F. Supp. 2d at 119-20 (plaintiffs lack standing to sue for alleged losses from mutual funds established as separate trusts within the same complex); *Stegall*, 394 F. Supp. 2d at 362 (plaintiff lacks standing to assert claims on behalf of purchasers of funds established pursuant to single trust in which he did not invest because he cannot "bootstrap claims arising out of investment decisions made in relation to other funds [established under the same trust] in which he was not a participant").

conjecture, the complaint is open to dismissal.'" *Plumbers' Union*, 632 F.3d at 771 (citations omitted); *see Fantini v. Salem State Coll.*, 557 F.3d 22, 26 (1st Cir. 2009) (on a motion to dismiss, court need not accept "bald assertions, periphrastic circumlocutions, unsubstantiated conclusions, or outright vituperation, or subjective characterizations, optimistic predictions, or problematic suppositions" (internal quotation marks omitted)). "Where a complaint pleads facts that are 'merely consistent' with a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Coughlin v. Town of Arlington*, No. 10-10203, 2011 WL 6370932, at *4 (D. Mass. Dec. 19, 2011) (Wolf, J.) (citations omitted).

Moreover, the Complaint's "scheme" allegations sound in fraud and are therefore subject to the heightened pleading requirements of Rule 9(b). *See, e.g., Shaw v. Digital Equipment Corp.*, 82 F.3d 1194, 1223 (1st Cir. 1996) (where complaint alleges "a single complaint of a unified course of fraudulent conduct," claims "sound in fraud" and must satisfy Rule 9(b)); *Hayduk v. Lanna*, 775 F.2d 441, 443 (1st Cir. 1985) (holding that "in actions alleging conspiracy to defraud or conceal, the particularity requirements of Rule 9(b) must be met"); *see also* Fed. R. Civ. P. 9(b). In particular, the Complaint alleges that State Street knowingly undertook "a course of conduct designed to conceal" a purported "scheme" to overcharge clients for indirect foreign exchange transactions at "false rate[s]." (Cmplt. ¶¶ 24, 26.) They directly challenge the "truthfulness" of State Street's statements. (Cmplt. ¶ 36.) Thus, Plaintiffs allege a "unified course of fraudulent conduct" and rely entirely on that course of conduct as the basis of their "scheme" claims, and they must therefore plead their "scheme" claim with particularity. *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (Rule 9(b) applies to allegations that defendants "misrepresent[ed] the benefits of its CPO program to sell more cars and increase revenue"); *North Am. Catholic Educ. Programming Found., Inc. v. Cardinale*, 567 F.3d 8,

15 (1st Cir. 2009) (Rule 9(b) applies where "core allegations effectively charge fraud.").

B. Count I Does Not State A Claim Against State Street As To Trades Initiated By Other Investment Managers

Count I purports to state a claim under Sections 406(b)(1) and (b)(3) of ERISA, 29 U.S.C. § 1106(b)(1) & (b)(3). Section 406(b)(1) prevents a fiduciary from dealing "with the assets of the plan in his own interest or for his own account." Section 406(b)(3) prohibits a fiduciary from receiving any consideration for his own account from a party dealing with the plan in connection with a transaction involving the plan's assets. Plaintiffs do not state a claim under these sections with respect to foreign exchange trades initiated by investment managers other than State Street because they do not plead an adequate factual basis to conclude either that: (i) any State Street entity acted as a fiduciary with respect to such a foreign exchange transaction initiated by third-party investment managers; or (ii) State Street received any consideration from a party to such a foreign exchange transaction with the plan.

There is no fiduciary duty inherent in the relationship between a pension plan and its custodian. *Beddall v. State Street Bank & Trust Co.*, 137 F.3d 12, 18-21 (1st Cir. 1998). In *Beddall*, as in this case, State Street acted as custodian for a pension plan pursuant to a contract establishing State Street as the plan's directed trustee. The First Circuit affirmed this Court's judgment that State Street in that capacity was not an ERISA fiduciary with respect to its activities in that case. *Id.* at 21.

Similarly, there is no fiduciary relationship inherent in a foreign exchange transaction. "Money is just a commodity in an international market." *In re Mexico Money Transfer Litig.*, 267 F.3d 743, 749 (7th Cir. 2001). In describing foreign exchange transactions as similar to transactions involving any commodity, the Seventh Circuit noted that "Neiman Marcus does not tell customers what it paid for the clothes they buy, nor need an auto dealer reveal rebates and

incentives it receives to sell cars. This is true in financial markets no less than markets for physical goods." *Id.* Banks ordinarily have no duty, as a result, to disclose the difference between their rates for foreign exchange and wholesale rates. *Id.*

The legal obligations of an agent who brokers a purchase or sale of a security or commodity differ significantly from those applicable to a buyer or seller acting as principal. An agent broker typically is a fiduciary agent of a principal who buys an asset on behalf of the principal, and is compensated by the principal's payment of an additional commission or brokerage fee. *See BAII Banking Corp. v. UPG, Inc.*, 985 F.2d 685, 700 (2d Cir. 1993). A principal dealer, such as State Street when it conducts its foreign exchange business, buys and sells assets to and from third parties, and obtains a profit or suffers a loss depending on what it pays and receives. *See Press v. Chem. Inv. Servs. Corp.*, 166 F.3d 529, 539-40 (2d. Cir. 1999). Dealers acting as principals are not fiduciaries absent some express agreement between the parties to that effect. *See id.*; *Banca Cremi, S.A. v. Alex. Brown & Sons, Inc.*, 132 F.3d 1017, 1038 (4th Cir. 1997).

Plaintiffs cannot state a claim under Section 406(b) without pleading factual allegations supporting a plausible inference that State Street acted as fiduciary in executing foreign exchange transactions with a plan. It is not enough for Plaintiffs to allege in a conclusory manner that "Defendants acted as fiduciaries within the meaning of ERISA" (Cmplt. ¶ 79) or that they "functioned as fiduciaries . . . both by acting as trustee and custodian . . . and by exercising authority and control over plan assets" (Cmplt. ¶50). *See Bell Atl. Corp.*, 550 U.S. at 570; *Cohen v. Indep. Blue Cross*, No. 10-4910, 2011 WL 5040706, at *4-5 (D.N.J. Oct. 24, 2011) ("[T]he Amended Complaint reveals no factual support, other than conclusory assertions, that IBC is a plan fiduciary."); *Jenkins v. Union Labor Life Ins. Co.*, No. 10-7361, 2011 WL 3919501, at *5

n.7, 6 (E.D. Pa. Sept. 7, 2011) ("Plaintiffs allege in conclusory terms that Amalgamated had discretionary authority over the defined benefit plan, but they do not provide other facts that makes this legal conclusion appear plausible."); *Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d 715, 722 (9th Cir. 1997) (custodial bank not plan fiduciary).

Even if Plaintiffs' conclusions could be accepted as true, they do not clear the high hurdle set by *Beddall*, which made clear both that "the mere exercise of physical control or the performance of mechanical administrative tasks generally is insufficient to confer fiduciary status"; and that "fiduciary status is not an all or nothing proposition; the statutory language indicates that a person is a plan fiduciary only 'to the extent' that he possesses or exercises the requisite discretion and control." 137 F.3d at 18, 21 (citation omitted).

The Complaint does not allege, even in conclusory terms, that State Street was offered or accepted a role executing foreign exchange trades as any plan's agent; and it nowhere alleges any facts plausibly supporting the conclusion that State Street acted as a plan's agent. The factual allegations of the Complaint are at the very least consistent with the conclusion that State Street is a non-fiduciary principal dealing for its own account; in some respects, they actually rebut the conclusion Plaintiffs seek to advance. Plaintiffs assert that "clients or their investment managers"—not State Street as custodian—initiated and were "ultimately responsible" for foreign exchange transactions. (*See*, *e.g.*, Cmplt. ¶¶ 46-47, 57, 67 (emphasis added).) As custodian, State Street is alleged only to have received and transmitted instructions from investment managers. (Cmplt. ¶ 27.)[22]

[22] Plaintiffs allegations as to LLC are no more than a guess. They admit their confusion as to LLC's role, and plead as to LLC only upon information and belief. *Compare* Cmplt. ¶¶ 14, 64-66.

Moreover, the custody contracts of record make clear that State Street was not appointed as any plan's agent to buy or sell currency; rather, only the plans or their fiduciary investment managers had discretion to decide whether the plan should buy or sell assets, including currency.[23] (*Compare* J & J Plan Agreement ¶ 4.1 (State Street acts "*at the direction*" of investment fiduciaries "[t]o purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with State Street Bank and Trust Company, its agents or subcustodians" (emphasis added)), *with id.* ¶ 4.2 (setting forth limited authority of State Street as custodian); *accord* defined contribution Plan Agreements ¶¶ 4.1, 4.2.). As the First Circuit made clear as to an indistinguishable agreement in *Beddall*, it "is beyond cavil" that appointment of an investment manager for designated assets "shifts all significant discretion and control over those assets to the investment manager and relegates the trustee to the role of an administrative functionary."[24] 137 F.3d at 21; *see also Maniace v. Commerce Bank of Kansas City, N.A.*, 40 F.3d 264, 267 (8th Cir. 1994) (where trust agreement explicitly limits trustee's discretion vis a vis stock at issue, it "had no discretion and could only act at the direction of the Committee. As such, [it] could not be a fiduciary (nor breach fiduciary duties) with respect to" that stock).[25]

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[23] Because "fiduciary responsibility under ERISA is directly and solely attributable to [an entity's] possession or exercise of discretionary authority, fiduciary liability arises in specific increments correlated to the vesting or performance of particular fiduciary functions in service of the plan, not in broad, general terms." *Beddall*, 137 F.3d at 18. Plaintiff therefore cannot plead a claim for fiduciary breach merely by asserting that "any action taken by [SSGM] was an action of SSBT" without alleging the "particular fiduciary function" it was exercising at the time. (Cmplt. ¶ 15.)

[24] Indeed, the pre-2008 Citi Plan Agreement shows that State Street was not even a Trustee until December 2008. (*See* Duncan Aff. ¶ 6 & Ex. A.)

[25] The Complaint otherwise alleges that State Street's responsibilities as custodian were purely administrative or ministerial, and that it was "independent" of the plan's fiduciaries who exercised investment management authority. (Cmplt. ¶ 51 (alleging that custodial

Because the allegations of the Complaint and the contracts themselves support only the conclusion that State Street is not a fiduciary with respect to foreign exchange transactions ordered by third party fiduciaries, Count I of the Complaint should be dismissed for failure to state a claim under Sections 406(b)(1) and (b)(3).[26] *See Sekerek v. Nat'l City Bank*, 342 F. Supp. 2d 701, 712 (N.D. Ohio 2004) (no fiduciary duty where custody contract did not create such a duty); *O'Toole v. Arlington Trust Co.*, 681 F.2d 94, 97 n.1 (1st Cir. 1982) (fiduciary status a "predicate condition" for liability under § 1106(b)). Even if State Street was a fiduciary, Plaintiffs state no claim under Section 406(b)(3). Plaintiffs have no factual basis to assert, and do not assert, that a party dealing with a Plan paid anything to State Street on account of foreign exchange. [redacted]

C. Plaintiffs' Section 404 Claim Depends On Their Defective Fiduciary Duty Allegations

Count II of the Complaint asserts that Defendants' breached Section 404 of ERISA, 29 U.S.C. § 1104(a)(1)(A) & (B). (Cmplt. ¶ 87.) This statute also applies only to actions of fiduciaries. 29 U.S.C. § 1104(a) (providing, among other things, that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries"). "In every case charging breach of ERISA fiduciary duty, then, the threshold question is . . . whether

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responsibilities include "the guarding and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities" and "ancillary services").

[26] As State Street's 2006 Investment Manager Guide makes clear, State Street's custodial clients or their investment managers were free to "execute foreign exchange transactions with third party FX providers." (Mitchell Decl. Ex. C at 5); *see also* defined contribution Plan Agreements ¶ 4.1).

th[e] person was acting as a fiduciary (that is, was performing a fiduciary function) when taking the action subject to the complaint." *Pegram v. Herdrich,* 530 U.S. 211, 226 (2000). "With no fiduciary function involved, there can be no breach of fiduciary duty." *Livick v. The Gillette Co.*, 524 F.3d 24, 30 (1st Cir. 2008). Because Plaintiffs have not adequately alleged that State Street is a fiduciary with respect to foreign exchange transactions ordered by third party investment managers, Count II fails to state a claim.

D. Plaintiffs Do Not State A Claim Against LLC

Finally, Count III of the Complaint asserts a claim against LLC under Section 405 of ERISA, 29 U.S.C. § 1105(a)(1) & (a)(3), which prohibits "a fiduciary with respect to a plan" from knowingly participating in, concealing or failing to remedy "a breach of fiduciary responsibility of another fiduciary with respect to the same plan."[27] As the Complaint has not alleged any facts to support the conclusion that either State Street or LLC acted in a fiduciary capacity with respect to foreign exchange transactions ordered by third party investment managers, this claim also fails.[28]

[27] Further, the statute expressly provides that "notwithstanding subsections (a)(2) and (3) . . . no trustee shall be liable for the acts or omissions of [an] investment manager or managers [appointed by the plan], or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager." 29 U.S.C. § 1105(d)(1).

[28] There is no factual basis in the Complaint to infer that LLC had anything to do with foreign exchange trading at all. Plaintiffs assert "confusion" as to whom they intend to sue, but there is nothing ambiguous in State Street's response to the California Attorney General's (the "AG's") Complaint-in-Intervention which they cite (Cmplt. ¶ 15 n.3; *see* Mitchell Decl. Ex. H ¶¶ 1, 12), or in the brief and affidavits filed in response to Plaintiffs' first complaint which made clear that LLC had nothing to do with foreign exchange trading. Both documents explain that LLC had no involvement in the activities challenged in this case.

E. The Complaint Contains No Plausible Allegation Of Any Foreign Exchange "Scheme" By Any Defendant

1. The Complaint's Inconsistent "Scheme" Allegations

Plaintiffs rely wholesale on other complaints in other cases (and the materials incorporated therein) to assert that State Street perpetrated a foreign exchange "scheme" during the Class Period.[29] In fact, Plaintiffs' allegations about the so-called foreign exchange "scheme" are themselves misleading and do not satisfy their pleading burdens here. (*Compare* Cmplt. ¶¶ 20-35.)

Plaintiffs tout an allegedly "extensive" investigation by the California Attorney General ("AG") leading to a complaint against State Street (Cmplt. ¶¶ 20-21), but decline to reveal that the AG did not adopt the allegations made by the *qui tam* relators in California upon which Plaintiffs here rely to assert a "scheme." That is, the AG did not allege that it was State Street's ordinary practice or "scheme" to "lock in" rates for *customer* trades "early in the day" and then to change those rates to more favorable ones later in the day. (*Compare* Cmplt. ¶¶ 29-30, *with* CA Complaint ¶ 26-28.) The AG rejected those allegations by filing a complaint in intervention that did not include them.[30] Plaintiffs advance no plausible factual basis for such a claim, and

[29] Plaintiffs seek to incorporate allegations and other materials referred to in complaints filed in three other cases: *Hill v. State Street*, 09-cv-12146–NG (D. Mass. July 29, 2010) [hereinafter, *Hill*]; *Brown v. State Street*, Case No. 34-2008-00008457-CU-MC-GDS. (Cal. Super. Ct., Sacramento County Oct. 20, 2009.); and *Arkansas Teachers Retirement System v. State Street*, No. 11-CV-10230 (D. Mass. April 15, 2011) [hereinafter, *ARTRS*]. These materials are attached to the Affidavit of Nolan Mitchell, submitted herewith. *See* Mitchell Decl. Ex. D, E, F, G.

[30] The AG's theory was that State Street's specific agreements with California pension funds required State Street to charge those clients interbank market rates, and not rates set with reference to interbank market rates. (*See* Mitchell Decl. Ex. D at ¶ 2.) That theory (which Plaintiffs here do not assert) was also incorrect: State Street's agreements only represented that it would charge its clients foreign transaction rates "based on"—not "at"—the interbank market rate.

plainly acknowledge that their critical scheme allegation—the notion that State Street systematically changed the rates on trades previously executed with customers—is a guess made purely "on information and belief." (*See* Cmplt. ¶¶ 29-35.)

In the Complaint, Plaintiffs adopt allegations from other complaints, despite their mutual inconsistency and despite Plaintiffs' concession that they have no factual basis or source of their own to advance their claims. (*See* Cmplt. ¶ 1.) These inconsistent allegations, particularly in the context of a record including the materials that Plaintiffs now incorporate by reference (most of which were not included in the *Hill* complaint brought before Judge Gertner and now before Judge O'Toole), fail to plead a plausible factual basis for their conclusion that State Street pursued a fraudulent foreign exchange scheme.[31]

For example, Plaintiffs here incorporate the 2009 State Street Investment Manager Guide, which plainly states that in pursuing its business as a principal dealer SSGM buys and sells foreign currency for its own account and not as an agent for its counterparty. (Hayes-Duffy Aff. Ex. A at 5.) That is, it buys currency *from* those with whom it deals, not *on their behalf*. *Id.* Plaintiffs advance no plausible factual basis for a conclusion to the contrary, and instead plead facts that tend to support the conclusion that State Street did not act as a fiduciary agent in executing foreign exchange trades. They attribute to *ARTRS* the allegation that State Street foreign exchange traders "were informed of SSBT's aggregated standing instruction trade

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[31] For purposes of defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6), the Court may consider materials incorporated by reference in the Complaint, as well as from relevant public sources. *See Risberg v. McArdle*, 529 F. Supp. 2d 213, 219 (D. Mass. 2008) ("Rule 12(b)(6) permits the court to take into consideration matters of public record, including public filings . . . as well as documents incorporated in, central to, or materially referenced in the Complaint.") (citations omitted); *Watterson v. Page*, 987 F.2d 1, 3-4 (1st Cir. 1993) (on motion to dismiss, Court may consider "documents the authenticity of which are not disputed by the parties," "official public records," "documents central to plaintiffs' claim," and "documents sufficiently referred to in the complaint").

requirements during the course of the day" and would "that day, trade in the interbank FX market in order to satisfy *SSBT's* standing instruction positions." (Cmplt. ¶ 28 (emphasis added)). This allegation—in addition to being inaccurate—amounts to no more than an assertion that State Street would trade during the day in the interbank market with knowledge of the amounts of currency its standing instruction customers sought to trade with State Street. That in no way supports—and indeed rebuts—the Plaintiffs' relator-based claims.

Plaintiffs also fail to grapple with the fact that the custody contracts incorporated in the Complaint do not appoint State Street as an agent of any of the Plans with respect to foreign exchange execution, and do not impose any duty upon State Street with respect to the rates at which foreign exchange transactions would occur. For example, unlike RFP responses submitted to the California customers to which the AG's complaint refers, no custody contract or other information supplied to a custody client in this case even allegedly addresses foreign exchange pricing. Instead, the contracts establish that State Street was a mere custodian or directed trustee with no duties arising under the contracts for foreign exchange execution at all. *See supra* at 4-5.

2. The Complaint's "Scheme" Allegations Fail To State A Claim

Plaintiffs provide no facts plausibly to support their allegation that State Street engaged in a "Foreign Exchange Scheme." Instead, the Complaint simply recites unsubstantiated, inflammatory allegations made by other plaintiffs, none of which purport to describe State

Street's foreign exchange pricing and disclosures for ERISA-covered entities.[32]

Blanket reference to other complaints is "legally immaterial." *See, e.g.*, *Low v. Robb*, No. 11-CV-2321, 2012 WL 173472, at *9 (S.D.N.Y. Jan. 20, 2012) (granting motion to strike because "[a]llegations in a complaint 'that are either based on, or rely on, complaints in other actions that have been dismissed, settled, or otherwise not resolved, are, as a matter of law, immaterial"); *RSM Prod. Corp. v. Fridman,* 643 F. Supp. 2d 382, 403-04 (S.D.N.Y. 2009) (such allegations immaterial as a matter of law); *In re Connetics Corp. Sec. Litig.*, 542 F. Supp. 2d 996, 1005-06 (N.D. Cal. 2008) (dismissing claims that relied on complaint filed by SEC); *Caiafa v. Sea Containers, Ltd.*, 525 F. Supp. 2d 398, 411 (S.D.N.Y. 2007); *In re Merrill Lynch & Co., Research Reports Sec. Litig.*, 218 F.R.D. 76, 78 (S.D.N.Y. 2003) (striking references to SEC and National Association of Securities Dealers complaints); *see also Wilson v. MicroFinancial, Inc.*, No. 03-11883, 2006 WL 1650971, at *3 (D. Mass. June 13, 2006) ("The Amended Complaint, which appears to have been cobbled together without any editorial oversight, is a classic example of what one court has termed 'puzzle' pleading."); *S.E.C. v. Patel*, No. 07-cv-39, 2009 WL 3151143, at *2 n.2 (D.N.H. Sept. 30, 2009) ("A complaint which relies on shotgun or puzzle pleading *does not meet Rule 9(b)'s particularity requirement*.") (emphasis in original and

[32] For example, the Complaint asserts that a former State Street employee who worked on the "same floor" as State Street's foreign exchange traders "in sworn testimony, described the practices of SSBT's FX traders as a 'totally unethical thing to do' and said that the FX Traders practices were not within the 'industry standard.'" (Cmplt. ¶ 23.) As the attached declaration shows, however, this opinion has no probative value and no foundation: it reflects the following facts which undermine use of this assertion here: the employee was located "within an earshot of any discussions about FX pricing"; he "discussed his views and advice about the markets with FX traders"; he was "familiar enough with the FX traders to recall most of their names"; and he "overheard that State Street FX traders were marking up custody FX trade prices." (*See* Mitchell Decl. Ex. B at 9-10.) Obviously, because markups are not ordinarily illegal, "overhearing" that there were markups proves nothing. *See In re Mexico Money*, 267 F.3d at 749 (banks ordinarily have no duty to disclose the difference between their rates for foreign exchange and wholesale rates).

internal quotation marks omitted).[33] Because the other complaints are not an adequate basis to plead a scheme, and because the Plaintiffs admittedly have no other basis, the Complaint fails to state a scheme claim. (*See, e.g.,* Cmplt. ¶¶ 1, 31-35 (relying on information and belief).)

The regurgitated "scheme" allegations Plaintiffs advance in this case are in any event mutually inconsistent, factually unsupported and in many cases inapposite. For example, the California AG's claim is based on contract language not alleged to be included in the Plan Agreements. And the *qui tam* relators' assertion that State Street consistently repriced trades executed with clients was rejected by the AG. (CA Complaint ¶¶ 26-28.) Nowhere do plaintiffs allege a basis to assert that the Plan Agreements contained any pricing commitment or established any fiduciary (or other) duty to disclose the difference between wholesale and other rates for foreign exchange. Indeed, as a matter of law, no such other duty exists. *See In re Mexico Money*, 267 F.3d at 749.

Plaintiffs also ignore other factual context embedded in the Complaint. For example, State Street's 2006 Investment Manager Guide *encouraged* investment managers to execute foreign exchange with State Street *directly* (i.e., not using the methods challenged in this case) and noted investment managers were free to "execute foreign exchange transactions with third party FX providers." (Mitchell Decl. Ex. C at 3, 5 (2006 Investment Manager Guide.) It described additional disclosures made to investment managers for ERISA clients, noting that State Street had "a special procedure when effecting foreign exchange transactions for ERISA trust and custody clients" in which State Street "post[ed] to its website on a daily basis, a specific

[33] *But see Hill v. State Street Corp.* No. 09-cv-12146, 2011 WL 3420439, at *10-14 (D. Mass. Aug. 3, 2011). In *Hill*, Judge Gertner rejected the argument that the plaintiffs could not rely on the relator's allegations. *Id.* at *10-14. Judge Gertner relied heavily on the AG's "investigation," which she mistakenly did not recognize did not support (and indeed rebutted) the assertion that State Street systematically changed the rates for indirect foreign exchange trades previously executed with clients. *Id.* at *13.

buy rate and sell rate for each currency," and that "[e]ach ERISA plan manager [could] direct [SSBT] to effect the plan's FX transactions . . . at the posted rates or at rates more favorable if market conditions warrant." (Cmplt. ¶ 67 (citing State Street's 2006 Investment Manager Guide).) The Complaint does not allege that this procedure was not followed. It does not explain how the "scheme" applied to ERISA clients at all. Instead, it advances allegations of other plaintiffs in non-ERISA cases, and assumes without basis that what they had to say applies with equal force to ERISA clients. (*Compare* Cmplt. ¶¶ 18-30 (describing allegations relating to SSGM's foreign exchange practices for "*Non-ERISA Clients*"), *with id.* ¶ 31 (asserting "[o]n information and belief" that ERISA custodial clients and collective funds were subject to "this pricing scheme").)

CONCLUSION

For the foregoing reasons, the Court should dismiss this case for lack of jurisdiction or for failure to state a claim.

STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS LLC

By its attorneys,

/s/ William H. Paine
Jeffrey B. Rudman (BBO# 433380)
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(617) 526-6000

Dated April 9, 2012

CERTIFICATE OF SERVICE

I, Nolan J. Mitchell, certify that this document filed under seal will be sent to all counsel of record via First Class mail on April 9, 2012.

/s/ Nolan J. Mitchell
Nolan J. Mitchell

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, ET AL. Plaintiff, v. STATE STREET BANK AND TRUST COMPANY AND STATE STREET GLOBAL MARKETS LLC Defendants.	)	C.A. No. 11-cv-12049-MLW

AFFIDAVIT OF JOHN CONNOLLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

John Connolly states:

Background and Qualifications

1. I am a Senior Vice President in the Institutional Investor Services ("IIS") Division of State Street Bank and Trust Company ("State Street"), which provides custodial banking services to institutional investors.

2. I am the relationship manager for the Johnson & Johnson Retirement Savings Plan (the "J & J Plan"). My responsibilities include providing custody, accounting, daily valuation and client service to the J & J Plan.

3. I submit this affidavit in support of Defendants' Motion to Dismiss the Complaint in the matter captioned above. I state in this affidavit the source of any information that is not based on personal knowledge.

State Street's Relationship to the J & J Plan

4. State Street provides custody services to institutional investors. These services are provided by divisions of State Street that are separate from the State Street divisions

responsible for providing investment management services to collective funds and for executing foreign exchange transactions with custody clients of State Street.

5. During the alleged class period ("Class Period"), State Street provided custody services to the J & J Plan, which is alleged to be an ERISA defined benefit plan. Complaint ¶ 13.

6. Prior to January 1, 2003, State Street's responsibilities as custodian were set forth in the Johnson & Johnson General Pension Trust Agreement dated January 11, 2001, a true and accurate copy of which is attached hereto as Exhibit A.

7. From January 1, 2003 to date, State Street's responsibilities as custodian are set forth in the Johnson & Johnson Pension and Savings Plans Master Trust Agreement, a true and accurate copy of which is attached hereto as Exhibit B.

8. The J & J plan invests its assets in accounts managed by investment managers appointed from time to time by the J & J Plan's named fiduciaries in accordance with the trust agreements referenced in Paragraphs 6 and 7 above.

9. The J & J Plan pays a fixed level of benefits to participants when they become eligible. The amount of benefits is determined by the participant's years of service. The amount of benefits each participant receives is not based on the value of any individual account. The benefits are funded by payments from the J & J Plan's Sponsor and not by individual contributions. *See* The Retirement Plan of Johnson & Johnson, Department of Labor Form 5500 (2010), Notes to Financial Statements, at 6 [attached as Exhibit A to the Declaration of Nolan J. Mitchell].

10. Pursuant to separate agreements, State Street's Retiree Services Division processes payments from the J & J Plan to eligible participants.

[redacted]

12. Plaintiffs William R. Taylor and Richard A. Sutherland allege that they are participants in the J & J Plan. Complaint ¶¶ 12-13.

[redacted]

14. To my knowledge, the J & J plan is neither underfunded nor in jeopardy of becoming underfunded.

I declare under penalty of perjury that the forgoing is true and correct to the best of my personal knowledge, information, and belief.

John S. Connolly

THE JOHNSON & JOHNSON GENERAL PENSION TRUST AGREEMENT

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THE JOHNSON & JOHNSON GENERAL PENSION TRUST AGREEMENT

Agreement effective as of January 2, 2001, by and between JOHNSON & JOHNSON, a corporation organized and existing under the laws of New Jersey (the "Company") and STATE STREET BANK AND TRUST COMPANY, a trust company organized under the laws of the Commonwealth of Massachusetts (hereinafter referred to as the "Trustee").

WITNESSETH:

WHEREAS, the Company maintains certain tax-qualified employee benefit plans (hereinafter referred to as the "Plans") for the exclusive benefit of certain of its employees;

WHEREAS, the Company has by Trust Agreement dated April 1, 1957 with Bankers Trust Company of New York established a single trust to serve as the funding vehicle for the Plans;

WHEREAS, the authority to conduct the general operation and administration of the Plans is vested in the Company, which has appointed the Pension Committee, as "Administrator" of the Plans, and the Pension Committee and its delegates (collectively, for purposes of this Trust Agreement, the "Pension Committee") shall have the authorities and shall be subject to the duties with respect to the trust specified in the Plans and in this Trust Agreement;

WHEREAS, the Company has appointed State Street Bank and Trust Company as successor trustee to Bankers Trust Company of New York, effective January 2, 2001; and

WHEREAS, the Company and the Trustee desire to amend and

restate the said Trust Agreement in its entirety.

NOW, THEREFORE, the Company and the Trustee do hereby amend and restate the said Trust Agreement and continue the trust as the funding vehicle for the Plans, upon the terms and conditions hereinafter set forth:

1. TRUST FUND

1.1 Trust Name. This Trust shall be known as The Johnson & Johnson General Pension Trust.

1.2 Receipt of Assets. The Trustee shall receive and accept for the purposes hereof all sums of money and other property paid to it by or at the direction of the Company or any Employer, and pursuant to the terms of this Trust Agreement shall hold, invest, reinvest, manage, administer and distribute such monies and other property and the increments, proceeds, earnings and income thereof for the exclusive benefit of participants in the Plans and their beneficiaries. The Trustee acknowledges that it is a fiduciary of the Plan with respect to the duties and obligations imposed upon it under this Trust Agreement which are within the scope of ERISA section 3(21)(A). The Trustee will discharge its fiduciary duties under the Trust with the skill, care, prudence, and diligence under the circumstances then prevailing of a prudent trustee acting in like capacity and familiar with such matters. The Trustee need not inquire into the source of any money or property transferred to it nor into the authority or right of the transferor of such money or property to transfer such money or property to the Trustee. All

assets held by the Trustee in the trust pursuant to the provisions of this Trust Agreement at the time of reference are referred to herein as the "Trust Fund".

1.3 Employers. For purposes of this Trust Agreement the term "Employer" means any corporation which is a member of a controlled group of corporations of which the Company is a member as determined under Section 1563(a) of the Internal Revenue Code of 1986, as amended without regard to Section 1563(a)(4) and Section 1563(e)(3)(C) of such Code.

1.4 Plans. References in this Trust Agreement to the "Plan" or the "Plans" shall, unless the context indicates to the contrary, mean the tax-qualified employee benefit plan or plans of the Company.

The Pension Committee shall be responsible for verifying that while any assets of a particular Plan are held in the Trust Fund, that Plan (i) is "qualified" within the meaning of Section 401(a) of the Code; (ii) is permitted by existing or future rulings of the United States Treasury Department to pool its funds in a group trust; and (iii) permits its assets to be commingled for investment purposes with the assets of other such Plans by investing such assets in this Trust Fund whether or not its assets will in fact be held in a separate Investment Fund.

1.5 Accounting for a Plan's Undivided Interest in the Trust Fund. All transfers to, withdrawals from, and other transactions regarding the Trust Fund shall be conducted in such a way that the proportionate interest in the Trust Fund of each Plan and the

fair market value of that interest may be determined at any time.

Whenever the assets of more than one Plan are commingled in the Trust Fund or in any Investment Fund, the undivided interest therein of that Plan shall be debited or credited (as the case may be) (i) for the entire amount of every contribution received on behalf of that Plan, every benefit payment, or other expense attributable solely to that Plan, and every other transaction relating only to that Plan; and (ii) for its proportionate share of every item of collected or accrued income, gain or loss, and general expense; and other transactions attributable to the Trust Fund or that Investment Fund as a whole. As of each date when the fair market value of the investments held in the Trust Fund or an Investment Fund are determined as provided for in Article 9, the Trustee shall adjust the value of each Plan's interest therein to reflect the net increase or decrease in such values since the last such date. For all of the foregoing purposes, fractions of a cent may be disregarded.

1.6 No Trustee Duty Regarding Contributions. The Trustee shall not be under any duty to require payment of any contributions to the Trust Fund, or to see that any payment made to it is computed in accordance with the provisions of the Plans, or otherwise be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities under the Plans. The named fiduciary responsible for ensuring timely payment of contributions to the Trust Fund is the Pension Committee.

2. DISBURSEMENTS FROM THE TRUST FUND.

The Trustee shall from time to time on the directions of the Pension Committee make payments out of the Trust Fund to such persons, or any member thereof, in such manner, in such amounts and for such purposes as may be specified in the directions of the Pension Committee.

The Pension Committee shall be responsible for insuring that any payment directed under this Article conforms to the provisions of the Plans, this Trust Agreement, and the provisions of the Employee Retirement Income Security Act of 1974, as amended (referred to herein as "ERISA"). Each direction of the Pension Committee shall be in writing (including but not limited to electronic writing such as e-mail, if agreed to by Trustee) and shall be deemed to include a certification that any payment or other distribution directed thereby is one which the Pension Committee is authorized to direct, and the Trustee may conclusively rely on such certification which is given in accordance with this Trust Agreement without further investigation unless it knows the certification constitutes a breach of fiduciary duty. Payments may be made by the Trustee by wire transfer, or such other electronic method or check to the order of the payee, as the Pension Committee may determine. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Trustee by the Pension Committee or if no such address has been so furnished, to the payee in care of the Pension Committee. The Trustee shall not

incur any liability or other damage on account of any payments or other distributions made by it in accordance with the written directions of the Pension Committee, unless reasonable care required under industry standards for a directed trustee would require alternate action.

3. RESPONSIBILITIES RELATING TO INVESTMENT FUNDS AND INVESTMENT ACCOUNTS.

3.1 Investment Funds. The Pension Committee, from time to time and in accordance with provisions of the Plans, may direct the Trustee to establish one or more separate investment accounts within the Trust Fund, each separate account being hereinafter referred to as an "Investment Fund". The Trustee shall transfer to each such Investment Fund such portion of the assets of the Trust Fund as the Pension Committee directs in accordance with the specific provisions of each Plan. The Trustee shall be under no duty to question, and shall not incur any liability on account of following, any direction of the Pension Committee which is given in accordance with this Trust Agreement. The Trustee shall be under no duty to review the investment guidelines, objectives and restrictions established, or the specific investment directions given, by the Pension Committee for any Investment Fund, or to make suggestions to the Pension Committee in connection therewith. To the extent that directions from the Pension Committee to the Trustee represent investment elections of the Plans' members, the Trustee shall have no responsibility for such investment elections and shall incur no liability on

account of investing the assets of the Trust Fund in accordance with such directions.

The Trustee shall credit and reinvest in the Investment Fund all interest, dividends and other income received with respect to, and any proceeds received from the sale or other disposition of, securities or other property held in such Investment Fund. All expenses of the Trust Fund which are allocable to a particular Investment Fund shall be so allocated and charged. Subject to the provisions of the Plans, the Pension Committee may direct the Trustee to eliminate an Investment Fund or Funds, and the Trustee shall thereupon dispose of the assets of such Investment Fund and reinvest the proceeds thereof in accordance with the directions of the Pension Committee.

If, and to the extent specifically authorized by the Plans, the Pension Committee may direct the Trustee to establish one or more Investment Funds all of the assets of which shall be invested in securities which constitute "qualifying employer securities" or "qualifying employer real property" within the meaning of Section 407 of ERISA. It shall be the duty of the Pension Committee to determine that such investment is not prohibited by Sections 406 or 407 of ERISA.

3.2 Investment Manager Appointment. The Pension Committee, from time to time and in accordance with the provisions of the Plans, may appoint one or more independent Investment Managers, pursuant to a written investment management agreement describing the powers and duties of the Investment Manager, to direct the

investment and reinvestment of all or a portion of the Trust Fund or an Investment Fund (hereinafter referred to as an "Investment Account").

The Pension Committee shall be responsible for ascertaining that while each Investment Manager is acting in that capacity hereunder, the following requirements are satisfied:

(a) The Investment Manager is either (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of Section 203A(a) of such Act, is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary, (iii) a bank as defined in that Act or (iv) an insurance company qualified to perform the services described in (b) below under the laws of more than one state.

(b) The Investment Manager has the authority to manage, acquire or dispose of any assets of the Plans for which it is responsible hereunder.

(c) The Investment Manager has acknowledged in writing to the Pension Committee and the Trustee that he or it is a fiduciary with respect to the Plans within the meaning of Section 3(21)(A) of ERISA.

(d) The Plans provide for the appointment of the Investment Manager in accordance with Section 402(c)(3) of ERISA, and the Investment Manager is appointed as so provided.

(e) Any Investment Manager with authority to invest in assets which will be held outside the jurisdiction of the district courts of the United States is an entity described in ERISA regulations at 29 C.F.R. 2550.404b-1(a)(2)(i).

The Pension Committee shall furnish the Trustee with written notice of the appointment of each Investment Manager hereunder, and of the termination of any such appointment. Such notice

shall specify the assets which shall constitute the Investment Account. The Trustee shall be fully protected in relying upon the effectiveness of such appointment and the Investment Manager's continuing satisfaction of the requirements set forth above until it receives written notice from the Pension Committee to the contrary.

The Trustee shall conclusively presume that each Investment Manager, under its investment management agreement, is entitled to act, in directing the investment and reinvestment of the Investment Account for which it is responsible, in its sole and independent discretion and without limitation, except for any limitations which from time to time the Pension Committee and the Trustee agree (in writing) shall modify the scope of such authority.

The Trustee shall have no liability (i) for the acts or omissions of any Investment Manager; (ii) for following directions, including investment directions of an Investment Manager, unless reasonable care required under industry standards for a directed trustee would require alternate action; or (iii) for any loss of any kind which may result by reason of the directed manner of division of the Trust Fund or Investment Fund into Investment Accounts.

An Investment Manager shall certify, at the request of the Trustee, the value of any securities or other property held in any Investment Account managed by such Investment Manager, and such certification shall be regarded as a direction with regard

to such valuation. The Trustee shall be entitled to conclusively rely upon such valuation for all purposes under this Trust Agreement, provided that it satisfies either any tolerance checks agreed upon by the parties or the Trustee's customary tolerance checks.

3.3 Company Directed Investment Accounts. The Trustee shall, if so directed in writing by the Pension Committee, segregate all or a portion of the Trust Fund held by it into one or more separate investment accounts to be known as Company Directed Accounts. The Pension Committee, by written notice to the Trustee, may at any time relinquish its powers under this Section 3.3 and direct that a Company Directed Account shall no longer be maintained. The Pension Committee also may direct the investment of cash within an Investment Account. In addition, during any time when there is no Investment Manager with respect to an Investment Account (such as before an investment management agreement takes effect or after it terminates), the Pension Committee shall direct the investment and reinvestment of such Investment Account. Whenever the Pension Committee is directing the investment and reinvestment of an Investment Account or a Company Directed Account, the Pension Committee shall have the powers and duties which an Investment Manager would have under this Trust Agreement if an Investment Manager were then serving and the Trustee shall be protected in relying on the Pension Committee's directions without reviewing investments or making suggestions to the same extent as it would be protected under

this Trust Agreement if it had relied on the directions of an Investment Manager.

3.4 Trustee Directed Investment Accounts. The Trustee shall have no duty or responsibility to direct the investment and reinvestment of the Trust Fund, any Investment Fund or any Investment Account unless the Pension Committee expressly appoints the Trustee as an Investment Manager, as agreed to in writing between the Trustee and the Pension Committee in accordance with the investment guidelines applicable to the Trustee as set forth on Schedule A (as amended from time to time, the "Trustee Investment Guidelines") with respect to any Portfolio (as defined in the Trustee Investment Guidelines). In the event that the Pension Committee appoints the Trustee pursuant to the Trustee Investment Guidelines, it shall have the powers and duties of an Investment Manager under this Trust Agreement with regard to such Portfolio. The Trustee Investment Guidelines may be modified from time to time by a written agreement signed by the authorized representatives of both parties. With respect to the Trustee's role as Investment Manager with respect to a Portfolio, the provisions of this Agreement shall apply to the extent not inconsistent with the Trustee Investment Guidelines. Additionally, the Trustee shall be entitled to such compensation as set forth in the Trustee Investment Guidelines for its services as Investment Manager with respect to a Portfolio. Such compensation shall be in addition to any compensation the Trustee receives in its role as Trustee

under this Trust Agreement. The Trustee, in its capacity as Investment Manager represents and warrants that it qualifies as an "investment manager," as defined in Section 3(38) of ERISA, with respect to the Portfolio. The Pension Committee acknowledges that the Trustee and its affiliates perform investment advisory services for various clients. The Pension Committee agrees that the Trustee may give advice and take action in the performance of its duties with respect to any of its other clients which differ from action taken with respect to the Portfolios, provided that the Portfolio is treated in a fair and equitable manner.

4. POWERS AND DUTIES OF THE TRUSTEE.

4.1 Investment Powers and Duties of the Trustee. The Trustee shall have and exercise the powers and authorities lettered (a) through (y) below (i) over Investment Accounts where it has express investment management discretion as provided in Section 3.4 or (ii) upon direction of the Investment Manager of an Investment Account or (iii) upon direction of the Pension Committee: (x) for a Company Directed Account and for cash within certain Investment Accounts identified by a standing direction letter to the Trustee, (y) for voting and tendering of qualifying employer securities, and (z) for lending to participants in the Plans.

(a) To purchase, receive, or subscribe for any securities or other property and to retain in trust such securities or other property.

(b) To acquire and hold qualifying employer securities and qualifying employer real property, as such investments are

defined in Section 407(d) of ERISA.

(c) To collect income and distributions received due to the Trust Fund and sign on behalf of the Trust Fund any declarations, affidavits, certificates of ownership and other documents required to collect income and principal payments, including but not limited to, tax reclaimations, rebates and other withheld amounts.

(d) To sell for cash or on credit, to grant options, convert, redeem, exchange for other securities or other property, to enter into standby agreements for future investment, either with or without a standby fee, or otherwise to dispose of any securities or other property at any time held by it and subject to the timely receipt of notice from an issuer, Investment Manager or Pension Committee, collect proceeds received from securities, certificates of deposit or other investments which may mature or be called.

(e) To settle, compromise or submit to arbitration any claims, debts, or damages, due or owing to or from the trust, to commence or defend suits or legal proceedings and to represent the trust in all suits or legal proceedings in any court of law or before any other body or tribunal.

(f) To trade in financial options and futures, including index options and options on futures and to execute in connection therewith such account agreements and other agreements in such form and upon such terms as the Investment Manager or the Pension Committee shall direct.

(g) To exercise all voting rights, tender or exchange rights, any conversion privileges, subscription rights and other rights and powers available in connection with any securities or other property at anytime held by it; to oppose or to consent to the reorganization, consolidation, merger, or readjustment of the finances of any corporation, company or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association any of the securities which may at any time be held by it and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions, which may be deemed necessary or advisable by the Investment Manager or Pension Committee in connection therewith, and to hold and retain any securities or other property which it may so acquire; and to deposit any property with any protective, reorganization or similar committee, and to pay and agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to property so deposited.

(h) To exercise all voting or tender offer rights with respect

to all qualifying employer securities held by it to the extent provided in the plans, or otherwise from the Pension Committee. The Pension Committee shall inform the Trustee of the voting and tender offer provisions of each Plan. Each participant entitled to do so may direct the Trustee, confidentially, how to vote or whether or not to tender the qualifying employer securities representing his proportionate interest in the assets of the Plans. The Pension Committee shall furnish the Trustee with the name of each participant and the number of shares held for the participant's account as near as practicable to the record date fixed for the determination of shareholders entitled to vote and shall provide the Trustee with all other information and assistance which the Trustee may reasonably request.

(i) To lend to participants in the Plans such amounts and upon such terms and conditions as the Pension Committee may direct. Any such direction shall be deemed to include a certification by the Pension Committee that such lending is in accordance with the provisions of ERISA and the Plans.

(j) To borrow money in such amounts and upon such terms and conditions as shall be deemed advisable or proper by the Pension Committee or Investment Manager to carry out the purposes of the trust and to pledge any securities or other property for the repayment of any such loan.

(k) To invest all or a portion of the Trust Fund in contracts issued by insurance companies, including contracts under which the insurance company holds Plan assets in a separate account or commingled separate account managed by the insurance company. The Trustee shall be entitled to rely upon any written directions of the Pension Committee or the Investment Manager under this Section 4.1, and the Trustee shall not be responsible for the terms of any insurance contract that it is directed to purchase and hold or for the selection of the issuer thereof or for performing any functions under such contract (other than the execution of any documents incidental thereto on the instructions of the Pension Committee or the Investment Manager).

(l) To manage, administer, operate, lease for any number of years, develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to, or otherwise deal with any real property or interest therein at any time held by it, and to hold any such real property in its own name or in the name of a nominee, with or without the addition of words indicating that such property is held in a fiduciary capacity, all upon such terms and conditions as may be deemed advisable by the Investment Manager or Pension Committee.

(m) To renew, extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable by the Investment Manager or Pension Committee, and to agree to a reduction in the rate of interest on any mortgage or of any guarantee pertaining thereto in any manner and to any extent that may be deemed advisable by the Investment Manager or Pension Committee for the protection of the Trust Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable by the Investment Manager or Pension Committee; to exercise and enforce any and all rights of foreclosure, to bid on property on foreclosure, to take a deed in lieu of foreclosure with or without paying consideration therefor, and in connection therewith to release the obligation on the bond secured by such mortgage, and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any such mortgage or guarantee.

(n) To hold part or all of the Trust Fund uninvested.

(o) To employ suitable agents and counsel and to pay their reasonable and proper expenses and compensation.

(p) To purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with State Street Bank and Trust Company, its agents or subcustodians.

(q) To form corporations and to create trusts to hold title to any securities or other property, all upon such terms and conditions as may be deemed advisable by the Investment Manager or Pension Committee.

(r) To register any securities held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity and to hold any securities in bearer form and to deposit any securities or other property in a depository or clearing corporation.

(s) To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases, or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers.

(t) To invest at State Street Bank and Trust Company (i) in any type of interest bearing investments (including, but not limited to savings accounts, money market accounts, certificates of deposit and repurchase agreements) and (ii)

in noninterest bearing accounts (including but not limited to checking accounts).

(u) To invest in collective investment funds maintained by State Street Bank and Trust Company or by others for the investment of the assets of employee benefit plans qualified under Section 401 of the Code, whereupon the instruments establishing such funds, as amended, shall be deemed a part of this Trust Agreement and incorporated by reference herein.

(v) To invest in open-end and closed-end investment companies, regardless of the purposes for which such fund or funds were created, including those managed, serviced, or advised by the Trustee or an affiliate of the Trustee, and in any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose.

(w) To lend securities through a securities lending program of the Trustee, as authorized under a separate lending agreement.

(x) To commingle any part or all of the assets of the Trust Fund for purposes of investment with the assets any other trust maintained by the Company for funding of retirement plans qualified under Section 401(a) of the Code, as directed by the Pension Committee.

(y) To generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or proper for the fulfillment of the foregoing duties hereunder.

Except as otherwise provided in this Trust Agreement, the Investment Manager of an Investment Account or the Pension Committee in the case of a Company Directed Account shall have the power and authority, to be exercised in its sole discretion at any time and from time to time, to issue orders for the purchase or sale of securities directly to a broker. Written notification of the issuance of each such order shall be given promptly to the Trustee by the Investment Manager or the Pension Committee and the confirmation of each such order shall be confirmed to the Trustee by the broker. Unless otherwise

directed by the Pension Committee or Investment Manager, such notification shall be authority for the Trustee to pay for securities purchased or to deliver securities sold as the case may be. Upon the direction of the Investment Manager or the Pension Committee, unless reasonable care required under industry standards for a directed trustee would require alternate action, the Trustee will execute and deliver appropriate trading authorizations, but no such authorization shall be deemed to increase the liability or responsibility of the Trustee under this Trust Agreement.

The Trustee shall transmit promptly to the Pension Committee or the Investment Manager, as the case may be, all notices of conversion, redemption, tender, exchange, subscription, class action, claim in insolvency proceedings or other rights or powers relating to any of the securities in the Trust Fund, which notices are received by the Trustee from its agents or custodians, from issuers of the securities in question and from the party (or its agents) extending such rights. The Trustee shall have no obligation to determine the existence of, or to exercise any right or power with respect to any conversion, redemption, tender, exchange, subscription, class action, claim in insolvency proceedings or other right or power relating to any of the securities in the Trust Fund which would not be reasonably evident to a similar trustee with similar experience acting in a similar capacity or of which notice was not given after the purchase of such securities by the Trust Fund.

The Trustee shall not be liable for any untimely exercise or assertion of such rights or powers described in the paragraph immediately above in connection with securities or other property of the Trust Fund at any time held by it unless (i) it or its agents or custodians are in actual possession of such securities or property and (ii) it receives directions to exercise any such rights or powers from the Pension Committee or the Investment Manager, as the case may be, and both (i) and (ii) occur at least three business days prior to the Trustee's deadline date to exercise such right or power.

If the Trustee is directed by the Pension Committee or an Investment Manager to purchase securities issued by any foreign government or agency thereof, or by any corporation or other entity domiciled outside of the United States: i) the Trustee shall provide market information to the Pension Committee or the Trust's Investment Managers consistent with industry standards for professional global custodians; ii) the Trustee shall receive for and credit to the Trust Fund any money or assets, including dividends and interest, due and payable from or on account of the securities and other investments and /or assets in the Trust Fund, based upon tax status information supplied by the Pension Committee; iii) the Trustee shall, in the ordinary course of business, take all necessary administrative steps for the timely collection of interest, repayments and dividends, and for exercising or cashing in rights and warrants as instructed, obtaining new coupon or dividend sheets and effecting conversion

transactions; however, the Trustee shall not attempt to enforce such collections by legal process unless directed in writing to do so by the Pension Committee or Investment Manager, and unless arrangements are made to Trustee's reasonable satisfaction with respect to reimbursement of expenses for any such legal process; (iv) the Trustee will submit to the relevant tax authorities documents received from the Pension Committee with regard to the Trust's tax status and will use reasonable efforts to claim any refund or withholding of tax to which the Trust Fund has been subject; (v) provide settlement of purchases and sales of securities as a global custodian. Except with respect to the foregoing activities conducted in the ordinary course of business, the Trustee shall have no responsibility to determine what foreign laws or regulations (including, without limitation, any laws or regulations affecting receipt by the Trust of dividends, interest or other distributions) might apply to such securities or other investments or to the Trust.

4.2 Administrative Powers of the Trustee. Notwithstanding the appointment of an Investment Manager, the Trustee shall have the following powers and authority, to be exercised in its sole discretion, with respect to the Trust Fund:

(a) To employ suitable agents, custodians and counsel, except that the indicia of ownership of any assets of the Fund shall not be held outside the jurisdiction of the District Courts of the United States unless in compliance with Section 404(b) of ERISA and regulations thereunder, and to pay their reasonable expenses and compensation.

(b) To appoint ancillary trustees to hold any portion of the assets of the trust and to pay their reasonable expenses and compensation.

(c) To register any securities held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity and to hold any securities in bearer form and to deposit any securities or other property in a depository or clearing corporation.

(d) To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers.

(e) Generally to do all ministerial acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable in carrying out its duties under this Trust Agreement.

Notwithstanding anything in the Plans or this Trust Agreement to the contrary, the Trustee shall not be required by the Company, the Pension Committee or any Investment Manager to engage in any action, nor make any investment which constitutes a prohibited transaction or is otherwise contrary to the provisions of ERISA or which is otherwise contrary to law or to the terms of the Plans or this Trust Agreement.

The Trustee may consult with legal counsel concerning any question which may arise with reference to this Trust Agreement and its powers and duties hereunder. The written opinion of such counsel shall be full and complete protection of the Trustee in respect to any action taken or suffered by the Trustee hereunder in good faith reliance on said opinion.

5. INDEMNIFICATION.

Unless resulting from the Trustee's negligence, willful misconduct, lack of good faith, or breach of its fiduciary duties under this Agreement or ERISA, the Company shall indemnify and

save harmless the Trustee for and from any loss or expense (including reasonable attorneys' fees) arising directly (a) out of an authorized action hereunder taken in good faith by the Trustee or any matter as to which this Trust Agreement provides that the Trustee is directed, protected, not liable, or not responsible, or (b) by reason of any breach of any statutory or other duty owed to the Plans by the Company, any Employer, the Pension Committee, any Investment Manager or any authorized delegate of any of them (and for the purposes of this sentence the Trustee shall not be considered to be such a delegate), whether or not the Trustee may also be considered liable for that person's breach under the provisions of section 405(a) of ERISA, unless the Trustee knowingly participates in or knowingly undertakes to conceal an act or omission of another fiduciary knowing it to be a fiduciary breach, or has knowledge of a breach by another fiduciary and fails to notify the Pension Committee of such breach.

6. SECURITIES OR OTHER PROPERTY.

The words "securities or other property", used in this Trust Agreement, shall be deemed to refer to any property, real or personal, or part interest therein, wherever situated, including, without limitation, governmental, corporate or personal obligations, trust and participation certificates, partnership interests, annuity or investment contracts issued by an insurance company, leaseholds, fee titles, mortgages and other interests in realty, preferred and common stocks, certificates of deposit,

financial options and futures or any other form of option, evidences of indebtedness or ownership in foreign corporations or other enterprises or indebtedness of foreign governments, and any other evidences of indebtedness or ownership, including securities or other property of the Company, even though the same may not be legal investment for trustees under any law other than ERISA.

7. SECURITY CODES.

If the Trustee has issued to the Company, the Pension Committee or to any Investment Manager appointed by the Pension Committee, security codes or passwords in order that the Trustee may verify that certain transmissions of information, including directions or instructions, have been originated by the Company, Pension Committee or the Investment Manager, as the case may be, the Trustee shall be kept indemnified by and be without liability to the Company for any action taken or omitted by it in reliance upon receipt by the Trustee of transmissions of information with the proper security code or password, including communications purporting to be directions or instructions, which the Trustee reasonably believes to be from the Company, Pension Committee or Investment Manager.

8. TAXES AND TRUSTEE COMPENSATION.

The Trustee shall pay out of the Trust Fund all real and personal property taxes, income taxes and other taxes or assessments of any and all kinds levied or assessed under existing or future laws against the Trust Fund by any

governmental authority. Until advised to the contrary by the Pension Committee (or such governmental authority), the Trustee shall assume that the Trust is exempt from Federal, State and local income taxes, and shall act in accordance with that assumption. The Pension Committee shall timely file all Federal, State and local tax and information returns relating to the Plans and Trust. The Trustee shall notify the Pension Committee as soon as reasonably practicable (but in any event no later than five (5) business days) after the Trustee receives notice of any tax or assessment and shall provide the Pension Committee with such information as the Trustee has received concerning such tax or assessment. The Pension Committee may direct that the Trustee refrain from paying the tax or assessment until such tax or assessment is due and payable (the "Review Period"), during which time the Trustee will provide all reasonable assistance to the Pension Committee in determining the validity of such tax or assessment and will cooperate in all reasonable efforts to have the tax or assessment waived or mitigated if such tax or assessment is considered not to be owed by the Trust. At the end of the Review Period, if the tax or assessment remains outstanding, the Trustee may pay the tax or assessment from the Trust Fund, only upon the advice of counsel acceptable to Pension Committee and Trustee, but will continue to provide all reasonable assistance to the Pension Committee in seeking a refund of the tax or assessment.

The Trustee shall be paid such reasonable compensation as

shall from time to time be agreed upon by the Pension Committee and the Trustee. Such compensation and all reasonable and proper expenses of administration of the Trust shall be withdrawn by the Trustee out of the Trust Fund, upon approval or direction of the Pension Committee, unless paid by the Company, but such compensation and expenses shall be paid by the Company if the same cannot by operation of law be withdrawn from the Trust Fund.

If the Trustee has advanced cash or securities for any proper purpose under the Trust, such as, but not limited to, the purchase or sale of foreign exchange to settle trades, such advances shall remain a charge on the Trust Fund until withdrawn by the Trustee or paid to it by the Company.

All payments from the Trust Fund under this Article 8 shall be accounted for to the Pension Committee.

9. ACCOUNTS OF THE TRUSTEE.

The Trustee shall maintain or cause to be maintained suitable records, data and information relating to its functions hereunder.

The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other actions hereunder, and such other records as the Pension Committee shall from time to time direct, as agreed to by the Trustee. Its books and records relating thereto shall be open to inspection and audit at all reasonable times by the Pension Committee or its duly authorized representatives and each Investment Manager. The Trustee shall be entitled to reasonable compensation and

reimbursement of its reasonable expenses incurred in connection with such audits or inspections.

In accordance with the Trustee's standard operating procedure, the Trustee shall credit the Trust Fund with income and maturity proceeds on securities on contractual payment date net of any taxes or upon actual receipt. To the extent the Trustee credits income on contractual payment date, the Trustee may reverse such accounting entries to the contractual payment date if the Trustee reasonably believes that such amount will not be received. The collection of income due the Trust Fund on securities loaned by the Trust Fund other than through a securities lending program of the Trustee shall be the responsibility of the Company and such income shall be credited upon actual receipt by the Trustee.

Within sixty days after the close of each fiscal year of the trust and at more frequent intervals if agreed to by the parties hereto, and within sixty days after the removal or resignation of the Trustee as provided hereunder, the Trustee shall render to the Pension Committee a written statement and account showing in reasonable summary the investments, receipts, disbursements, and other transactions engaged in during the preceding fiscal year or period, and setting forth the assets and liabilities of the trust. Unless the Pension Committee shall have filed with the Trustee written exceptions or objections to any such statement and account within sixty days after receipt thereof, the Pension Committee shall be deemed to have approved such statement and

account, and in such case or upon written approval by the Pension Committee of any such statement and account, the Trustee shall be released and discharged with respect to the accuracy of all matters and things embraced in such statement and account as though it had been settled by a decree of a court of competent jurisdiction in an action or proceeding in which the Company, all other necessary parties and all persons having any beneficial interest in the Trust Fund were parties.

The Trustee shall certify the value of any securities or other property held in the Trust Fund and determine the fair market value of the Trust Fund monthly, or for such other period as may be mutually agreed upon (with the expectation of beginning daily valuation during April, 2001), in accordance with methods consistently followed and uniformly applied, based upon information and financial publications of general circulation, statistical and valuation services, records of security exchanges, appraisals by qualified persons, transactions and bona fide offers in assets of the type in question and other information customarily used in the valuation of property, including, in the case of securities or other property for which the value cannot be readily obtained, valuations provided by Investment Managers.

The Pension Committee or its delegate, each Investment Manager, and the Trustee shall file such descriptions and reports and make such other publications, disclosures, registrations and other filings as are required of them respectively by ERISA.

Nothing contained in this Trust Agreement or in the Plans shall deprive the Trustee of the right to have a judicial settlement of its account. In any proceeding for a judicial settlement of the Trustee's accounts or for instructions in connection with the trust, the only necessary party thereto in addition to the Trustee shall be the Pension Committee, and no participant or other person having or claiming any interest in the Trust Fund shall be entitled to any notice or service of process (except as required by law). Any judgment, decision or award entered in any such proceeding or action shall be conclusive upon all interested persons.

10. RELIANCE ON COMMUNICATIONS.

The Trustee may rely upon a certification of the Pension Committee with respect to any instruction, direction or approval of such Pension Committee, and may continue to rely upon such certification until a subsequent certification is filed with the Trustee.

The Trustee shall be fully protected in acting upon any instrument, certificate, or paper of the Company, its Board of Directors, the Pension Committee, reasonably believed by it to be genuine and to be signed or presented by any authorized person, and the Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized by the Company, its Board of Directors or the Pension Committee, as the case may be.

The Trustee shall be further protected in reasonable

reliance upon a certification from any Investment Manager appointed by the Pension Committee as to the person or persons authorized to give instructions or directions on behalf of such Investment Manager and may continue to rely upon such certification until a subsequent certification is filed with Trustee.

11. RESIGNATION AND REMOVAL OF TRUSTEE.

Any Trustee acting hereunder may resign at any time by giving sixty days' prior written notice to the Pension Committee, which notice may be waived by the Pension Committee. The Pension Committee may remove the Trustee at any time upon sixty days' prior written notice to the Trustee, which notice may be waived by the Trustee. In case of the resignation or removal of the Trustee, the Pension Committee shall appoint a successor trustee. The removal of a Trustee and the appointment of a new Trustee shall be by a written instrument delivered to the Trustee. Upon the appointment of a successor trustee, the resigning or removed Trustee shall transfer or deliver the Trust Fund to such successor trustee on a timely basis.

12. AMENDMENT.

This Trust Agreement may be amended by agreement between the Trustee and the Company at any time or from time to time and in any manner, and the provisions of any such amendment may be applicable to the Trust Fund as constituted at the time of the amendment as well as to the part of the Trust Fund subsequently acquired.

13. TERMINATION.

This Trust Agreement and the trust created hereby may be terminated at any time by the Company, and upon such termination or upon the dissolution or liquidation of the Company, in the event that a successor to the Company by operation of law or by the acquisition of its business interests shall not elect to continue the Plans and the trust, the Trust Fund shall be paid out by the Trustee after the settlement of its final account when directed by the Pension Committee. Notwithstanding the foregoing, the Trustee shall not be required to pay out any assets of the Trust Fund upon termination of the Trust until the Trustee has received written certification from the Pension Committee: (i) that all provisions of law with respect to such termination have been complied with; and (ii) (after the Trustee has made a determination of the fair market value of the Plans' assets) that the Plans' assets are sufficient to discharge when due all obligations of the Plans required by law. The Trustee shall rely conclusively on such written certification, and shall be under no obligation to investigate or otherwise determine its propriety.

14. WITHDRAWAL FROM TRUST FUND.

14.1 Withdrawal of a Plan. In the event of the withdrawal of a Plan from the trust or in the event of the Company's or an Employer's election to terminate or to fund separately the benefits provided under any of its Plans, the Company shall cause

a valuation to be made of the share of the Trust Fund which is held for the benefit of persons having an interest therein under such Plans. The Trustee shall thereupon segregate and dispose of such share in accordance with the written direction of the Company accompanied by its certification to the Trustee that such segregation and disposition is in accordance with the terms of the Plans and the requirements of the law.

14.2 Withdrawal Due to Disqualification. If the Company or any Employer receives notice that one or more of its Plans is no longer qualified under the provisions of Section 401 of the Code or the corresponding provisions of any future Federal revenue act, the Company shall immediately cause a valuation to be made of the share of the Trust Fund which is held for the benefit of such persons having an interest under such disqualified Plan or Plans. The Trustee shall thereupon segregate, withdraw from the Trust Fund, and dispose of such share in accordance with the terms of the disqualified Plan or Plans. The Company may direct the Trustee to dispose of such share by the transfer and delivery of such share to itself as trustee of a separate trust, the terms and conditions of which shall be identical with those of this Trust Agreement, except that either the Company or the Employer maintaining such disqualified Plan or Plans and the Trustee shall be the only parties thereto.

14.3 Withdrawal of a Group of Employees. In the event that any group of employees covered by a Plan is withdrawn from such Plan, the Company shall, if required by the terms of such Plan,

cause a valuation to be made of the share of the Trust Fund which is held for the benefit of such group of employees. The Trustee shall thereupon segregate and dispose of such share in accordance with the direction of the Company accompanied by its certification to the Trustee that such segregation and disposition is in accordance with the terms of such Plan and the requirements of the law.

The Trustee shall have no duty to see that the valuation of any share in accordance with the provisions of this Section 14 is caused to be made by the Company, nor to segregate and dispose of any such share in the absence of the written direction of the Company to do so.

15. **MISCELLANEOUS**.

15.1 Governing Law. To the extent not inconsistent with ERISA, as heretofore or hereafter amended, the provisions of this Trust Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of the conflicts of laws of that state; however, to the extent required by law, the Trustee's rights, duties, obligations and powers with respect to the trust created hereby, and the terms and conditions of any common or collective trust maintained by the Trustee into which any assets held hereunder are deposited shall in all respects be governed by and construed in accordance with the Commonwealth of Massachusetts' laws governing trusts.

15.2 No Reversion to Employers. Except as provided herein,

no portion of the principal or the income of the Trust Fund shall revert to or be recoverable by the Company or any Employer or ever be used for or diverted to any purpose other than for the exclusive benefit of participants in the Plans and persons claiming under or through them pursuant to the Plans, provided, however, that:

(a) if a contribution is conditioned upon the deductibility of the contribution under Section 404 of the Code, then, to the extent the deduction is disallowed, the Trustee shall, upon written request of the affected Employer or the Company, return such amounts as may be permitted by law to such Employer or the Company, as appropriate, within one year after the date the deduction is disallowed; and

(b) if a contribution or any portion thereof is made by the Company or an Employer by a mistake of fact, the Trustee shall, upon written request of the Company or such Employer, return such amounts as may be permitted by law to the Company or such Employer, as appropriate, within one year after the date of payment to the Trustee or within such other period as is permitted by applicable law; and

(c) if a contribution is conditioned upon the qualification of the Plans and Trust under Section 401 and 501 of the Code, the contributions of the Company or an Employer to the Trust for all Plans Years, with the gains and losses thereon, shall be returned by the Trustee to the Company or such Employer, as appropriate, within one year in the event that the Commissioner of Internal Revenue fails to rule that the Plans and Trust were as of such date qualified and tax-exempt (within the meaning of Sections 401 and 501 of the Code); and

(d) in the event that a Plan whose assets are held in the Trust Fund is terminated, assets of such Plan may be returned to the Employer if all liabilities to participants and beneficiaries of such Plan have been satisfied; and

(e) assets may be returned to the Employer to the extent that the law permits such transfer.

The Trustee shall be under no obligation to return any part of the Trust Fund as provided in this Section 15.2 until the

Trustee has received a written certification from the Pension Committee that such return is in compliance with this Section 15.2, the Plans and the requirements of the law. The Trustee shall rely conclusively on such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

15.3 Non-Alienation of Benefits. No benefit to which a participant or his beneficiary is or may become entitled under a Plan shall at any time be subject in any manner to alienation or encumbrance, nor be resorted to, appropriated or seized in any proceeding at law, in equity or otherwise. No participant or other person entitled to receive a benefit under a Plan shall, except as specifically provided in such Plans, have power in any manner to transfer, assign, alienate or in any way encumber such benefit under such Plan, or any part thereof, and any attempt to do so shall be void.

15.4 Duration of Trust. Unless sooner terminated, the trust created under this Trust Agreement shall continue for the maximum period of time which the laws of the State of New York shall permit.

15.5 No Guarantees. Neither the Company, the Pension Committee nor any Employer, nor the Trustee guarantees the Trust Fund from loss or depreciation, nor the payment of any amount which may become due to any person under the Plans or this Trust Agreement.

15.6 Duty to Furnish Information. Both the Pension

Committee and the Trustee shall furnish to the other any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties imposed under the Plans or this Trust Agreement or otherwise imposed by law.

15.7 Withholding. The Company or its agent shall withhold any tax which by any present or future law is required to be withheld from any payment under the Plans, unless the Trustee or its agents or affiliates shall have agreed in writing to do so. The Administrator shall provide all information reasonably requested by the Trustee to enable the Trustee to so withhold.

15.8 Parties Bound. This Trust Agreement shall be binding upon the parties hereto, all participants in the Plans and persons claiming under or through them pursuant to the Plans, and, as the case may be, the heirs, executors, Pension Committees, successors, and assigns of each of them. The provisions of Articles 5 and 7 shall survive termination of the Trust created under this Trust Agreement or resignation or removal of the Trustee for any reason.

In the event of the merger or consolidation of the Company or any Employer or other circumstances whereby a successor person, firm or company shall continue to carry on all or a substantial part of its business, and such successor shall elect to carry on the provisions of the Plan or Plans applicable to such business, as therein provided, such successor shall be substituted hereunder for the Company or such Employer, as the

case may be, upon the filing in writing of its election so to do with the Trustee. The Trustee may, but need not, rely on the certification of an officer of the Company, and a certified copy of a resolution of the Board of Directors of such successor, reciting the facts, circumstances and consummation of such succession and the election of such successor to continue the said Plan or Plans as conclusive evidence thereof, without requiring any additional evidence.

15.9 Necessary Parties to Disputes. Necessary parties to any accounting, litigation or other proceedings shall include only the Trustee, the Company, the Pension Committee and any appropriate Employers and the settlement or judgment in any such case in which the Company, the Pension Committee, the appropriate Employers and the Trustee are duly served or cited shall be binding upon all participants in the Plans and their beneficiaries and estates, and upon all persons claiming by, through or under them.

15.10 Unclaimed Benefit Payments. If any check or share certificate in payment of a benefit hereunder which has been mailed by regular US mail to the last address of the payee furnished the Trustee by the Company is returned unclaimed, the Trustee shall notify the Company and shall discontinue further payments to such payee until it receives the further instruction of the Company. Any such returned benefits shall be promptly redeposited into the Trust Fund in accordance with the Trustee's standard operating procedure.

15.11 Severability. If any provisions of this Trust Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Trust Agreement shall continue to be fully effective.

15.12 References. Unless the context clearly indicates to the contrary, a reference to a statute, regulation, document or provision shall be construed as referring to any subsequently enacted, adopted or executed counterpart.

15.13 Headings. Headings and subheadings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of its provisions.

15.14 No Liability for Acts of Predecessor and Successor Trustees. The Trustee shall have no liability for the acts or omissions of any predecessors or successors in office.

15.15 Counterparts. This Trust Agreement may be executed in one or more counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers as of the day and year first above written.

ATTEST:

JOHNSON & JOHNSON

_____

BY: _____

NAME: John A. Papa

TITLE: Treasurer

DATE: December 21, 2000

ATTEST:

STATE STREET BANK AND TRUST COMPANY

_____

BY: _____

NAME: _____

TITLE: Vice President

DATE: December 22, 2000

REVIEWED
LEGAL DIVISION
By _____
Date 1/11/01

SCHEDULE A

TRUSTEE INVESTMENT GUIDELINES

From time to time, the Pension Committee may appoint the Trustee to act as Investment Manager for the investment and reinvestment of certain assets of the Trust in a certain portfolio of securities (the "Portfolio") identified on a supplement hereto (each a "Supplement"). By executing a copy of the Supplement for a Portfolio, the Trustee accepts its appointment as the Investment Manager with respect to such Portfolio. In such event, the provisions of this Schedule A, and, to the extent they are not inconsistent with this Schedule A, the provisions of the Trust Agreement shall apply to the provision of such investment management services by the Trustee. In no event shall the Trustee be considered to be an Investment Manager with respect to securities or other assets held in the Trust unless otherwise appointed by the Pension Committee pursuant to this Schedule A, as amended from time to time. The Trustee, in its capacity as Investment Manager represents and warrants that it qualifies as an "investment manager," as defined in Section 3(38) of ERISA, with respect to the Portfolio. The Trustee, in its capacity as Investment Manager, acknowledges that it is a fiduciary with respect to the Portfolio and that it will discharge its duties as Investment Manager in good faith, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person who is familiar with such matters would use.

The Pension Committee shall direct the Trustee to acquire on behalf of the Portfolio units in the State Street Bank and Trust Company Investment Funds for Tax Exempt Retirement Plans (the "State Street Trust"), a trust pursuant to which State Street operates and maintains the funds identified on the Supplement (collectively referred to as the "Funds"). The Funds will be maintained in accordance with investment objectives (the "Objectives"), the current form of which is set forth on the Supplement. Any amendment to such Objectives shall be effective only upon mutual acceptance, in writing, by both the Pension Committee and the Trustee. In the event that the Plan loses its tax-qualified status, the Pension Committee warrants that it shall immediately cause such assets to be withdrawn from the Portfolio.

The Trustee shall be entitled to a fee in accordance with the Supplement. Fees will be charged to the Portfolio quarterly in arrears following each calendar quarter based on the average of the Portfolio's month-end market values within each such calendar quarter. The Trustee will provide the Portfolio with an invoice subsequent to the end of each calendar quarter. Any and all reasonable expenses directly relating to the investment of the assets of the Portfolio, and all taxes, including any interest and penalties with respect thereto, which may be levied or assessed under existing or future laws upon or in respect of the Funds or income thereof and applied to the Funds' participants on a pro rata basis pursuant to applicable law shall, unless otherwise provided, be charged to and paid out of the assets of the Portfolio.

SUPPLEMENT

Daily EAFE Securities Lending Fund Series A

The investment objective of the Fund shall be to match, as closely as possible, the performance of the Morgan Stanley Capital International EAFE Index.

[redacted]

Russell 3000 Index Securities Lending Fund; and,
Russell 3000 Index Securities Lending Fund Series A

The investment objective of the Fund shall be to match, as closely as possible, the performance of the Russell 3000 Index.

[redacted]

Government Securities Funds

The investment objective of the Fund shall be to maximize current income while preserving capital and liquidity through investing in fixed-rate and floating-rate securities backed by the U.S. Treasury and its agencies. The Net Asset [redacted]

All of the above shall be effective as of December 29, 2000.

ATTEST:

_____

JOHNSON & JOHNSON PENSION COMMITTEE

BY: _____

NAME: John A. Papa

TITLE: Member, Pension Committee

ATTEST:

_____

JOHNSON & JOHNSON PENSION COMMITTEE

BY: _____

NAME: Lori P. Blutfield

TITLE: Member, Pension Investment Subcommittee, as delegate for the Pension Committee

ATTEST:

_____

STATE STREET BANK AND TRUST COMPANY

BY: _____

NAME: JOHN R. SERHANT

TITLE: E.V.P

REVIEWED
LEGAL DIVISIC
By _____
Date 1/11/01

Connolly Ex. B

THE JOHNSON & JOHNSON PENSION AND SAVINGS PLANS MASTER TRUST AGREEMENT

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THE JOHNSON & JOHNSON

PENSION AND SAVINGS PLANS MASTER TRUST AGREEMENT

Agreement (hereinafter referred to as the "Trust Agreement") effective as of January 1, 2003, by and between Johnson & Johnson, a corporation organized under the laws of New Jersey (hereinafter referred to as the "Company") and STATE STREET BANK AND TRUST COMPANY, a trust company organized under the laws of the Commonwealth of Massachusetts (hereinafter referred to as the Trustee").

WITNESSETH:

WHEREAS, the Company maintains certain tax-qualified plans (hereinafter referred to collectively as the "Plans," and identified on Exhibit A hereto, as it may be amended from time to time) for the exclusive benefit of certain of its employees and the employees of certain of its affiliates and subsidiaries;

WHEREAS, the Pension Committee has by Agreements dated April 1, 1957 and June 1, 1982 with Bankers Trust Company of New York established two trusts to serve as the funding vehicles for the Plans (the "General Pension Trust" and the "Savings Trust," respectively);

WHEREAS, the authority to conduct the general operation and administration of the Plans is vested in the Company, which has appointed the Pension Committee as "Administrator" of the Plans, and the Pension Committee and its delegates (collectively, for purposes of this Trust Agreement, the "Pension Committee") shall

have the authorities and shall be subject to the duties with respect to the trust specified in the Plans and in this Trust Agreement;

WHEREAS, the Company has appointed State Street Bank and Trust Company as successor trustee to Bankers Trust Company of New York, effective January 2, 2001; and

WHEREAS, the Company has appointed a recordkeeper to provide recordkeeping and other administrative services other than those the Pension Committee continues to perform for the Plan in such capacity, and any other person or entity hereafter engaged by the Company to provide such services, being hereinafter referred to as the "Recordkeeper";

WHEREAS, the Company and the Trustee desire to amend and restate the two said Trust Agreements into a single Trust Agreement and to merge the General Pension Trust into the Savings Trust as the sole funding vehicle for the Plans, and wish to rename the surviving Trust.

NOW, THEREFORE, the Company and the Trustee do hereby amend and restate the two said Trust Agreements into a single Trust Agreement and continue the merged trust as the funding vehicle for the Plans, upon the terms and conditions hereinafter set forth:

1. TRUST FUND

1.1 Trust Name. This Trust shall be known as The Johnson & Johnson Pension and Savings Plans Master Trust.

1.2 Receipt of Assets. The Trustee shall receive and

accept for the purposes hereof all sums of money and other property paid to it by or at the direction of the Company or any Employer, and shall hold, invest, reinvest, manage, administer and distribute such monies and other property and the increments, proceeds, earnings and income thereof pursuant to the terms of this Trust Agreement and for the exclusive benefit of participants in the Plans and their beneficiaries. The Trustee acknowledges that it is a fiduciary of the Plans with respect to the duties and obligations imposed upon it under this Trust Agreement which are within the scope of ERISA section 3(21)(A). The Trustee will discharge its fiduciary duties under the Trust with the skill, care, prudence, and diligence under the circumstances then prevailing of a prudent trustee acting in like capacity and familiar with such matters. The Trustee need not inquire into the source of any money or property transferred to it nor into the authority or right of the transferor of such money or property to transfer such money or property to the Trustee. All Plan assets held by the Trustee in the trust pursuant to the provisions of this Trust Agreement at the time of reference are referred to herein as the "Trust Fund".

1.3 Employers. For purposes of this Trust Agreement the term "Employer" means the Company or any corporation (or other trade or business) which is a member of a controlled group of corporations of which the Company is a member as determined under Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code").

1.4 Plans. References in this Trust Agreement to the "Plan" or the "Plans" shall mean the tax-qualified employee benefit plan or plans of the Company, or the plan or plans of any Employer which are tax qualified under Section 401(a) of the Code or which are treated as so qualified pursuant to Section 1022(i) of ERISA (a "Qualified Puerto Rican Plan"), provided that the Employer has adopted the trust as a funding vehicle for such plan or plans.

The Pension Committee shall be responsible for verifying that while any assets of the Plan are held in the Trust Fund, the Plan (i) is "qualified" with the meaning of Section 401(a) of the Code (or is a Qualified Puerto Rican Plan) and, if a defined contribution plan either (x) the Plan provides that each participant is a "named fiduciary" (as described in Section 402(a)(2) of the provisions of the Employee Retirement Income Security Act of 1974, as amended (referred to herein as "ERISA")) who is duly authorized under the Plan to provide investment direction to the Pension Committee, acting as agent for such participant, for conveyance to the Trustee or (y) the Plan is duly qualified as an "ERISA Section 404(c) Plan" described in 29 C.F.R. 2550.404c under which each participant is authorized to provide investment direction to the Pension Committee, acting as agent for such Participant, for conveyance to the Trustee; (ii) is permitted by existing or future ruling of the United States Treasury Department to pool its funds in a group trust; (iii) permits its assets to be commingled for investment purposes with

the assets of other such plans by investing such assets in this Trust Fund whether or not its assets will in fact be held in a separate investment fund; and (iv) the Plan does not prohibit the Company from appointing the Recordkeeper to perform daily recordkeeping services as described herein, and provides that the Pension Committee is the fiduciary responsible for carrying out participant investment directions.

1.5 Accounting for a Plan's Undivided Interest in the Trust Fund. All transfers to, withdrawals from, and other transactions regarding the Trust Fund shall be conducted in such a way that the proportionate interest in the Trust Fund of each Plan and the fair market value of that interest may be determined at any time. Whenever the assets of more than one Plan are commingled in the Trust Fund or in any Investment Fund, the undivided interest therein of that Plan shall be debited or credited (as the case may be) (i) for the entire amount of every contribution received on behalf of that Plan, every benefit payment, or other expense attributable solely to that Plan, and every other transaction relating only to that Plan; and (ii) for its proportionate share of every item of collected or accrued income, gain or loss, and general expense; and other transactions attributable to the Trust Fund or that Investment Fund as a whole. As of each date when the fair market value of the investments held in the Trust Fund or an Investment Fund are determined as provided for in Article 9, the Trustee shall adjust the value of each Plan's interest therein to reflect the net increase or decrease in such values

since the last such date. For all of the foregoing purposes, fractions of a cent may be disregarded.

1.6 Appointment of Recordkeeper. Under the Plan, the Pension Committee is the fiduciary responsible for carrying out participant investment directions and in order to effect this, the Pension Committee has appointed Recordkeeper to perform certain services including but not limited to maintaining participant accounts for all contributions, loans and loan repayments, rollovers, and other deposits made for the purpose of determining how such deposits are to be allocated to the Investment Funds of the Plan, for determining requirements for disbursements from or transfers among Investment Funds in accordance with the terms of the Plan, for maintaining participant records for the purpose of voting or tendering shares in an Investment Fund as described in Section 4.1 herein, for distributing information about the Investment Funds provided for under the Plan, and for distributing participant statements at periodic intervals.

1.7 No Trustee Duty Regarding Contributions. The Trustee shall not be under any duty to require payment of any contributions to the Trust Fund or determine that a contribution is in compliance with a participant investment direction, or to see that any payment made to it is computed in accordance with the provisions of the Plans, or otherwise be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities under the Plans. The named fiduciary responsible for ensuring

timely payment of contributions to the Trust Fund is the Pension Committee.

1.8 Withholding. Unless otherwise agreed by the Pension Committee and the Trustee, the Pension Committee, its delegate, or the Recordkeeper shall withhold any tax which by any present or future law is required to be withheld from any payment under the Plans.

2. DISBURSEMENTS FROM THE TRUST FUND.

The Trustee shall from time to time on the directions of the Pension Committee or Recordkeeper make payments out of the Trust Fund to such persons, including the Pension Committee or Recordkeeper, in such manner, in such amounts and for such purposes as may be specified in the directions of the Recordkeeper or Pension Committee.

The Recordkeeper or Pension Committee shall be responsible for insuring that any payment directed under this Article conforms to the provisions of the Plans, this Trust Agreement, and the provisions of the Employee Retirement Income Security Act of 1974, as amended (hereinafter referred to as "ERISA"). Each direction of the Recordkeeper or Pension Committee shall be in writing (including but limited to electronic writing such as e-mail, if agreed to by Trustee) and shall be deemed to include a certification that any payment or other distribution directed thereby is one which the Recordkeeper or Pension Committee is authorized to direct, and the Trustee may conclusively rely on such certification which is given in accordance with this Trust

Agreement without further investigation unless it knows the certification constitutes a breach of fiduciary duty. Payments may be made by the Trustee by wire transfer, or such other electronic transfer method, or check to the order of the payee, as the Pension Committee may determine. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Trustee by the Recordkeeper or if no such address has been so furnished, to the payee in care of the Recordkeeper. The Trustee shall not incur any liability or other damage on account of any payments or other distributions made by it in accordance with the written directions of the Recordkeeper or Pension Committee, unless reasonable care required under industry standards for a directed trustee would require alternate action.

3. COMPANY SELECTED INVESTMENT FUNDS.

3.1 In General. The Pension Committee from time to time and in accordance with provisions of the Plan, may direct the Trustee to establish one or more separate investment accounts within the Trust Fund, each separate account being hereinafter referred to as an "Investment Fund" which may be invested in (i) shares of investment companies registered under the Investment Company Act of 1940, (ii) collective funds maintained by a bank or trust company, (iii) various classes of common stock of the Company, (iv) participant directed brokerage accounts, (v) pools that contain insurance contracts, (vi) funds managed by a registered investment manager, bank or insurance company, (vii)

accounts managed by named fiduciaries for the Plan; and (viii) other investment options available from time to time under the Plan (specifically the Investment Funds described on Attachment "A" to this Trust Agreement, as amended from time to time by the Pension Committee and with the consent of the Trustee). The Trustee shall have no liability for any loss of any kind which may result by reason of the manner of division of the Trust Fund into Investment Funds, or for the investment management of these accounts, except as provided for in Section 3.5 respecting a Trustee Managed Investment Account, if any. The Trustee shall transfer to each such Investment Fund such portion of the assets of the Trust Fund as the Pension Committee or the Recordkeeper directs. The Trustee shall not incur any liability on account of following any direction of the Pension Committee or the Recordkeeper and the Trustee shall be under no duty to review the investment guidelines, objectives and restrictions so established. To the extent that directions from the Pension Committee or Recordkeeper to the Trustee represent investment instructions of the Plans' participants, the Trustee shall have no responsibility for such investment elections and shall incur no liability on account of the direct and necessary results of investing the assets of the Trust Fund in accordance with such participant investment instructions.

The Trustee shall credit and reinvest in the Investment Fund all interest, dividends and other income received with respect to, and any proceeds received from the sale or other disposition

of, securities or other property held in an Investment Fund shall be credited to and reinvested in such Investment Fund. All expenses of the Trust Fund which are allocable to a particular Investment Fund shall be so allocated and charged. Subject to the provisions of the Plans, the Pension Committee may direct the Trustee to eliminate an Investment Fund or Funds, and the Trustee shall thereupon dispose of the assets of such Investment Fund and reinvest the proceeds thereof in accordance with the directions of the Pension Committee.

3.2 Participant-Directed Brokerage Accounts. The Trustee shall, if so directed by the Pension Committee segregate all or a portion of the Trust Fund held by it into one or more separate investment accounts to be known as Participant Directed Brokerage Accounts. Whenever a Participant is directing the investment and reinvestment of a Participant Directed Brokerage Account, the Participant shall have the powers and duties which an Investment Manager would have under this Trust Agreement if an Investment Manager were then serving and the Trustee shall be protected to the same extent as it would be protected under this Trust Agreement as to directions or the absence of directions of an Investment Manager. Participants shall be entitled to give orders directly to the broker for the purchases and sale of securities as defined in Section 6 of this Agreement. The broker shall provide confirmation of each order to the Pension Committee or Recordkeeper which shall maintain records in such form as to satisfy reporting requirements of the Plan.

3.3 Company Managed Stock Investment Accounts. If, and to the extent specifically authorized by the Plans, the Pension Committee may direct the Trustee to establish one or more Investment Funds substantially all of the assets of which shall be invested in securities which constitute "qualifying employer securities" or "qualifying employer real property" within the meaning of Section 407 of ERISA. It shall be the duty of the Pension Committee to determine that such investment is not prohibited by Sections 406 or 407 of ERISA. The Pension Committee also may direct the investment of cash within an Investment Account. In addition, during any time when there is no Investment Manager with respect to a Company Managed Stock Account (such as before an investment management agreement takes effect or after it terminates), the Pension Committee shall direct the investment and reinvestment of such Company Managed Stock Account.

3.4 Trustee Directed Investment Accounts. The Trustee shall have no duty or responsibility to direct the investment and reinvestment of the Trust Fund, any Investment Fund or any Investment Account unless the Pension Committee expressly appoints the Trustee as an Investment Manager, as agreed to in writing between the Trustee and the Pension Committee in accordance with the investment guidelines applicable to the Trustee as set forth on Schedule A (as amended from time to time, the "Trustee Investment Guidelines") with respect to any Portfolio (as defined in the Trustee Investment Guidelines). In

the event that the Pension Committee appoints the Trustee pursuant to the Trustee Investment Guidelines, it shall have the powers and duties of an Investment Manager under this Trust Agreement with regard to such Portfolio. The Trustee Investment Guidelines may be modified from time to time by a written agreement signed by the authorized representatives of both parties. With respect to the Trustee's role as Investment Manager with respect to a Portfolio, the provisions of this Agreement shall apply to the extent not inconsistent with the Trustee Investment Guidelines. Additionally, the Trustee shall be entitled to such compensation as set forth in the Trustee Investment Guidelines for its services as Investment Manager with respect to a Portfolio. Such compensation shall be in addition to any compensation the Trustee receives in its role as Trustee under this Trust Agreement. The Trustee, in its capacity as Investment Manager represents and warrants that it qualifies as an "investment manager," as defined in Section 3(38) of ERISA, with respect to the Portfolio. The Pension Committee acknowledges that the Trustee and its affiliates perform investment advisory services for various clients. The Pension Committee agrees that the Trustee may give advice and take action in the performance of its duties with respect to any of its other clients which differ from action taken with respect to the Portfolios, provided that the Portfolio is treated in a fair and equitable manner.

3.5 <u>Trustee Managed Investment Accounts</u>. The Trustee shall

have no duty or responsibility to direct the investment and reinvestment of the Trust Fund, any Investment Fund or any Investment Account unless expressly agreed to in writing between the Trustee and the Company. In the event that the Trustee enters into such an agreement, it shall have the powers and duties of an Investment Manager under this Trust Agreement with regard to such Investment Account.

3.6 Investment Manager Accounts. The Company or Pension Committee, from time to time and in accordance with the provisions of the Plans, may appoint one or more independent Investment Managers, pursuant to a written investment management agreement describing the powers and duties of the Investment Manager, to direct the investment and reinvestment of all or a portion of the Trust Fund or an Investment Fund (hereinafter referred to as an "Investment Account").

The Pension Committee shall be responsible for ascertaining that while each Investment Manager is acting in that capacity hereunder, the following requirements are satisfied:

(a) The Investment Manager is either (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of Section 203A(a) of such Act, is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filled the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary, (iii) a bank as defined in that Act or (iv) an insurance company qualified to perform the services described in (b) below under the laws of more than one state.

(b) The Investment Manager has the authority to manage, acquire or dispose of any assets of the Plans for which it is responsible hereunder;

(c) The Investment Manager has acknowledged in writing to the Pension Committee and the Trustee that he or it is a fiduciary with respect to the Plans within the meaning of Section 3(21)(A) of ERISA.

(d) The Plans provide for the appointment of the Investment Manager in accordance with Section 402(c)(3) of ERISA, and the Investment Manager is appointed as so provided.

(e) Any Investment Manager with authority to invest in assets which will be held outside the jurisdiction of the district courts of the United States is an entity described in ERISA regulations at 29 C.F.R. 2550.404b-1(a)(2)(i).

The Pension Committee shall furnish the Trustee with written notice of the appointment of each Investment Manager hereunder, and of the termination of any such appointment. Such notice shall specify the assets which shall constitute the Investment Account of such Investment Manager. The Trustee shall be fully protected in relying upon the effectiveness of such appointment and the Investment Manager's continuing satisfaction of the requirements set forth above until it receives written notice from the Pension Committee to the contrary.

The Trustee shall conclusively presume that each Investment Manager, under its investment management agreement, is entitled to act, in directing the investment and reinvestment of the Investment Account for which it is responsible, in its sole and independent discretion and without limitation, except for any limitations which from time to time the Pension Committee and the Trustee agree (in writing) shall modify the scope of such authority.

The Trustee shall have no liability (i) for the acts or omissions of any Investment Manager (except to the extent the Trustee itself is serving as Investment Manager); (ii) for following directions, including investment directions of an Investment Manager (other than the Trustee) or the Pension Committee, unless reasonable care required under industry standards for a directed trustee would require alternate action; (iii) for failing to act in the absence of Investment Manager direction; or (iv) for any loss of any kind which may result by reason of the directed manner of division of the Trust Fund or Investment Fund into Investment Accounts.

An Investment Manager shall certify, at the request of the Trustee, the value of any securities or other property held in any Investment Account managed by such Investment Manager, and such certification shall be regarded as a direction with regard to such valuation. The Trustee shall be entitled to conclusively rely upon such valuation for all purposes under this Trust Agreement, provided that it satisfies either any tolerance checks agreed upon by the parties or the Trustee's customary tolerance checks.

Except as otherwise provided in this Trust Agreement, the Investment Manager of an Investment Account shall have the power and authority, to be exercised in its sole discretion at any time and from time to time, to issue orders for the purchase or sale of securities directly to a broker. Written notification of the issuance of each such order shall be given promptly to the

Trustee by the Investment Manager and the confirmation of each such order shall be confirmed to the Trustee by the broker. The broker shall promptly provide confirmation of each such order to the Recordkeeper, which shall maintain all participant level accounts. The Recordkeeper shall provide to the Trustee all information reasonably required by the Trustee to fulfill its accounting and reporting obligations with respect to assets held in the Participant Directed Brokerage Accounts. Unless otherwise directed by the Investment Manager, such notification shall be authority for the Trustee to pay for securities purchased or to deliver securities sold as the case may be. Upon the direction of the Investment Manager, unless reasonable care required under industry standards for a directed trustee would require alternate action the Trustee will execute and deliver appropriate trading authorizations, but no such authorization shall be deemed to increase the liability or responsibility of the Trustee under this Trust Agreement.

4. POWERS AND DUTIES OF THE TRUSTEE.

4.1 Investment Powers and Duties of the Trustee. The Trustee shall have and exercise the following powers and authorities lettered (a) through (x) below (i) over Investment Accounts for which it has express investment management discretion as provided in Section 3.5 or (ii) upon direction of the Investment Manager of an Investment Account or (iii) upon direction of a Participant with respect to a Participant Directed Brokerage Account or (iv) upon direction of the Pension

Committee: (x) for a Company Managed Account and for cash within certain Investment Accounts identified by a standing direction letter to the Trustee; (y) subject to Section 4.1(h), for voting and tendering of qualifying employer securities; and (z) for lending to participants in the Plans:

(a) To purchase, receive, or subscribe for any securities or other property and to retain in trust such securities or other property.

(b) To acquire and hold qualifying employer securities and qualifying employer real property, as such investments are defined in Section 407(d) of ERISA.

(c) To collect income and distributions received due to the Trust Fund and sign on behalf of the Trust Fund any declarations, affidavits, certificates of ownership and other documents required to collect income and principal payments, including but not limited to, tax reclaimations, rebates and other withheld amounts.

(d) To sell for cash or on credit, to grant options, convert, redeem, exchange for other securities or other property, to enter into standby agreements for future investment, either with or without a standby fee, or otherwise to dispose of any securities or other property at any time held by it and subject to the timely receipt of notice from an issuer, Investment Manager or Pension Committee, collect proceeds received from securities, certificates of deposit or other investments which may mature or be called.

(e) To settle, compromise or submit to arbitration any claims, debts, or damages, due or owing to or from the trust, to commence or defend suits or legal proceedings and to represent the trust in all suits or legal proceedings in any court of law or before any other body or tribunal.

(f) To trade in financial options and futures, including index options and options on futures and to execute in connection therewith such account agreements and other agreements including contracts for the exchange of interest rates, or investment performance, currencies or other notional principal contracts in such form and upon such terms as the Investment Manager or the Pension Committee shall direct.

(g) Subject to Section 4.1(h), to exercise all voting rights, tender or exchange rights, any conversion privileges, subscription rights and other rights and powers available in

connection with any securities or other property at any time held by it; to oppose or to consent to the reorganization, consolidation, merger, or readjustment of the finances of any corporation, Pension Committee or association, or to the sale, mortgage, pledge or lease of the property of any corporation, Pension Committee or association any of the securities which may at any time be held by it and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions, which may be deemed necessary or advisable by the Investment Manager or Pension Committee in connection therewith, and to hold and retain any securities or other property which it may so acquire; and to deposit any property with any protective, reorganization or similar committee, and to pay and agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to property so deposited.

(h) To exercise all voting or tender or exchange offer rights with respect to all qualifying employer securities held by it as provided in sections 4.3 and 4.4 The Recordkeeper shall furnish the Trustee with the name and address of each participant and the number of shares held for the participant's account as near as practicable to the record date fixed for the determination of shareholders entitled to vote, tender or exchange, and shall provide the Trustee with all other information and assistance which the Trustee may reasonably request.

(i) To lend to participants in the Plans such amounts and upon such terms and conditions as the Pension Committee or Recordkeeper may direct. Any such direction shall be deemed to include a certification by the Pension Committee or Recordkeeper that such lending is in accordance with the provisions of ERISA and the Plans.

(j) To borrow money in such amounts and upon such terms and conditions as shall be deemed advisable or proper by the Pension Committee or Investment Manager to carry out the purposes of the trust and to pledge any securities or other property for the repayment of any such loan.

(k) To invest all or a portion of the Trust Fund in contracts issued by insurance companies, including contracts under which the insurance company holds Plan assets in a separate account or commingled separate account managed by the insurance company. The Trustee shall be entitled to rely upon any written directions of the Pension Committee or the Investment Manager under this Section 5.1, and the Trustee shall not be responsible for the terms of any insurance contract that it is directed to purchase and hold or for the

selection of the issuer thereof or for performing any functions under such contract (other than the execution of any documents incidental thereto on the instructions of the Pension Committee or the Investment Manager).

(l) To manage, administer, operate, lease for any number of years, develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to, or otherwise deal with any real property or interest therein at any time held by it, and to hold any such real property in its own name or in the name of a nominee, with or without the addition of words indicating that such property is held in a fiduciary capacity, all upon such terms and conditions as may be deemed advisable by the Investment Manager or Pension Committee.

(m) To renew, extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable by the Investment Manager or Pension Committee, and to agree to a reduction in the rate of interest on any mortgage or of any guarantee pertaining thereto in any manner and to any extent that may be deemed advisable by the Investment Manager or Pension Committee for the protection of the Trust Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable by the Investment Manager or Pension Committee; to exercise and enforce any and all rights of foreclosure, to bid on property on foreclosure, to take a deed in lieu of foreclosure with or without paying consideration therefor, and in connection therewith to release the obligation on the bond secured by such mortgage, and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any such mortgage or guarantee.

(n) To hold part or all of the Trust Fund uninvested.

(o) To employ suitable agents and counsel and to pay their reasonable and proper expenses and compensation.

(p) To purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with State Street Bank and Trust Company, its agents or subcustodians.

(q) To form corporations and to create trusts to hold title to any securities or other property, all upon such terms and conditions as may be deemed advisable by the Investment Manager or Pension Committee.

(r) To register any securities held by it hereunder in its own name, in the name of its nominee, in the name of its agent, or in the name of its agent's nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity, and to hold any securities in bearer form and to deposit any securities or other property in a depository or clearing corporation.

(s) To make, execute and deliver, as Trustee, any and all documents and agreements, or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers.

(t) To invest at any bank including State Street Bank and Trust Company (i) in any type of interest bearing investments (including, but not limited to savings accounts, money market accounts, certificates of deposit and repurchase agreements) and (ii) in noninterest bearing accounts (including but not limited to checking accounts).

(u) To invest in collective investment funds maintained by State Street Bank and Trust Company or by other banks for the investment of the assets of employee benefit plans qualified under Section 401(a) of the Code, whereupon the instruments establishing such funds, as amended, shall be deemed a part of this Trust Agreement and incorporated by reference herein.

(v) To lend securities through a securities lending program of the Trustee, as authorized under a separate lending agreement.

(w) To commingle any part or all of the assets of the Trust Fund for purposes of investment with the assets any other trust maintained by the Company for funding of retirement plans qualified under Section 401(a) of the Code, as directed by the Pension Committee.

(x) To generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or proper for the fulfillment of the foregoing duties hereunder.

(y) To invest in open-end and closed-end investment companies, regardless of the purposes for which such fund or funds were created, including those managed, serviced, or advised by the Trustee or an affiliate of the Trustee, and in any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose.

The Trustee shall transmit promptly to the Pension Committee or the Investment Manager, as the case may be, all information received by the Trustee regarding ownership rights pertaining to property held in the Trust Fund, all notices of conversion, redemption, tender, exchange, subscription, class action, claim in insolvency proceedings or other rights or powers relating to any of the securities in the Trust Fund, which notices are received by the Trustee from its agents or custodians, from issuers of the securities in question and from the party (or its agents) extending such rights. The Trustee shall have no obligation to determine the existence of, or to exercise any right or power with respect to any conversion, redemption, tender, exchange, subscription, class action, claim in insolvency proceedings or other right or power relating to any of the securities in the Trust Fund which would not be reasonably evident to a similar trustee with similar experience acting in a similar capacity or of which notice was not given after the purchase of such securities by the Trust Fund.

The Trustee shall not be liable for any untimely exercise or assertion of such rights or powers described in the paragraph immediately above in connection with securities or other property of the Trust Fund at any time held by it unless (i) it or its agents or custodians are in actual possession of such securities or property and (ii) it receives directions to exercise any such rights or powers from the Pension Committee or the Investment Manager, as the case may be, and both (i) and (ii) occur at least

three business days prior to the date on which such rights or powers are to be exercised.

If the Trustee is directed by the Pension Committee or an Investment Manager to purchase securities issued by any foreign government or agency thereof, or by any corporation or other entity domiciled outside of the United States: i) the Trustee shall provide market information to the Pension Committee or the Trust's Investment Managers consistent with industry standards for professional global custodians; ii) the Trustee shall receive for and credit to the Trust Fund any money or assets, including dividends and interest, due and payable from or on account of the securities and other investments and/or assets in the Trust Fund, based upon tax status information supplied by the Pension Committee; iii) the Trustee shall, in the ordinary course of business, take all necessary administrative steps for the timely collection of interest, repayments and dividends, and for exercising or cashing in rights and warrants as instructed, obtaining new coupon or dividend sheets and effecting conversion transactions; however, the Trustee shall not attempt to enforce such collections by legal process unless directed in writing to do so by the Pension Committee or Investment Manager, and unless arrangements are made to Trustee's reasonable satisfaction with respect to reimbursement of expenses for any such legal process; (iv) the Trustee will submit to the relevant tax authorities documents received from the Pension Committee with regard to the Trust's tax status and will use reasonable efforts to claim any

refund or withholding of tax to which the Trust Fund has been subject; (v) provide settlement of purchases and sales of securities as a global custodian. Except with respect to the foregoing activities conducted in the ordinary course of business, the Trustee shall have no responsibility to determine what foreign laws or regulations (including, without limitation, any laws or regulations affecting receipt by the Trust of dividends, interest or other distributions) might apply to such securities or other investments or to the Trust.

All Investment Company Shares shall be registered in the name of the Trustee or its nominee. Subject to any requirement of applicable law, the Trustee will transmit to Recordkeeper or the Pension Committee, as the case may be, copies of any notices of shareholders' meetings, proxies and proxy-soliciting materials, prospectuses and the annual or other reports to shareholders, with respect to Investment Company Shares held in the Trust. The Trustee shall act in accordance with appropriate directions received from Recordkeeper or the Pension Committee, as the case may be, with respect to matters to be voted upon by the shareholders of the Investment Company. Such directions must be in writing on a form approved by the Trustee, signed by the addressee and delivered to the Trustee within the time prescribed by it. The Trustee will not vote Investment Company shares as to which it receives no written directions. For the purposes of this Section, Investment Company means a registered investment company provided that its prospectus offers its shares under the

Plan.

4.2 Administrative Powers of the Trustee. Notwithstanding the appointment of an Investment Manager, the Trustee shall have the following powers and authority, to be exercised in its sole discretion, with respect to the Trust Fund:

(a) To employ suitable agents, custodians and counsel, except that the indicia of ownership of any assets of the Fund shall not be held outside the jurisdiction of the District Courts of the United States unless in compliance with Section 404(b) of ERISA and regulations thereunder, and to pay their reasonable expenses and compensation.

(b) To appoint ancillary trustees to hold any portion of the assets of the trust and to pay their reasonable expenses and compensation.

(c) To register any securities held by it hereunder in its own name, in the name of its nominee, in the name of its agent, or in the name of its agent's nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity, and to hold any securities in bearer form and to deposit any securities or other property in a depository or clearing corporation.

(d) To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers.

(e) Generally to do all ministerial acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable in carrying out its duties under this Trust Agreement.

Notwithstanding anything in the Plans or this Trust Agreement to the contrary, the Trustee shall not be required by the Company, the Pension Committee, Recordkeeper or any Investment Manager to engage in any action, nor make any investment which constitutes a prohibited transaction or is otherwise contrary to the provisions of ERISA or which is

otherwise contrary to law or to the terms of the Plans or this Trust Agreement.

The Trustee may consult with legal counsel concerning any question which may arise with reference to this Trust Agreement and its powers and duties hereunder. The written opinion of such counsel shall be full and complete protection of the Trustee in respect to any action taken or suffered by the Trustee hereunder in good faith reliance on said opinion.

4.3 The Leveraged Employee Stock Ownership Plan.

(a) Committee Directions. Upon the direction of the Pension Committee, the Trustee shall borrow funds under any Acquisition Loans, enter into, execute and deliver any instruments, documents, agreements, and other related materials in connection with such borrowings under any Acquisition Loans (including delivering stock so pledged to another custodian for the benefit of the pledgee), and to prepay, extend, repay or refinance Acquisition Loans, all as directed by the Pension Committee in accordance with this Section 4.3.

It is specifically contemplated that the trust established by this Trust Agreement will operate pursuant to a leveraged employee stock ownership plan (the "ESOP") and that the Trustee will, at the written direction of the Pension Committee, incur indebtedness for the purpose of acquiring Common Stock of the Company to be held under the ESOP ("ESOP Shares"). The Pension Committee may from time to time direct the Trustee to incur indebtedness (including indebtedness to the Company or an affiliate thereof) on behalf of the trust (an "Acquisition Loan") on such terms and conditions as the Pension Committee shall determine, and shall direct the Trustee to take such actions as the Pension Committee shall determine with respect to any such actions as the Pension Committee shall determine with respect to any such Acquisition Loan including, without limitation, electing applicable interest rates, extending the term of the Acquisition Loan, prepaying and repaying principal of, and interest on, such Acquisition Loan, refinancing such Acquisition Loan, acquiring ESOP Shares pursuant to such Acquisition Loan, establishing the timing, manner and purchasing agent for the investment of the proceeds of such Acquisition Loan in ESOP Shares, pledging ESOP Shares acquired therewith to secure such borrowings, establishing

and maintaining an ESOP suspense account, purchasing ESOP Shares from the Company or other sellers, and providing or causing to be provided to the Trustee opinions, directions, orders or certifications acceptable to the Trustee in connection with such Acquisition Loan. The Provision thereof by the Pension Committee to the Trustee or any other person relying on the giving of a direction, order or certification by named fiduciary under any documents related to an Acquisition Loan, shall constitute a representation and warranty to the Trustee that all of the terms and conditions of the transaction are proper and appropriate under the Plan, this Agreement, the Code, ERISA and any other law applicable to the transaction and shall be given with respect to the initial Acquisition Loan and any subsequent or additional Acquisition Loans in form and substance reasonable satisfactory to the Trustee. The Company shall undertake on behalf of the Trust to make all filings that are required to be made under any Federal or state securities laws as a result of any public offering related to an Acquisition Loan.

(b) Trustee Determinations. The Trustee shall determine at the time of the initial Acquisition Loan, and upon request of the Committee in connection with any refinancing of such Acquisition Loan, that the terms of such Acquisition Loan or refinancing are at least as favorable to the Plan as the terms of a comparable loan resulting from arm's-length negotiations between independent parties and that the acquisition of the ESOP Shares with the proceeds of such Acquisition Loan is for a price which, on the date of each such acquisition, is not in excess of adequate consideration.

(c) Requirements for Acquisition Loans. Any such Acquisition Loan shall meet all of the requirements necessary to constitute an "exempt Association Loan" within the meaning of Treasury Regulation Section 54.4975-7(b)(1)(iii) and shall be used primarily for the benefit of the Plan participants and their beneficiaries. The proceeds of any such Acquisition Loan shall be used only to purchase ESOP Shares or to repay such Acquisition Loan or a prior Acquisition Loan. Any such Acquisition Loan shall provide for no more than a reasonable rate of interest and must be without recourse against the Plan and Trust. The number of years to maturity under the Acquisition Loan must be definitely ascertainable at all times. The Acquisition Loan may not be payable at the demand of any person, except in the case of a default. The only assets of the Trust that may be given as collateral for an Acquisition Loan are ESOP Shares acquired with the proceeds of the Acquisition Loan and ESOP Shares that were used as collateral on prior Acquisition Loans repaid with the proceeds of the current

Acquisition Loan. In the event that ESOP Shares are used as collateral for an Acquisition Loan, such ESOP Shares shall be released from such encumbrance at an annual rate which is geared to the rate of total repayment (principal plus interest) of the Acquisition Loan or the rate of principal repayment of the Acquisition Loan, provided that in either case all applicable requirements of the applicable regulations shall be satisfied. No person entitled to payment under an Acquisition Loan shall be entitled to payment from the Trust other than from ESOP Shares acquired with the proceeds of the Acquisition Loan which are collateral for the Acquisition Loan, contributions made under the Plan by the Company or an affiliated company for the purpose of satisfying the Acquisition Loan obligation, earnings attributable to such ESOP Shares and such Company or affiliated company contributions, the proceeds from the sale of unallocated ESOP Shares ("Unallocated ESOP Shares") and such other assets, if any, as to which recourse may be permitted under Section 4975 of the Code. Payments of principal and interest on any such Acquisition Loan shall be made by the Trustee (as directed by the Pension Committee) only from (1) Company or affiliated company contributions made under the Plan for the purpose of satisfying such Acquisition Loan obligation, earnings on such contributions, and earnings on ESOP Shares acquired with the proceeds of such Acquisition Loan, (2) the proceeds of a subsequent Acquisition Loan made to repay the prior Acquisition Loan, and/or (3) in the case of the termination of the Plan or the ESOP portion of the Plan, the proceeds of the sale of any Unallocated ESOP Shares acquired with the proceeds of such Acquisition Loan. In the event of a default under an Acquisition Loan, the value of Trust assets transferred to the lender shall not exceed the amount of the default, provided further that if the lender is a "party in interest" within the meaning of Section 3(14) of ERISA, a transfer of trust assets upon default shall be made only if, and to the extent of, the Trust's failure to meet the Acquisition Loan's payment schedule.

4.4 ESOP Shares. It is intended that the Trustee's functions and responsibilities with respect to the ESOP Shares (including fractional interests therein) as to voting and tender exchange offers shall be custodial and ministerial only, and shall be exercised in accordance with the terms of the Savings Plan and with certain additional procedures contained in Section

4.5(c) of this Trust Agreement.

4.5 Common Stock of the Company Held Outside the ESOP. It is intended that the Trustee's functions and responsibilities as to voting and tender offers with respect to the Common Stock of the Company which are not ESOP Shares shall be custodial and ministerial only, and shall be exercised as follows:

(a) Shares held under the Union Plan (as set forth on Exhibit A) ("Union Plan Shares"). The Trustee shall vote Union Plan Shares in each Union Plan participant's Account in accordance with directions of each Union Plan participant. The Trustee shall abstain from voting Union Plan Shares for which it has not received Union Plan participant direction, to the extent such abstention is permitted by law. The Trustee shall exercise tender offer rights with respect to Union Plan Shares in each Union Plan participant's Account in accordance with directions of each Union Plan participant. The Trustee shall not exercise such rights with respect to Union Plan Shares for which it has not received Union Plan participant direction, to the extent such abstention is permitted by law. The additional procedures contained in Section 4.5(c) of this Trust Agreement shall apply to Union Plan Shares.

(b) Shares held under the Savings Plan and Puerto Rico Plan outside of the ESOP ("Savings Plan Shares").

(i) Voting. The Trustee shall vote Savings Plan Shares attributable to the proportionate value in each Plan participant's Account in accordance with directions of each Plan participant (received by the Trustee from the Committee) to whose Account such proportionate value has been allocated to the extent of his whole share interest therein. For purposes of determining the number of shares to be voted the Trustee shall use the nearest practicable valuation date as determined by the Pension Committee in conjunction with the record date for proxy solicitation by the Company. The Trustee shall vote Savings Plan Shares for which it has not received direction (including allocated Savings Plan Shares for which no affirmative voting direction is received by the Trustee and unallocated Savings Plan Shares) in the same proportion as directed allocated Savings Plan Shares are voted by Plan participants (or beneficiaries) and, except as required by law, the Trustee shall have no discretion in such matter.

(ii) Tender Offer Rights with Respect to Savings Plan Shares. The provisions of this Section 4.5(b)(ii) shall apply in the event a tender or exchange offer including, but not limited to, a tender offer or exchange offer within the meaning of the Securities Exchange Act of 1934, as from time to time amended and in effect (hereinafter, a "tender offer"), for Savings Plan Shares is commenced by a person or persons. The Trustee shall have no discretion or authority to sell, exchange or transfer any of such Savings Plan Shares pursuant to such tender offer except to the extent, and only to the extent, as provided in this Trust Agreement.

Each Savings Plan participant is, for purposes of this Section 4.5(b)(ii), hereby designated as a named fiduciary with respect to the Savings Plan Shares allocated to his Account and each Savings Plan participant and beneficiary shall have the right, to the extent of the number of the Savings Plan Shares allocated to his Account, to direct the Trustee in writing as to the manner in which to respond to a tender offer with respect to such Savings Plan Shares. The Company shall use its best efforts to timely distribute or cause to be distributed to each Savings Plan participant (or beneficiary) such information as will be distributed to stockholders of the Company in connection with any such tender offer. Upon timely receipt of such instructions, the Trustee shall respond as instructed with respect to such Savings Plan Shares. If the Trustees shall not receive timely instructions from a Savings Plan participant (or beneficiary) as to the manner in which to respond to such a tender offer, the Trustee shall not tender or exchange any Savings Plan Shares with respect to which such Savings Plan participant (or beneficiary) has the right of direction, and, except as required by law, the Trustee shall have no discretion in such matter. Savings Plan Shares which have not been allocated to a Savings Plan participant's Account shall be tendered or exchanged by the Trustee in the same proportion it tenders or exchanges the Savings Plan Shares with respect to which Savings Plan participants have the right of direction, and, except as required by law, the Trustee shall have no discretion in such manner. In determining such proportion, the Trustee shall under all circumstances include in its calculation the direction of Savings Plan participants (or beneficiaries) on all Savings Plan Shares allocated to a Savings Plan participant's Account. The Pension Committee shall solicit from each Savings Plan participant (or beneficiary) the directions described in this paragraph as to whether Savings Plan Shares are to be tendered and shall instruct the Trustee as to the amount of Savings Plan Shares to be tendered, in accordance with the above provisions.

(c) Procedures.

(i) Direction by Pension Committee. In the event that a tender offer is made on a date when no Savings Plan Shares have been allocated, the Pension Committee shall direct the Trustee whether to sell, offer to sell, exchange or otherwise dispose of all Savings Plan Shares.

(ii) Allocation of Proceeds. Any securities or other property received by the Trustee as a result of having tendered Savings Plan Shares after a tender offer shall be held, and any cash so received shall be held, in the account or investment fund from which the corresponding shares were tendered. Such proceeds of tendering shall be invested in short term investments, pending any further action which the Trustee may be directed to take by the Pension Committee pursuant to the Savings Plan.

(iii) Allocation of Returned Shares. Common Stock of the Company which, following the Trustee's tender thereof, has not been accepted by the party making such a tender offer and is returned to the Trustee, shall be credited to the accounts from which such stock was tendered. For these purposes, the portion of the total Common Stock of the Company returned to the Trustee which is allocated to any account shall be the product determined by multiplying a fraction, the numerator of which is the total Common Stock of the Company tendered from such account, and the denominator of which is the total Common Stock of the Company tendered from all accounts, times the total Common Stock of the Company returned to the Trustee.

4.6 Limitation of Powers. The forgoing provisions of this Section 4 shall not be deemed to expand the permissible investments for any Investment Fund under Section 3 or to limit the Pension Committee's power to restrict the exercise of such powers by an Investment Manager. In addition, any powers conferred on the Trustee or any other Investment Manager thereunder may be suspended or revoked at any time by the Pension Committee upon notice to the Investment Manager or the Trustee, as the case may be.

5. INDEMNIFICATION.

Unless resulting from the Trustee's negligence, willful misconduct, lack of good faith, or breach of its fiduciary duties under this agreement or ERISA, the Company shall indemnify and save harmless the Trustee for and from any loss or expense (including reasonable attorneys' fees) directly arising (a) out of an authorized action hereunder taken in good faith by the Trustee or any matter as to which this Trust Agreement provides that the Trustee is directed, protected, not liable, or not responsible, (b) out of a Plan not qualifying as an ERISA 404(c) plan or the inability of a Plan participant or beneficiary to exercise independent control over his account within the meaning of 29 C.F.R. section 2550.404c-1, or (c) by reason of any breach of any statutory or other duty owed to the Plans by the Company, any Employer, the Pension Committee, the Recordkeeper or any Investment Manager or any authorized delegate of any of them (and for the purposes of this sentence the Trustee shall not be considered to be such a delegate), whether or not the Trustee may also be considered liable for that person's breach under the provisions of section 405(a) of ERISA, unless the Trustee knowingly participates in or knowingly undertakes to conceal an act or omission of another fiduciary knowing it to be a fiduciary breach, or has knowledge of a breach by another fiduciary and fails to notify the Pension Committee of such breach.

6. SECURITIES OR OTHER PROPERTY.

The words "securities or other property", used in this Trust

Agreement, shall be deemed to refer to any property, real or personal, or part interest therein, wherever situated, including, without limitation, governmental, corporate or personal obligations, trust and participation certificates, partnership interests, annuity or investment contracts issued by an insurance company, leaseholds, fee titles, mortgages and other interests in realty, preferred and common stocks, certificates of deposit, financial options and futures or any other form of option, evidences of indebtedness or ownership in foreign corporations or other enterprises or indebtedness of foreign governments, and any other evidences of indebtedness or ownership, including securities or other property of the Company, even though the same may not be legal investment for trustees under any law other than ERISA.

7. SECURITY CODES.

If the Trustee has issued to the Company, the Pension Committee or to any Investment Manager appointed by the Pension Committee, security codes or passwords in order that the Trustee may verify that certain transmissions of information, including directions or instructions, have been originated by the Company, Pension Committee or the Investment Manager, as the case may be, the Trustee shall be kept indemnified by and be without liability to the Company for any action taken or omitted by it in reliance upon receipt by the Trustee of transmissions of information with the proper security code or password, including communications purporting to be directions or instructions, which the Trustee

reasonably believes to be from the Company, Pension Committee or Investment Manager.

8. TAXES AND TRUSTEE COMPENSATION.

The Trustee shall pay out of the Trust Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws against the Trust Fund by any governmental authority. Until advised to the contrary by the Pension Committee (or such governmental authority), the Trustee shall assume that the Trust is exempt from Federal, State and local income taxes, and shall act in accordance with that assumption. The Pension Committee shall timely file all Federal, State and local tax and information returns relating to the Plans and Trust. The Trustee shall notify the Pension Committee as soon as reasonably practicable (but in any event no later than five (5) business days) after the Trustee receives notice of any tax or assessment and shall provide the Pension Committee with information as the Trustee has received concerning such tax or assessment. The Pension Committee may direct that the Trustee refrain from paying the tax or assessment until such tax or assessment is due and payable (the "Review Period"), during which time the Trustee will provide all reasonable assistance to the Pension Committee in determining the validity of such tax or assessment and will cooperate in all reasonable efforts to have the tax or assessment waived or mitigated if such tax or assessment is considered not to be owed by the Trust. At the end of the Review Period, if the

tax or assessment remains outstanding, the Trustee may pay the tax or assessment from the Trust Fund, only upon the advice of counsel acceptable to Pension Committee and Trustee, but will continue to provide all reasonable assistance to the Pension Committee in seeking a refund of the tax or assessment.

The Trustee shall be paid such reasonable compensation as shall from time to time be agreed upon by the Pension Committee and the Trustee in writing. Such compensation and all reasonable and proper expenses of administration of the Trust shall be withdrawn by the Trustee out of the Trust Fund upon approval or direction of the Pension Committee, unless paid by the Company, but such compensation and expenses shall be paid by the Company if the same cannot by operation of law be withdrawn from the Trust Fund.

If the Trustee has advanced cash or securities for any proper purpose under the Trust, such as, but not limited to, the purchase or sale of foreign exchange to settle trades, such advances shall remain a charge on the Trust Fund until withdrawn by the Trustee or paid to it by the Company.

All payments from the Trust Fund under this Article 8 shall be accounted for to the Pension Committee.

9. ACCOUNTS OF THE TRUSTEE.

The Trustee shall maintain or cause to be maintained suitable records, data and information relating to its functions hereunder.

The Trustee shall keep accurate and detailed accounts of all

investments, receipts, disbursements, and other actions hereunder, and such other records as the Pension Committee shall from time to time direct, as agreed to by the Trustee. Its books and records relating thereto shall be open to inspection and audit at all reasonable times by the Pension Committee or its duly authorized representatives and each Investment Manager. The Trustee shall be entitled to reasonable compensation and reimbursement of its reasonable expenses incurred in connection with such audits or inspections.

In accordance with the Trustee's standard operating procedure, the Trustee shall credit the Trust Fund with income and maturity proceeds on securities on contractual payment date net of any taxes or upon actual receipt. To the extent the Trustee credits income on contractual payment date, the Trustee may reverse such accounting entries to the contractual payment date if the Trustee reasonably believes that such amount will not be received. The collection of income due the Trust Fund on securities loaned by the Trust Fund other than through a securities lending program of the Trustee shall be the responsibility of the Company and such income shall be credited upon actual receipt by the Trustee.

Within sixty days after the close of each fiscal year of the trust and at more frequent intervals if agreed to by the parties hereto, and within sixty days after the removal or resignation of the Trustee as provided hereunder, the Trustee shall render to the Pension Committee a written statement and account showing in

reasonable summary the investments, receipts, disbursements, and other transactions engaged in during the preceding fiscal year or period, and setting forth the assets and liabilities of the trust. Accounts maintained by the Pension Committee or Recordkeeper, such as participant directed brokerage accounts, may be incorporated into Trustee reports. Unless the Pension Committee shall have filed with the Trustee written exceptions or objections to any such statement and account within sixty days after receipt thereof and except as otherwise required or provided by applicable law, the Pension Committee shall be deemed to have approved such statement and account, and in such case or upon written approval by the Pension Committee of any such statement and account, the Trustee shall be released and discharged with respect to the accuracy of all matters and things embraced in such statement and account as though it had been settled by a decree of a court of competent jurisdiction in an action or proceeding in which the Company, all other necessary parties and all persons having any beneficial interest in the Trust Fund were parties.

The Trustee shall certify the value of any securities or other property held in the Trust Fund and determine the fair market value of the Trust Fund monthly, or for such other period as may be mutually agreed upon (with the expectation of beginning daily valuation during April, 2001), in accordance with methods consistently followed and uniformly applied, based upon information and financial publications of general circulation,

statistical and valuation services, records of security exchanges, appraisals by qualified persons, transactions and bona fide offers in assets of the type in question and other information customarily used in the valuation of property, including, in the case of securities or other property for which the value cannot be readily obtained, valuations provided by Investment Managers.

The Pension Committee or its delegate, each Investment Manager, and the Trustee shall file such descriptions and reports and make such other publications, disclosures, registrations and other filings as are required of them respectively by ERISA.

Nothing contained in this Trust Agreement or in the Plans shall deprive the Trustee of the right to have a judicial settlement of its account. In any proceeding for a judicial settlement of the Trustee's accounts or for instructions in connection with the trust, the only necessary party thereto in addition to the Trustee shall be the Pension Committee, and no participant or other person having or claiming any interest in the Trust Fund shall be entitled to any notice or service of process (except as required by law). Any judgment, decision or award entered in any such proceeding or action shall be conclusive upon all interested persons.

10. RELIANCE ON COMMUNICATIONS.

The Trustee may rely upon a certification of the Pension Committee or the Recordkeeper with respect to any instruction, direction or approval of such Pension Committee or the

Recordkeeper and may rely upon a certification of the Company as to the membership of the Board, or Pension Committee as it then exists, and may continue to rely upon such certification until a subsequent certification is filed with the Trustee.

The Trustee shall be fully protected in acting upon any instrument, certificate, or paper of the Company, its Board of Directors, the Pension Committee or the Recordkeeper, reasonably believed by it to be genuine and to be signed or presented by any authorized person, and the Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized by the Pension Committee, the Board, or the Recordkeeper, if applicable, as the case may be.

The Trustee shall be further protected in reasonable reliance upon a certification from any Investment Manager appointed by the Company as to the person or persons authorized to give instructions or directions on behalf of such Investment Manager and may continue to rely upon such certification until a subsequent certification is filed with Trustee.

11. RESIGNATION AND REMOVAL OF TRUSTEE.

Any Trustee acting hereunder may resign at any time by giving sixty days' prior written notice to the Pension Committee, which notice may be waived by the Pension Committee. The Pension Committee may remove the Trustee at any time upon thirty days' prior written notice to the Trustee, which notice may be waived by the Trustee. In case of the resignation or

removal of the Trustee, the Pension Committee shall appoint a successor trustee. The removal of a Trustee and the appointment of a new Trustee shall be by a written instrument delivered to the Trustee. Upon the appointment of a successor trustee, the resigning or removed Trustee shall transfer or deliver the Trust Fund to such successor trustee.

12. AMENDMENT.

This Trust Agreement may be amended by agreement between the Trustee and the Company at any time or from time to time and in any manner, and the provisions of any such amendment may be applicable to the Trust Fund as constituted at the time of the amendment as well as to the part of the Trust Fund subsequently acquired.

13. TERMINATION.

This Trust Agreement and the trust created hereby may be terminated at any time by the Company, and upon such termination or upon the dissolution or liquidation of the Company, in the event that a successor to the Company by operation of law or by the acquisition of its business interests shall not elect to continue the Plans and the trust, the Trust Fund shall be paid out by the Trustee when directed by the Pension Committee. Notwithstanding the foregoing, the Trustee shall not be required to pay out any assets of the Trust Fund upon termination of the Trust until the Trustee has received written certification from the Pension Committee that all provisions of law with respect to such termination have been complied with. The Trustee shall rely

conclusively on such written certification, and shall be under no obligation to investigate or otherwise determine its propriety.

14. WITHDRAWAL FROM TRUST FUND.

14.1 Withdrawal of a Plan . In the event of the withdrawal of a Plan from the trust or in the event of the Company's or an Employer's election to terminate or to fund separately the benefits provided under any of its Plans, the Company shall cause a valuation to be made of the share of the Trust Fund which is held for the benefit of persons having an interest therein under such Plans. The Trustee shall thereupon segregate and dispose of such share in accordance with the written direction of the Company accompanied by its certification to the Trustee that such segregation and disposition is in accordance with the terms of the Plans and the requirements of the law.

14.2 Withdrawal Due to Disqualification. If the Company or any Employer receives notice that one or more of its Plans is no longer qualified under the provisions of Section 401 of the Code or the corresponding provisions of any future Federal revenue act, the Company shall immediately cause a valuation to be made of the share of the Trust Fund which is held for the benefit of such persons having an interest under such disqualified Plan or Plans. The Trustee shall thereupon segregate, withdraw from the Trust Fund, and dispose of such share in accordance with the terms of the disqualified Plan or Plans. The Company may direct the Trustee to dispose of such share by the transfer and delivery of such share to itself as trustee of a separate trust, the terms

and conditions of which shall be identical with those of this Trust Agreement, except that either the Company or the Employer maintaining such disqualified Plan or Plans and the Trustee shall be the only parties thereto.

14.3 Withdrawal of a Group of Employees. In the event that any group of employees covered by a Plan is withdrawn from such Plan, the Company shall, if required by the terms of such Plan, cause a valuation to be made of the share of the Trust Fund which is held for the benefit of such group of employees. The Trustee shall thereupon segregate and dispose of such share in accordance with the direction of the Company accompanied by its certification to the Trustee that such segregation and disposition is in accordance with the terms of such Plan and the requirements of the law.

The Trustee shall have no duty to see that the valuation of any share in accordance with the provisions of this Section 14.1 is caused to be made by the Company, nor to segregate and dispose of any such share in the absence of the written direction of the Company to do so.

15. MISCELLANEOUS.

15.1 Governing Law. To the extent not inconsistent with ERISA, as heretofore or hereafter amended, the provisions of this Trust Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of the conflicts of laws of that state; however, to the extent required by law, the Trustee's rights, duties,

obligations and powers with respect to the trust created hereby, and the terms and conditions of any common or collective trust maintained by the Trustee into which any assets held hereunder are deposited shall in all respects be governed by and construed in accordance with the Commonwealth of Massachusetts' laws governing trusts.

15.2 No Reversion to Employer. Except as provided herein, no portion of the principal or the income of the Trust Fund shall revert to or be recoverable by the Company or any Employer or ever be used for or diverted to any purpose other than for the exclusive benefit of participants in the Plans and persons claiming under or through them pursuant to the Plans, provided, however, that:

(a) all contributions are conditioned upon the deductibility of the contributions under Section 404(a) of the Code, and, to the extent determined to be nondeductible, the Trustee shall, upon written request of the affected Company, return such amount as may be permitted by law to such Company, as appropriate, within one year after the determination of nondeductibility or within such other period as is permitted by applicable law; and

(b) if a contribution or any portion thereof is made by the Company by a mistake of fact, the Trustee shall, upon written request of the Company, return such amounts as may be permitted by law to the Company, as appropriate, within one year after the date of payment to the Trustee or within such other period as is permitted by applicable law; and

(c) if a contribution is conditioned upon the qualification of the Plans and Trust under Section 401 and 501 of the Code, the contributions of the Company to the Trust for all Plans Years, with the gains and losses thereon, shall be returned by the Trustee to the Company, as appropriate, within one year in the event that the Commissioner of Internal Revenue fails to rule that the Plans and Trust were as of such date qualified and tax-exempt (within the meaning of Sections 401 and 501 of the Code); and

(d) in the event that a Plan whose assets are held in the Trust Fund is terminated, assets of such Plan may be returned to the Employer if all Plan liabilities to participants and beneficiaries of such Plan have been satisfied; and

(e) assets may be returned to the Employer to the extent that the law permits such transfer.

The Trustee shall be under no obligation to return any part of the Trust Fund as provided in this Section 15.2 until the Trustee has received a written certification from the Pension Committee that such return is in compliance with this Section 15.2, the Plans and the requirements of applicable law. The Trustee shall rely conclusively on such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

15.3 Non-Alienation of Benefits. No benefit to which a participant or his beneficiary is or may become entitled under a Plan shall at any time be subject in any manner to alienation or encumbrance, nor be resorted to, appropriated or seized in any proceeding at law, in equity or otherwise. No participant or other person entitled to receive a benefit under a Plan shall, except as specifically provided in such Plan, have power in any manner to transfer, assign, alienate or in any way encumber such benefit under such Plan, or any part thereof, and any attempt to do so shall be void.

15.4 Duration of Trust. Unless sooner terminated, the trust created under this Trust Agreement shall continue for the maximum period of time which the laws of the State of New York shall permit.

15.5 No Guarantees. Neither the Company, the Pension Committee nor any Employer, nor the Trustee guarantees the Trust Fund from loss or depreciation, nor the payment of any amount which may become due to any person under the Plans or this Trust Agreement.

15.6 Duty to Furnish Information. Both the Company and the Trustee shall furnish to the other any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties imposed under the Plans or this Trust Agreement or otherwise imposed by law.

15.7 Parties Bound. This Trust Agreement shall be binding upon the parties hereto, all participants in the Plans and persons claiming under or through them pursuant to the Plans, and, as the case may be, the heirs, executors, Pension Committees, successors, and assigns of each of them. The provisions of Articles 5 and 7 shall survive termination of the Trust created under this Trust Agreement or resignation or removal of the Trustee for any reason.

In the event of the merger or consolidation of the Company or any Employer or other circumstances whereby a successor person, firm or Company shall continue to carry on all or a substantial part of its business, and such successor shall elect to carry on the provisions of the Plan or Plans applicable to such business, as therein provided, such successor shall be substituted hereunder for the Company or such Employer, as the case may be, upon the filing in writing of its election so to do

with the Trustee. The Trustee may, but need not, rely on the certification of an officer of the Company, and a certified copy of a resolution of the Board of Directors of such successor, reciting the facts, circumstances and consummation of such succession and the election of such successor to continue the said Plan or Plans as conclusive evidence thereof, without requiring any additional evidence.

15.8 Necessary Parties to Disputes. Necessary parties to any accounting, litigation or other proceedings shall include only the Trustee, the Company, the Pension Committee and any appropriate Employers and the settlement or judgment in any such case in which the Company, the Pension Committee, the appropriate Employers and the Trustee are duly served or cited shall be binding upon all participants in the Plans and their beneficiaries and estates, and upon all persons claiming by, through or under them.

15.9 Unclaimed Benefit Payments. If any check or share certificate in payment of a benefit hereunder which has been mailed by regular US mail to the last address of the payee furnished the Trustee by the Pension Committee or Recordkeeper is returned unclaimed, the Trustee shall notify the Pension Committee or Recordkeeper and shall discontinue further payments to such payee until it receives the further instruction of the Pension Committee or Recordkeeper. Any such returned benefits shall be promptly redeposited into the Trust Fund in accordance with the Trustee's standard operating procedure.

15.10 Severability. If any provisions of this Trust Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Trust Agreement shall continue to be fully effective.

15.11 References. Unless the context clearly indicates to the contrary, a reference to a statute, regulation, document or provision shall be construed as referring to any subsequently enacted, adopted or executed counterpart.

15.12 Headings. Headings and subheadings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of its provisions.

15.13 No Liability for Acts of Predecessor and Successor Trustees. The Trustee shall have no liability for the acts or omissions of any predecessors or successors in office.

[Remainder of page intentionally left blank.]

15.14 Counterparts. This Trust Agreement may be executed in one or more counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers as of the day and year first above written.

ATTEST:

_____

ITS: _____

JOHNSON & JOHNSON

BY: _____

NAME: JOHN A. PAPA

TITLE: Treasurer

DATE: 9/22/03

ATTEST:

_____

ITS: officer

STATE STREET BANK AND TRUST COMPANY

BY: _____

NAME: ALAN FLOWERS

TITLE: VICE PRESIDENT

DATE: 10/6/03

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, ET AL. Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY AND STATE STREET GLOBAL MARKETS LLC Defendants.	)	C.A. No. 11-cv-12049-MLW

AFFIDAVIT OF MARK A. CURRAN
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Mark A. Curran states:

Background and Qualifications

1. I am a Vice President in the Investor Services ("IS") Division of State Street Bank and Trust Company ("State Street"), which provides custodial banking services to institutional investors.

2. I am the relationship manager for the Waste Management Retirement Savings Plan (the "WM Plan"). My responsibilities include providing custody, accounting, daily valuation and client service to the WM Plan.

3. I submit this affidavit in support of Defendants' Motion to Dismiss the Complaint in the matter captioned above. I state in this affidavit the source of any information that is not based on personal knowledge.

State Street's Relationship to the WM Plan

4. State Street provides custody services to institutional investors. These services are provided by divisions of State Street that are separate from the State Street divisions

responsible for providing investment management services to collective funds and for executing foreign exchange transactions with custody clients of State Street.

5. During the alleged class period ("Class Period"), State Street provided custody services to the WM Plan, which is alleged to be an ERISA defined contribution plan or 401(k) plan. Complaint ¶ 10.

6. State Street's responsibilities as custodian are set forth in a trust agreement, dated January 1, 1999, in which the WM Plan's Investment and Administrative Committees appointed State Street as the WM Plan's custodian pursuant to a Defined Contribution Plans Master Trust Agreement Between Waste Management, Inc. and State Street Bank and Trust Company. A true and accurate copy of that agreement is attached as Exhibit A hereto.

7. During the Class Period, the WM Plan's Investment and Administrative Committees, which are the named fiduciaries of the WM Plan, from time to time pursuant to written direction selected collective funds advised by State Street's separate State Street Global Advisors division ("SSgA") as WM Plan investment options. WM Plan participants could choose such funds as investments for their individual accounts.

8. During the Class Period, Plaintiff Arnold Henriquez ("Henriquez") alleges that he selected certain such collective funds for allocation of WM Plan assets in his account (the "WM Selected Funds"). Specifically, Henriquez alleges that he was invested in funds referred to as the "International Equity Fund" from "the second quarter of 2005 through the second quarter of 2009" and, at unspecified points during the Class Period, in the Large Cap Equity Fund, the Small Cap Equity Fund, the Conservative Asset Allocation Fund, the Moderate Asset Allocation Fund, the Aggressive Allocation Fund, the Bond Market Fund and the SSgA Target Retirement 2030 Fund. Complaint ¶ 10 & n.2.

[redacted]

I declare under penalty of perjury that the forgoing is true and correct to the best of my personal knowledge, information, and belief.

Mark A. Curran

DEFINED CONTRIBUTION PLANS

MASTER TRUST AGREEMENT

Between

WASTE MANAGEMENT, INC.

and

STATE STREET BANK AND TRUST COMPANY

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DEFINED CONTRIBUTION PLANS

MASTER TRUST AGREEMENT

Agreement (hereinafter referred to as the "Trust Agreement") made as of 1st day of January, 1999, by and between WASTE MANAGEMENT, INC. corporation organized under the laws of ______________ (hereinafter referred to as the "Company") and STATE STREET BANK AND TRUST COMPANY, a trust company organized under the laws of the Commonwealth of Massachusetts (hereinafter referred to as the "Trustee").

WITNESSETH:

WHEREAS, the Company maintains a certain tax-qualified plan known as the U.S.A Waste Services, Inc. Employee Savings Plan (hereinafter referred to as the "USA Plan") for the exclusive benefit of certain of its employees and the employees of certain of its affiliates and subsidiaries;

WHEREAS, the Company's subsidiary, Waste Management Holdings, Inc., maintains a certain tax-qualified plan known as the Waste Management Retirement Savings Plan for the benefit of certain of its, and its subsidiaries and affiliates, employees (hereinafter referred to as the "Holding Plan"); and

WHEREAS, the Company's subsidiaries, Wheelabrator Technologies Inc. and Trust International Inc., maintain a certain tax-qualified plan known as the Wheelabrator-Rust Savings and Retirement Plan for the benefit of certain of its, and its subsidiaries and affiliates, employees (hereinafter referred to as the "WTI-Rust Plan"); and

WHEREAS, the Company intends to establish the new Waste Management Retirement Savings Plan (the "WM Plan") effective January 1, 1999 and to merger the USA Plan, the Holdings Plan and the WTI-Rust Plan effective as soon after January 1, 1999 as the assets can be transferred from the respective trusts to this Trust; and

WHEREAS, the Company's subsidiary, Waste Management Holdings, Inc., maintains a certain tax-qualified plan known as the Waste Management Retirement Savings Plan for Collectively Bargained Employees for the benefit of certain of its, and its subsidiaries and affiliates, employees (hereinafter referred to as the "Union Plan"); and

WHEREAS, the Company's subsidiary, Waste Management Industrial Services, maintains a certain tax-qualified plan known as the Industrial Cleaning 401(k) Plan for the benefit of certain of its, and its subsidiaries and affiliates', employees (hereinafter referred to as the "Cleaning Plan"); and

WHEREAS, certain affiliates and subsidiaries of the Company may in the future maintain separate tax-qualified employee benefit plans for certain of their employees and may adopt the trust and Trust Agreement to serve as the funding vehicle for such plans (hereinafter together with the WM Plan and the Union Plan, referred to individually as a "Plan" and collectively as the "Plans");

WHEREAS, the authority to conduct the general operation and administration of the Plans is vested in the Administrative Committee and Investment Committee, each as defined and as provided in the Plan, who shall have the authorities and shall be subject to the duties with respect to the trust specified in the Plans and in this Trust Agreement;

WHEREAS, the Company has appointed State Street Bank and Trust Company as trustee under this Agreement effective January 1, 1999; and

WHEREAS, the Company has appointed State Street Bank and Trust Company to provide recordkeeping and other administrative services other than those the Administrative Committee continues to perform for the Plan (in such capacity, and any other person or entity hereafter engaged by the Company to provide such services, being hereinafter referred to as the "Recordkeeper");

WHEREAS, the Company and the Trustee desire to adopt this Agreement effective January 1, 1999.

NOW, THEREFORE, the Company and the Trustee do hereby adopt the Trust Agreement as the funding vehicle for the Plan, and the Company and Trustee do hereby agree to the following provisions of the Trust Agreement:

1. TRUST FUND.

1.1 Receipt of Assets. The Trustee shall receive and accept for the purposes hereof all sums of money and other property paid to it by or at the direction of the Company or any Employer, and shall hold, invest, reinvest, manage, administer and distribute such monies and other property and the increments, proceeds, earnings and income thereof pursuant to the terms of this Trust Agreement and for the exclusive benefit of participants in the Plans and their beneficiaries. The Trustee need not inquire into the source of any money or property transferred to it nor into the authority or right of the transferor of such money or property to transfer such money or property to the Trustee. All Plan assets held by the Trustee in the trust pursuant to the provisions of this Trust Agreement at the time of reference are referred to herein as the "Trust Fund".

1.2 Employers. For purposes of this Trust Agreement the term "Employer" means the Company or any corporation (or other trade or business) which is a member of a controlled group of corporations of which the Company is a member as determined under Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code"), and which corporation has adopted this Trust Agreement in accordance with the provisions of Section 14.1.

1.3 Plans. References in this Trust Agreement to the "Plan" or the "Plans" shall, mean the tax-qualified employee benefit plan or plans of the Company or the tax-qualified employee benefit plan or plans of any Employer that has adopted the trust as the funding vehicle for such plan or plans as the case may be.

The Company shall be responsible for verifying that while any assets of the Plan are held in the Trust Fund, the Plan (i) is "qualified" with the meaning of Section 401(a) of the Code and, as a defined contribution plan either (x) the Plan provides that each participant is duly authorized under the Plan to provide investment direction to the Administrative Committee or Recordkeeper, acting as agent for such participant, for conveyance to the Trustee; (ii) is permitted by existing or future ruling of the United States Treasury Department to pool its funds in a group trust; (iii) permits its assets to be commingled for investment purposes with the assets

in a group trust; (iii) permits its assets to be commingled for investment purposes with the assets of other such plans by investing such assets in this Trust Fund whether or not its assets will in fact be held in a separate investment fund; and (iv) the Plan does not prohibit the Company from appointing the Recordkeeper to perform daily recordkeeping services as described herein, and provides that the Administrative Committee is the fiduciary responsible for carrying out participant investment directions.

1.4 Accounting for a Plan's Undivided Interest in the Trust Fund. All transfers to, withdrawals from, and other transactions regarding the Trust Fund shall be conducted in such a way that the proportionate interest in the Trust Fund of each Plan and the fair market value of that interest may be determined at any time. Whenever the assets of more than one Plan are commingled in the Trust Fund or in any Investment Fund, the undivided interest therein of that Plan shall be debited or credited (as the case may be) (i) for the entire amount of every contribution received on behalf of that Plan, every benefit payment, or other expense attributable solely to that Plan, and every other transaction relating only to that Plan; and (ii) for its proportionate share of every item of collected or accrued income, gain or loss, and general expense; and other transactions attributable to the Trust Fund or that Investment Fund as a whole. As of each date when the fair market value of the investments held in the Trust Fund or an Investment Fund are determined as provided for in Article 9, the Trustee shall adjust the value of each Plan's interest therein to reflect the net increase or decrease in such values since the last such date. For all of the foregoing purposes, fractions of a cent may be disregarded.

1.5 Appointment of Recordkeeper. Under the Plan, the Company is the fiduciary responsible for carrying out participant investment directions and in order to effect this, the Company has appointed Recordkeeper to perform certain services including but not limited to maintaining participant accounts for all contributions, loans and loan repayments, rollovers, and other deposits made for the purpose of determining how such deposits are to be allocated to the Investment Funds of the Plan, for determining requirements for disbursements from or transfers among Investment Funds in accordance with the terms of the Plan, for maintaining participant records for the purpose of voting or tendering shares in an Investment Fund as described in

Section 3.1 herein, for distributing information about the Investment Funds provided for under the Plan, and for distributing participant statements at periodic intervals.

1.6 No Trustee Duty Regarding Contributions. The Trustee shall not be under any duty to require payment of any contributions to the Trust Fund or determine that a contribution is in compliance with a participant's deferral election, or to see that any payment made to it is computed in accordance with the provisions of the Plans, or otherwise be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities under the Plans.

2. DISBURSEMENTS FROM THE TRUST FUND.

The Trustee shall from time to time on the directions of the Administrative Committee or Recordkeeper make payments out of the Trust Fund to such persons, including the Administrative Committee or Recordkeeper, in such manner, in such amounts and for such purposes as may be specified in the directions of the Recordkeeper or Administrative Committee.

The Recordkeeper or Administrative Committee shall be responsible for insuring that any payment directed under this Article conforms to the provisions of the Plans, this Trust Agreement, and the provisions of the Employee Retirement Income Security Act of 1974, as amended (hereinafter referred to as "ERISA"). Each direction of the Recordkeeper or Administrative Committee shall be in writing and shall be deemed to include a certification that any payment or other distribution directed thereby is one which the Recordkeeper or Administrative Committee is authorized to direct, and the Trustee may conclusively rely on such deemed certification without further investigation. Payments by the Trustee may be made by its check to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Trustee by the Recordkeeper or if no such address has been so furnished, to the payee in care of the Recordkeeper. The Trustee shall not incur any liability or other damage on account of any payments or other distributions made by it in accordance with the written directions of the Recordkeeper or Administrative Committee.

3. COMPANY SELECTED INVESTMENT FUNDS.

3.1 In General. The Investment Committee from time to time and in accordance with provisions of the Plan, may direct the Trustee to establish one or more separate investment accounts within the Trust Fund, each separate account being hereinafter referred to as an "Investment Fund" which may be invested in (i) shares of investment companies registered under the Investment Company Act of 1940, (ii) collective funds maintained by a bank or trust company, (iii) various classes of common stock of the Company, (iv) Participant directed brokerage accounts, (v) pools of insurance contracts, (vi) funds managed by a registered investment manager, bank or insurance company, (vii) accounts managed by named fiduciaries for the Plan; and (viii) other investment options available from time to time under the Plan (specifically the Investment Funds described on Attachment "A" to this Trust Agreement, as amended from time to time by the Committee and with the consent of the Trustee). The Trustee shall have no liability for any loss of any kind which may result by reason of the manner of division of the Trust Fund into Investment Funds, or for the investment management of these accounts, except as provided for in Section 3.5 respecting a Trustee managed investment account, if any. The Trustee shall transfer to each such Investment Fund such portion of the assets of the Trust Fund as the Administrative Committee or the Recordkeeper directs. The Trustee shall not incur any liability on account of following any direction of the Administrative Committee or the Recordkeeper and the Trustee shall be under no duty to review the investment guidelines, objectives and restrictions so established. To the extent that directions from the Administrative Committee or Recordkeeper to the Trustee represent investment instructions of the Plans' participants, the Trustee shall have no responsibility for such investment elections and shall incur no liability on account of the direct and necessary results of investing the assets of the Trust Fund in accordance with such participant investment instructions.

All interest, dividends and other income received with respect to, and any proceeds received from the sale or other disposition of, securities or other property held in an Investment Fund shall be credited to and reinvested in such Investment Fund. All expenses of the Trust Fund which are allocable to a particular Investment Fund shall be so allocated and charged.

Subject to the provisions of the Plans, the Investment Committee may direct the Trustee to eliminate an Investment Fund or Funds, and the Trustee shall thereupon dispose of the assets of such Investment Fund and reinvest the proceeds thereof in accordance with the directions of the Administrator.

3.2 Participant-Directed Brokerage Accounts. The Trustee shall, if so directed by the Investment Committee segregate all or a portion of the Trust Fund held by it into one or more separate investment accounts to be known as Participant Directed Brokerage Accounts. Whenever a Participant is directing the investment and reinvestment of a Participant Directed Brokerage Account, the Participant shall have the powers and duties which an Investment Manager would have under this Trust Agreement if an Investment Manager were then serving and the Trustee shall be protected to the same extent as it would be protected under this Trust Agreement as to directions or the absence of directions of an Investment Manager. Participant shall be entitled to give orders directly to the broker for the purchases and sale of securities as defined in Section 6 of this Agreement. The broker shall provide confirmation of each order to the Administrative Committee or Recordkeeper which shall maintain records in such form as to satisfy reporting requirements of the Plan.

3.3 Company Stock Funds The Investment Committee may direct the Trustee to establish one or more Investment Funds substantially all of the assets of which shall be invested in securities which constitute "qualifying employer securities" or "qualifying employer real property" within the meaning of Section 407 of ERISA. It shall be the duty of the Investment Committee to determine that such investment is not prohibited by Sections 406 or 407 of ERISA. In addition, during any time when there is no Investment Manager with respect to a Company Stock Fund (such as before an investment management agreement takes effect or after it terminates), the Investment Committee shall direct the investment and reinvestment of such Company Stock Fund.

3.4 Investment Committee Managed Investment Accounts. The Trustee shall, if so directed in writing by the Investment Committee, segregate all or a portion of the Trust Fund held by it into one or more separate investment accounts to be known as Investment Committee

Managed Investment Accounts. The Investment Committee, by written notice to the Trustee, may at any time relinquish its powers under this Section 3.4 and direct that a Investment Committee Managed Investment Account shall no longer be maintained. Whenever the Investment Committee is directing the investment and reinvestment of an Investment Account or a Investment Committee Managed Investment Account, the Investment Committee shall have the powers and duties which an Investment Manager would have under this Trust Agreement if an Investment Manager were then serving and the Trustee shall be protected to the same extent as it would be protected under this Trust Agreement as to directions or the absence of directions of an Investment Manager.

3.5 Trustee Managed Investment Accounts. The Trustee shall have no duty or responsibility to direct the investment and reinvestment of the Trust Fund, any Investment Fund or any Investment Account unless expressly agreed to in writing between the Trustee and the Investment Committee. In the event that the Trustee enters into such an agreement, it shall have the powers and duties of an Investment Manager under this Trust Agreement with regard to such Investment Account.

3.6 Investment Manager Accounts. The Investment Committee, from time to time and in accordance with the provisions of the Plans, may appoint one or more independent Investment Managers, pursuant to a written investment management agreement describing the powers and duties of the Investment Manager, to direct the investment and reinvestment of all or a portion of the Trust Fund or an Investment Fund (hereinafter referred to as an "Investment Account").

The Investment Committee shall be responsible for ascertaining that while each Investment Manager is acting in that capacity hereunder, the following requirements are satisfied:

(a) The Investment Manager is either (i) registered as an investment adviser under the Investment Advisers Act of 1940, as amended, (ii) a bank as defined in that Act or (iii) an insurance company qualified to perform the services described in (b) below under the laws of more than one state;

(b) The Investment Manager has the power to manage, acquire or dispose of any assets of the Plans for which it is responsible hereunder;

(c) The Investment Manager has acknowledged in writing to the Investment Committee and the Trustee that he or it is a fiduciary with respect to the Plans within the meaning of Section 3(21)(A) of ERISA.

The Investment Committee shall furnish the Trustee with written notice of the appointment of each Investment Manager hereunder, and of the termination of any such appointment. Such notice shall specify the assets which shall constitute the Investment Account of such Investment Manager. The Trustee shall be fully protected in relying upon the effectiveness of such appointment and the Investment Manager's continuing satisfaction of the requirements set forth above until it receives written notice from the Investment Committee to the contrary.

The Trustee shall conclusively presume that each Investment Manager, under its investment management agreement, is entitled to act, in directing the investment and reinvestment of the Investment Account for which it is responsible, in its sole and independent discretion and without limitation, except for any limitations which from time to time the Investment Committee and the Trustee agree (in writing) shall modify the scope of such authority.

The Trustee shall have no liability (i) for the acts or omissions of any Investment Manager (except to the extent the Trustee itself is serving as Investment Manager); (ii) for following directions, including investment directions of an Investment Manager (other than the Trustee) or the Investment Committee, which are given in accordance with this Trust Agreement; (iii) for failing to act in the absence of Investment Manager direction; or (iv) for any loss of any kind which may result by reason of the manner of division of the Trust Fund or Investment Fund into Investment Accounts.

An Investment Manager shall certify, at the request of the Trustee, the value of any securities or other property held in any Investment Account managed by such Investment Manager, and such certification shall be regarded as a direction with regard to such valuation.

The Trustee shall be entitled to conclusively rely upon such valuation for all purposes under this Trust Agreement.

Except as otherwise provided in this Trust Agreement, the Investment Manager of an Investment Account shall have the power and authority, to be exercised in its sole discretion at any time and from time to time, to issue orders for the purchase or sale of securities directly to a broker. Written notification of the issuance of each such order shall be given promptly to the Trustee by the Investment Manager and the confirmation of each such order shall be confirmed to the Trustee by the broker. The broker shall promptly provide confirmation of each such order to the Recordkeeper, which shall maintain all participant level accounts. The Recordkeeper shall provide to the Trustee all information reasonably required by the Trustee to fulfill its accounting and reporting obligations with respect to assets held in the Participant Directed Brokerage Accounts. Unless otherwise directed by the Investment Manager, such notification shall be authority for the Trustee to pay for securities purchased or to deliver securities sold as the case may be. Upon the direction of the Investment Manager, the Trustee will execute and deliver appropriate trading authorizations, but no such authorization shall be deemed to increase the liability or responsibility of the Trustee under this Trust Agreement.

4. POWERS OF THE TRUSTEE.

4.1 Investment Powers of the Trustee. The Trustee shall have and exercise the following powers and authority (i) over Investment Accounts for which it has express investment management discretion as provided in Section 3.5 or (ii) upon direction of the Investment Manager of an Investment Account or (iii) upon direction of a Participant with respect to a Participant Directed Brokerage Account or (iv) upon direction of the Investment Committee: (x) for a Investment Committee Managed Investment Account; or (y) for voting and tendering of qualified employer securities; or (v) upon direction of the Administrative Committee for lending to participants in the Plans:

(a) To purchase, receive, or subscribe for any securities or other property and to retain in trust such securities or other property.

(b) To acquire and hold qualifying employer securities and qualifying employer real property, as such investments are defined in Section 407(d) of ERISA.

(c) To sell for cash or on credit, to grant options, convert, redeem, exchange for other securities or other property, to enter into standby agreements for future investment, either with or without a standby fee, or otherwise to dispose of any securities or other property at any time held by it.

(d) To settle, compromise or submit to arbitration any claims, debts, or damages, due or owing to or from the trust, to commence or defend suits or legal proceedings and to represent the trust in all suits or legal proceedings in any court of law or before any other body or tribunal.

(e) To trade in financial options and futures, including index options and options on futures and to execute in connection therewith such account agreements and other agreements including contracts for the exchange of interest rates, or investment performance, currencies or other notional principal contracts in such form and upon such terms as the Investment Manager or the Administrator shall direct.

(f) Subject to Section 4.1(g), to exercise all voting rights, tender or exchange rights, any conversion privileges, subscription rights and other rights and powers available in connection with any securities or other property at any time held by it; to oppose or to consent to the reorganization, consolidation, merger, or readjustment of the finances of any corporation, company or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association any of the securities which may at any time be held by it and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions, which may be deemed necessary or advisable by the Investment Manager or Investment Committee in connection therewith, and to hold and retain any securities or other property which it may so acquire; and to deposit any property with any protective, reorganization or similar committee, and to pay and agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to property so deposited.

(g) To exercise all voting or tender or exchange offer rights with respect to all qualifying employer securities held by it except that portion, if any, for which it has received voting or tender or exchange offer instructions from participants in the Plans as provided in this paragraph. If the Plan provides, each participant may direct the Trustee, confidentially, how to vote or whether or not to tender or exchange the qualifying employer securities representing his proportionate interest in the assets of the Plans. The Recordkeeper shall furnish the Trustee with the name and address of each participant and the number of shares held for the participant's account as near as practicable to the record date fixed for

the determination of shareholders entitled to vote, tender or exchange, and shall provide the Trustee with all other information and assistance which the Trustee may reasonably request. Shares for which the Trustee has not received timely voting or tender or exchange instructions shall be voted or tendered by the Trustee to the extent permitted by the Plans or, if required by applicable law, in its sole discretion.

(h) To lend to participants in the Plans such amounts and upon such terms and conditions as the Administrative Committee or Recordkeeper may direct. Any such direction shall be deemed to include a certification by the Administrative Committee or Recordkeeper that such lending is in accordance with the provisions of ERISA and the Plans.

(i) To borrow money in such amounts and upon such terms and conditions as shall be deemed advisable or proper by the Investment Committee or Investment Manager to carry out the purposes of the trust and to pledge any securities or other property for the repayment of any such loan.

(j) To invest all or a portion of the Trust Fund in contracts issued by insurance companies, including contracts under which the insurance company holds Plan assets in a separate account or commingled separate account managed by the insurance company. The Trustee shall be entitled to rely upon any written directions of the Investment Committee or the Investment Manager under this Section 4.1, and the Trustee shall not be responsible for the terms of any insurance contract that it is directed to purchase and hold or for the selection of the issuer thereof or for performing any functions under such contract (other than the execution of any documents incidental thereto on the instructions of the Investment Committee or the Investment Manager).

(k) To manage, administer, operate, lease for any number of years, develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to, or otherwise deal with any real property or interest therein at any time held by it, and to hold any such real property in its own name or in the name of a nominee, with or without the addition of words indicating that such property is held in a fiduciary capacity, all upon such terms and conditions as may be deemed advisable by the Investment Manager or Investment Committee.

(l) To renew, extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable by the Investment Manager or Investment Committee, and to agree to a reduction in the rate of interest on any mortgage or of any guarantee pertaining thereto in any manner and to any extent that may be deemed advisable by the Investment Manager or Investment Committee for the protection of the Trust Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be

deemed advisable by the Investment Manager or Investment Committee; to exercise and enforce any and all rights of foreclosure, to bid on property on foreclosure, to take a deed in lieu of foreclosure with or without paying consideration therefor, and in connection therewith to release the obligation on the bond secured by such mortgage, and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any such mortgage or guarantee.

(m) To hold part or all of the Trust Fund uninvested.

(n) To employ suitable agents and counsel and to pay their reasonable and proper expenses and compensation.

(o) To purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with State Street Bank and Trust Company, its agents or subcustodians.

(p) To form corporations and to create trusts to hold title to any securities or other property, all upon such terms and conditions as may be deemed advisable by the Investment Manager or Investment Committee.

(q) To register any securities held by it hereunder in its own name, in the name of its nominee, in the name of its agent, or in the name of its agent's nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity, and to hold any securities in bearer form and to deposit any securities or other property in a depository or clearing corporation.

(r) To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases, or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers.

(s) To invest at any bank including State Street Bank and Trust Company (i) in any type of interest bearing investments (including, but not limited to savings accounts, money market accounts, certificates of deposit and repurchase agreements) and (ii) in noninterest bearing accounts (including but not limited to checking accounts).

(t) To invest in collective investment funds maintained by State Street Bank and Trust Company or by other banks for the investment of the assets of employee benefit plans qualified under Section 401(a) of the Code, whereupon the instruments establishing such funds, as amended, shall be deemed a part of this Trust Agreement and incorporated by reference herein.

The Trustee shall transmit promptly to the Investment Committee or the Investment Manager, as the case may be, all notices of conversion, redemption, tender, exchange, subscription, class action, claim in insolvency proceedings or other rights or powers relating to any of the securities in the Trust Fund, which notices are received by the Trustee from its agents or custodians, from issuers of the securities in question and from the party (or its agents) extending such rights. The Trustee shall have no obligation to determine the existence of any conversion, redemption, tender, exchange, subscription, class action, claim in insolvency proceedings or other right or power relating to any of the securities in the Trust Fund of which notice was given prior to the purchase of such securities by the Trust Fund, and shall have no obligation to exercise any such right or power unless the Trustee is informed of the existence of the right or power.

The Trustee shall not be liable for any untimely exercise or assertion of such rights or powers described in the paragraph immediately above in connection with securities or other property of the Trust Fund at any time held by it unless (i) it or its agents or custodians are in actual possession of such securities or property and (ii) it receives directions to exercise any such rights or powers from the Investment Committee or the Investment Manager, as the case may be, and both (i) and (ii) occur at least three business days prior to the date on which such rights or powers are to be exercised.

If the Trustee is directed by the Investment Committee or an Investment Manager to purchase securities issued by any foreign government or agency thereof, or by any corporation or other entity domiciled outside of the United States, it shall be the responsibility of the Investment Committee or Investment Manager, as the case may be, to advise the Trustee in writing with respect to any laws or regulations of any foreign countries or any United States territory or possession which shall apply in any manner whatsoever to such securities, including, without limitation, receipt by the Trustee of dividends, interest or other distributions on such securities.

All Investment Company shares shall be registered in the name of the Trustee or its nominee. Subject to any requirement of applicable law, the Trustee will transmit to Recordkeeper or the Investment Committee, as the case may be, copies of any notices of shareholders' meetings, proxies and proxy-soliciting materials, prospectuses and the annual or

other reports to shareholders, with respect to Investment Company shares held in the Trust. The Trustee shall act in accordance with appropriate directions received from Recordkeeper or the Investment Committee, as the case may be, with respect to matters to be voted upon by the shareholders of the Investment Company. Such directions must be in writing on a form approved by the Trustee, signed by the addressee and delivered to the Trustee within the time prescribed by it. The Trustee will not vote Investment Company shares as to which it receives no written directions. For the purposes of this Section, Investment Company means a registered investment company provided that its prospectus offers its shares under the Plan.

4.2 Administrative Powers of the Trustee. Notwithstanding the appointment of an Investment Manager, the Trustee shall have the following powers and authority, to be exercised in its sole discretion, with respect to the Trust Fund:

(a) To employ suitable agents, custodians and counsel and to pay their reasonable expenses and compensation.

(b) To appoint ancillary trustees to hold any portion of the assets of the trust and to pay their reasonable expenses and compensation.

(c) To register any securities held by it hereunder in its own name, in the name of its nominee, in the name of its agent, or in the name of its agent's nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity, and to hold any securities in bearer form and to deposit any securities or other property in a depository or clearing corporation.

(d) To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers.

(e) Generally to do all ministerial acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable in carrying out its duties under this Trust Agreement.

Notwithstanding anything in the Plans or this Trust Agreement to the contrary, the Trustee shall not be required by the Investment Committee, the Administrative Committee, Recordkeeper or any Investment Manager to engage in any action, nor make any investment

which constitutes a prohibited transaction or is otherwise contrary to the provisions of ERISA or which is otherwise contrary to law or to the terms of the Plans or this Trust Agreement.

The Trustee may consult with legal counsel concerning any question which may arise with reference to this Trust Agreement and its powers and duties hereunder.

5. INDEMNIFICATION.

To the extent permitted by applicable law, the Company shall indemnify and save harmless the Trustee for and from any loss or expense (including reasonable attorneys' fees) arising (a) out of an authorized action hereunder taken in good faith by the Trustee, or (b) out of any matter as to which this Trust Agreement provides that the Trustee is directed, protected, not liable, or not responsible, or (c) by reason of any breach of any statutory or other duty owed to the Plans by the Company, any Employer, the Administrative Committee, the Recordkeeper, the Investment Committee or any Investment Manager or any delegate of any of them (and for the purposes of this sentence the Trustee shall not be considered to be such a delegate), whether or not the Trustee may also be considered liable for that other person's breach under the provisions of Section 405(a) of ERISA, except for any loss or expense arising from a negligent performance of or negligent failure to perform a duty under this Trust Agreement, or a breach of fiduciary duty by (I) State Street in any capacity, (ii) any parent organization of State Street, (iii) any subsidiary or division of State Street or any parent thereof, or (iv) any officer, director, employee of State Street, or any contractor or agent selected by State Street or any of the foregoing (any of (ii), (iii) or (iv) herewith referred to as an "Affiliate"). Central securities depositories and clearing agencies shall not be considered contractors or agents of the Trustee.

6. SECURITIES OR OTHER PROPERTY.

The words "securities or other property", used in this Trust Agreement, shall be deemed to refer to any property, real or personal, or part interest therein, wherever situated, including, without limitation, governmental, corporate or personal obligations, trust and participation certificates, partnership interests, annuity or investment contracts issued by an insurance

company, leaseholds, fee titles, mortgages and other interests in realty, preferred and common stocks, certificates of deposit, financial options and futures or any other form of option, evidences of indebtedness or ownership in foreign corporations or other enterprises or indebtedness of foreign governments, and any other evidences of indebtedness or ownership, including securities or other property of the Company, even though the same may not be legal investment for trustees under any law other than ERISA.

7. SECURITY CODES.

If the Trustee has issued to the Investment Committee, or to any Investment Manager appointed by the Investment Committee, security codes or passwords in order that the Trustee may verify that certain transmissions of information, including directions or instructions, have been originated by the Investment Committee or the Investment Manager, as the case may be, the Trustee shall be kept indemnified by and be without liability to the Company for any action taken or omitted by it in reliance upon receipt by the Trustee of transmissions of information with the proper security code or password, including communications purporting to be directions or instructions, which the Trustee reasonably believes to be from the Investment Committee or Investment Manager.

8. TAXES AND TRUSTEE COMPENSATION.

The Trustee shall pay out of the Trust Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws against the Trust Fund. Until advised to the contrary by the Administrative Committee, the Trustee shall assume that the Trust is exempt from Federal, State and local income taxes, and shall act in accordance with that assumption. The Administrative Committee shall timely file all Federal, State and local tax and information returns relating to the Plans and Trust.

The Trustee shall be paid such reasonable compensation as shall from time to time be agreed upon by the Company and the Trustee in writing. Such compensation and all reasonable and proper expenses of administration of the Trust, including counsel fees, shall be withdrawn by

qualified persons, transactions and bona fide offers in assets of the type in question and other information customarily used in the valuation of property.

The Administrative Committee or its delegate, each Investment Manager, and the Trustee shall file such descriptions and reports and make such other publications, disclosures, registrations and other filings as are required of them respectively by ERISA.

Nothing contained in this Trust Agreement or in the Plans shall deprive the Trustee of the right to have a judicial settlement of its account. In any proceeding for a judicial settlement of the Trustee's accounts or for instructions in connection with the trust, the only necessary party thereto in addition to the Trustee shall be the Company, and no participant or other person having or claiming any interest in the Trust Fund shall be entitled to any notice or service of process (except as required by law). Any judgment, decision or award entered in any such proceeding or action shall be conclusive upon all interested persons.

10. RELIANCE ON COMMUNICATIONS.

The Trustee may rely upon a certification of the Administrative Committee, the Investment Committee or the Recordkeeper with respect to any instruction, direction or approval of such Administrative Committee, Investment Committee or the Recordkeeper and may rely upon a certification of the Company as to the membership of Administrative Committee and Investment Committee as they then exist, and may continue to rely upon such certification until a subsequent certification is filed with the Trustee.

The Trustee shall be fully protected in acting upon any instrument, certificate, or paper of the Company, its Board of Directors, the Administrative Committee, the Investment Committee (or any member of the Board, Board Committee or the Committee, if applicable) or the Recordkeeper, believed by it to be genuine and to be signed or presented by any authorized person, and the Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized by the Company, the Board, Board Committee, Administrative Committee , the Investment Committee or the Recordkeeper, if applicable, as the case may be.

The Trustee shall be further protected in relying upon a certification from any Investment Manager appointed by the Investment Committee as to the person or persons authorized to give instructions or directions on behalf of such Investment Manager and may continue to rely upon such certification until a subsequent certification is filed with Trustee.

11. RESIGNATION AND REMOVAL OF TRUSTEE.

Any Trustee acting hereunder may resign at any time by giving sixty days' prior written notice to the Company, which notice may be waived by the Company. The Company may remove the Trustee at any time upon sixty days' prior written notice to the Trustee, which notice may be waived by the Trustee. In case of the resignation or removal of the Trustee, the Company shall appoint a successor trustee. Any successor trustee shall have the same powers and duties as those conferred upon the Trustee named in this Trust Agreement. The removal of a Trustee and the appointment of a new Trustee shall be by a written instrument delivered to the Trustee. Upon the appointment of a successor trustee, the resigning or removed Trustee shall transfer or deliver the Trust Fund to such successor trustee.

12. AMENDMENT.

This Trust Agreement may be amended by agreement between the Trustee and the Company at any time or from time to time and in any manner, and the provisions of any such amendment may be applicable to the Trust Fund as constituted at the time of the amendment as well as to the part of the Trust Fund subsequently acquired.

13. TERMINATION.

This Trust Agreement and the trust created hereby may be terminated at any time by the Company, and upon such termination or upon the dissolution or liquidation of the Company, in the event that a successor to the Company by operation of law or by the acquisition of its business interests shall not elect to continue the Plans and the trust, the Trust Fund shall be paid out by the Trustee when directed by the Administrative Committee. Notwithstanding the

foregoing, the Trustee shall not be required to pay out any assets of the Trust Fund upon termination of the Trust until the Trustee has received written certification from the Administrative Committee that all provisions of law with respect to such termination have been complied with. The Trustee shall rely conclusively on such written certification, and shall be under no obligation to investigate or otherwise determine its propriety.

14. PARTICIPATION OF OTHER EMPLOYERS.

14.1 Adoption by Other Employers; Withdrawals. The Trust is maintained by the Company for use as the funding vehicle for the Plans which it maintains for various groups of employees and for use as the funding vehicle for the Plans of any Employer.

(a) Any Employer which has been certified to the Trustee by the Company as being authorized and as having adopted this Trust with the consent of the Company as a funding vehicle for its own Plans may, at any time thereafter, become a party to this Trust Agreement by filing with the Trustee a certified copy of a resolution of its Board of Directors evidencing its election so to do; and

(b) Any Employer which is a party to this Trust Agreement and which has been certified to the Trustee by the Company as having adopted one or more other Plans and as being authorized to adopt this Trust as the funding medium for such other Plan or Plans may, at any time thereafter, adopt this Trust for the purposes of such other Plan or Plans by filing with the Trustee a certified copy of a resolution of its Board of Directors evidencing its election so to do.

Thereafter, the Trustee shall receive and hold as a part of the Trust Fund, subject to the provisions of this Trust Agreement, any deposits made to it under such Plans by or at the direction of such Employer. Should this paragraph become operative:

(a) In the event of the withdrawal of a Plan from the trust or in the event of the Company's or an Employer's election to terminate or to fund separately the benefits provided under any of its Plans, the Company shall cause a valuation to be made of the share of the Trust Fund which is held for the benefit of persons having an interest therein under such Plans. The Trustee shall thereupon segregate and dispose of such share in accordance with the written direction of the Company accompanied by its certification to the Trustee that such segregation and disposition is in accordance with the terms of the Plans and the requirements of the law.

(b) If the Company or any Employer receives notice that one or more of its Plans is no longer qualified under the provisions of Section 401 of the Code or the corresponding provisions of any future Federal revenue act, the Company shall immediately cause a valuation to be made of the share of the Trust Fund which is held for the benefit of such persons having an interest under such disqualified Plan or Plans. The Trustee shall thereupon segregate, withdraw from the Trust Fund, and dispose of such share in accordance with the terms of the disqualified Plan or Plans. The Company may direct the Trustee to dispose of such share by the transfer and delivery of such share to itself as trustee of a separate trust, the terms and conditions of which shall be identical with those of this Trust Agreement, except that either the Company or the Employer maintaining such disqualified Plan or Plans and the Trustee shall be the only parties thereto.

(c) In the event that any group of employees covered by a Plan is withdrawn from such Plan, the Company shall, if required by the terms of such Plan, cause a valuation to be made of the share of the Trust Fund which is held for the benefit of such group of employees. The Trustee shall thereupon segregate and dispose of such share in accordance with the direction of the Company accompanied by its certification to the Trustee that such segregation and disposition is in accordance with the terms of such Plan and the requirements of the law.

The Trustee shall have no duty to see that the valuation of any share in accordance with the provisions of this Section 14.1 is caused to be made by the Company, nor to segregate and dispose of any such share in the absence of the written direction of the Company to do so.

14.2 Powers and Authorities of Other Employers to be Exercised Exclusively by Company. Each Employer, other than the Company, which is or shall become a party to this Trust Agreement, hereby irrevocably gives and grants to the Company, the Administrative Committee and the Investment Committee full and exclusive power and authority to exercise all of the powers conferred upon it by the terms of this Trust Agreement and to take or refrain from taking any and all action which such Employer might otherwise take or refrain from taking with respect to this Trust Agreement, including the sole and exclusive power to exercise, enforce or waive any rights whatsoever which such Employer might otherwise have with respect to the Trust Fund, and each such Employer, by becoming a party to this Trust Agreement, irrevocably appoints the Company, the Administrative Committee and the Investment Committee its agent for such purposes. The Trustee shall have no obligation to account to any such Employer or to

follow the instructions of or otherwise deal with any such Employer, the intention being that the Trustee shall deal solely with the Company as if the Trustee and the Company were the only parties in this Trust Agreement.

15. MISCELLANEOUS.

15.1 Governing Law. To the extent not inconsistent with ERISA, as heretofore or hereafter amended, the provisions of this Trust Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. The Company hereby submits to the jurisdiction of the State and Federal Courts located in the Commonwealth of Massachusetts including any appellate courts thereof.

15.2 No Reversion to Employer. Except as provided herein, no portion of the principal or the income of the Trust Fund shall revert to or be recoverable by the Company or any Employer or ever be used for or diverted to any purpose other than for the exclusive benefit of participants in the Plans and persons claiming under or through them pursuant to the Plans, provided, however, that:

(a) all contributions are conditioned upon the deductibility of the contributions under Section 404(a) of the Code, and, to the extent determined to be nondeductible, the Trustee shall, upon written request of the affected Company, return such amount as may be permitted by law to such Company, as appropriate, within one year after the determination of nondeductibility or within such other period as is permitted by applicable law; and

(b) if a contribution or any portion thereof is made by the Company by a mistake of fact, the Trustee shall, upon written request of the Company, return such amounts as may be permitted by law to the Company, as appropriate, within one year after the date of payment to the Trustee or within such other period as is permitted by applicable law; and

(c) if a contribution is conditioned upon the qualification of the Plans and Trust under Section 401 and 501 of the Code, the contributions of the Company to the Trust for all Plans Years, with the gains and losses thereon, shall be returned by the Trustee to the Company, as appropriate, within one year in the event that the Commissioner of Internal Revenue fails to rule that the Plans and Trust were as of such date qualified and tax-exempt (within the meaning of Sections 401 and 501 of the Code); and

(d) in the event that a Plan whose assets are held in the Trust Fund is terminated, assets of such Plan may be returned to the Employer if all Plan liabilities to participants and beneficiaries of such Plan have been satisfied; and

(e) assets may be returned to the Employer to the extent that the law permits such transfer.

The Trustee shall be under no obligation to return any part of the Trust Fund as provided in this Section 15.2 until the Trustee has received a written certification from the Administrative Committee that such return is in compliance with this Section 15.2, the Plans and the requirements of applicable law. The Trustee shall rely conclusively on such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

15.3 Non-Alienation of Benefits. Except in accordance with the procedures set forth in the Plan with respect to qualified domestic relations orders, no benefit to which a participant or his beneficiary is or may become entitled under a Plan shall at any time be subject in any manner to alienation or encumbrance, nor be resorted to, appropriated or seized in any proceeding at law, in equity or otherwise. No participant or other person entitled to receive a benefit under a Plan shall, except as specifically provided in such Plan, have power in any manner to transfer, assign, alienate or in any way encumber such benefit under such Plan, or any part thereof, and any attempt to do so shall be void.

15.4 Duration of Trust. Unless sooner terminated, the trust created under this Trust Agreement shall continue for the maximum period of time which the laws of the Commonwealth of Massachusetts shall permit.

15.5 No Guarantees. Neither the Company, nor any Employer, nor the Trustee guarantees the Trust Fund from loss or depreciation, nor the payment of any amount which may become due to any person under the Plans or this Trust Agreement.

15.6 Duty to Furnish Information. Both the Company and the Trustee shall furnish to the other any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties imposed under the Plans or this Trust Agreement or otherwise imposed by law.

15.7 Withholding. The Administrative Committee or the Recordkeeper shall withhold any tax which by any present or future law is required to be withheld from any payment under the Plans, unless the Trustee shall have agreed in writing to do so. The Administrative Committee or the Recordkeeper shall provide all information reasonably requested by the Trustee to enable the Trustee to so withhold.

15.8 Parties Bound. This Trust Agreement shall be binding upon the parties hereto, all participants in the Plans and persons claiming under or through them pursuant to the Plans, and, as the case may be, the heirs, executors, administrators, successors, and assigns of each of them. The provisions of Articles 5 and 7 shall survive termination of the Trust created under this Trust Agreement or resignation or removal of the Trustee for any reason.

In the event of the merger or consolidation of the Company or any Employer or other circumstances whereby a successor person, firm or company shall continue to carry on all or a substantial part of its business, and such successor shall elect to carry on the provisions of the Plan or Plans applicable to such business, as therein provided, such successor shall be substituted hereunder for the Company or such Employer, as the case may be, upon the filing in writing of its election so to do with the Trustee. The Trustee may, but need not, rely on the certification of an officer of the Company, and a certified copy of a resolution of the Board of Directors of such successor, reciting the facts, circumstances and consummation of such succession and the election of such successor to continue the said Plan or Plans as conclusive evidence thereof, without requiring any additional evidence.

15.9 Necessary Parties to Disputes. Necessary parties to any accounting, litigation or other proceedings shall include only the Trustee, the Company and any appropriate Employers and the settlement or judgment in any such case in which the Company, the appropriate Employers and the Trustee are duly served or cited shall be binding upon all participants in the Plans and their beneficiaries and estates, and upon all persons claiming by, through or under them.

15.10 Unclaimed Benefit Payments. If any check or share certificate in payment of a benefit hereunder which has been mailed by regular US mail to the last address of the payee

furnished the Trustee by the Administrative Committee or Recordkeeper is returned unclaimed, the Trustee shall notify the Administrative Committee or Recordkeeper and shall discontinue further payments to such payee until it receives the further instruction of the Administrative Committee or Recordkeeper.

15.11 Severability. If any provisions of this Trust Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Trust Agreement shall continue to be fully effective.

15.12 References. Unless the context clearly indicates to the contrary, a reference to a statute, regulation, document or provision shall be construed as referring to any subsequently enacted, adopted or executed counterpart.

15.13 Headings. Headings and subheadings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of its provisions.

15.14 No Liability for Acts of Predecessor and Successor Trustees. The Trustee shall have no liability for the acts or omissions of any predecessors or successors in office.

15.15 Counterparts. This Trust Agreement may be executed in one or more counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers as of the day and year first above written.

ATTEST:

WASTE MANAGEMENT, INC.

____

BY: ____________________

TITLE: Sr. Vice President

ATTEST: ____________________

STATE STREET BANK AND TRUST COMPANY

BY: ____________________

Vice President

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, ET AL. Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY AND STATE STREET GLOBAL MARKETS LLC Defendants.	)	C.A. No. 11-cv-12049-MLW

AFFIDAVIT OF ROBERT DEMPSEY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Robert Dempsey states:

Background and Qualifications

1. I am a Managing Director for Portfolio Administration in the State Street Global Advisors ("SSgA") division of State Street Bank and Trust Company ("State Street").

2. My responsibilities include the management of investment operations, including for the SSgA-managed collective funds discussed below.

3. State Street has authorized me to submit this affidavit in support of Defendants' motion to dismiss the Complaint in the matter captioned above. I state in this affidavit the source of any information that is not based on personal knowledge.

SSgA Collective Funds

4. SSgA manages collective investment vehicles similar to mutual funds. Institutional investors such as the Waste Management Retirement Savings Plan ("WM Plan") and the Citigroup 401(k) Plan (the "Citi Plan") are permitted to invest in certain of these collective investment funds.

5. The collective funds are governed by a declaration of trust for the "State Street Bank and Trust Company Investment Funds for Tax Exempt Retirement Plans," which has been restated from time to time during the alleged class period beginning January 1, 2001 (the "Class Period"). The Fourth Amended and Restated version has an effective date of October 1, 2005, and is attached hereto as Exhibit A (the "Declaration of Trust"). The Fifth Amended and Restated Version has an effective date of September 30, 2011, and is attached hereto as Exhibit B.[1]

6. The Declaration of Trust provides that "each Fund ... constitute[s] a separate trust and the assets of each Fund shall be separately held, managed, administered, valued, invested, reinvested, accounted for and otherwise dealt with as a separate trust hereunder." (*Id.* § 3.1.)

7. The Declaration of Trust provides that investors in each collective fund receive a "beneficial interest" in "Units" proportional to their investment in each fund, which represents an "undivided proportionate interest in all assets and liabilities of the Fund . . . ." (*Id.* § 4.1.)

8. The Declaration of Trust provides that the net asset value (or NAV) of each such "Unit" is calculated as (i) the "fair value of the assets of the Fund"; (ii) less "any fees, expenses, charges and other liabilities"; (iii) divided by the "by the number of outstanding Units." (*Id.* § 4.3.)

9. The Declaration of Trust provides that when an investor redeems Units from the Fund, he or she receives "a sum arrived at by multiplying the number of Units withdrawn by the

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[1] Based on my review of past versions of the Declaration of Trust, the relevant provisions of the applicable master trust agreements cited in this Affidavit did not materially change over the Class Period.

[NAV] of each Unit as of the close of business on the relevant Valuation Date." (*Id.* § 5.3.). Investors also buy Units at NAV.[2]

10. State Street is the custodian for the collective funds subject to the Declaration of Trust.

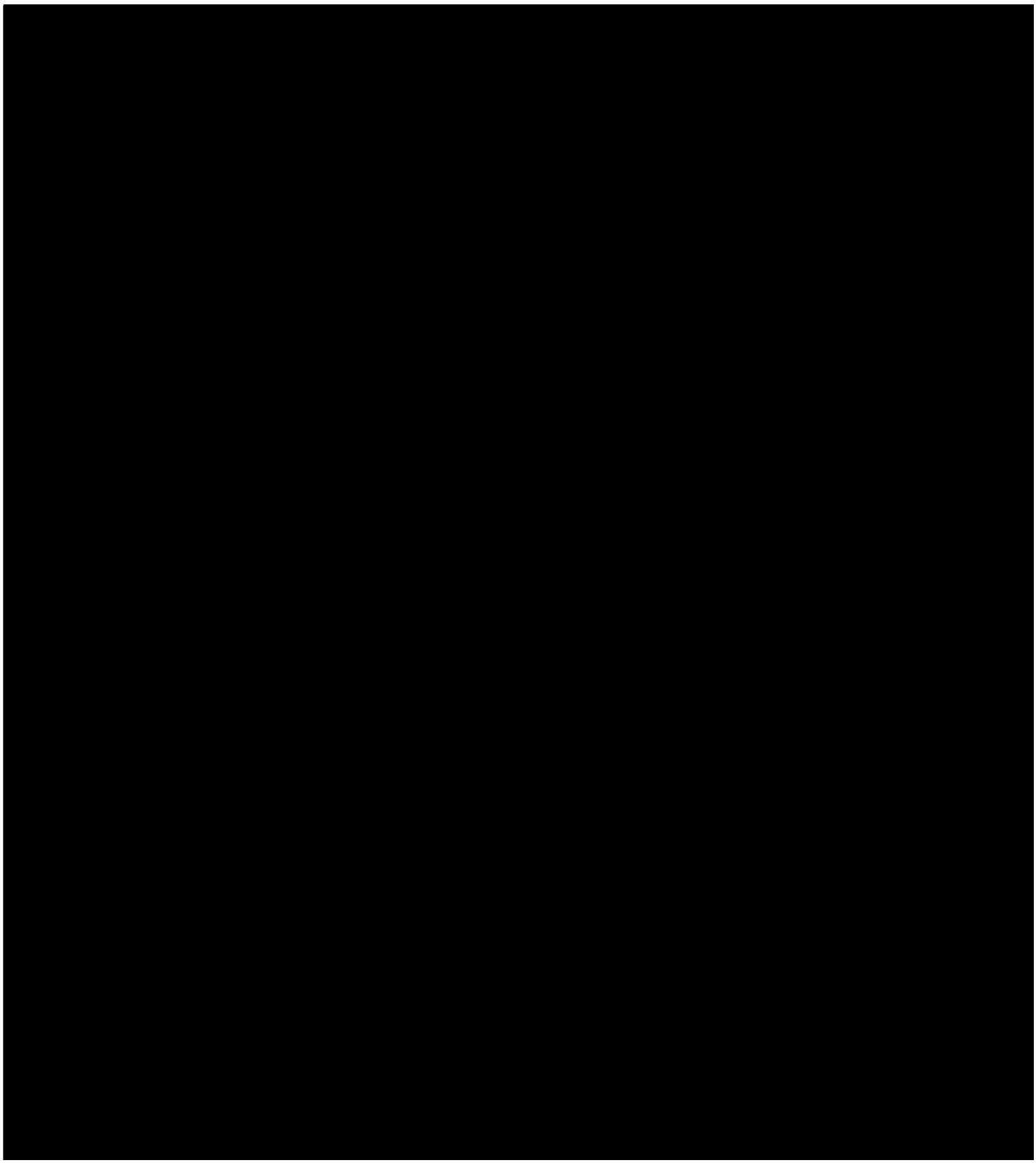
Plaintiffs' Alleged Collective Fund Investments

11. Plaintiff Arnold Henriquez ("Henriquez") alleges that he is a participant in the WM Plan. Henriquez alleges that WM Plan assets in his account were invested in certain SSgA-managed collective funds (the "WM Selected Funds") at certain times. *See* Complaint ¶ 10 & n.2.

12. Plaintiff Michael T. Cohn ("Cohn") alleges that he is a participant in the Citi Plan. Cohn alleges that Citi Plan assets in his account were invested in certain SSgA-managed collective funds (the "Citi Selected Funds") at certain times. *See* Complaint ¶ 11.

[redacted]

[redacted]



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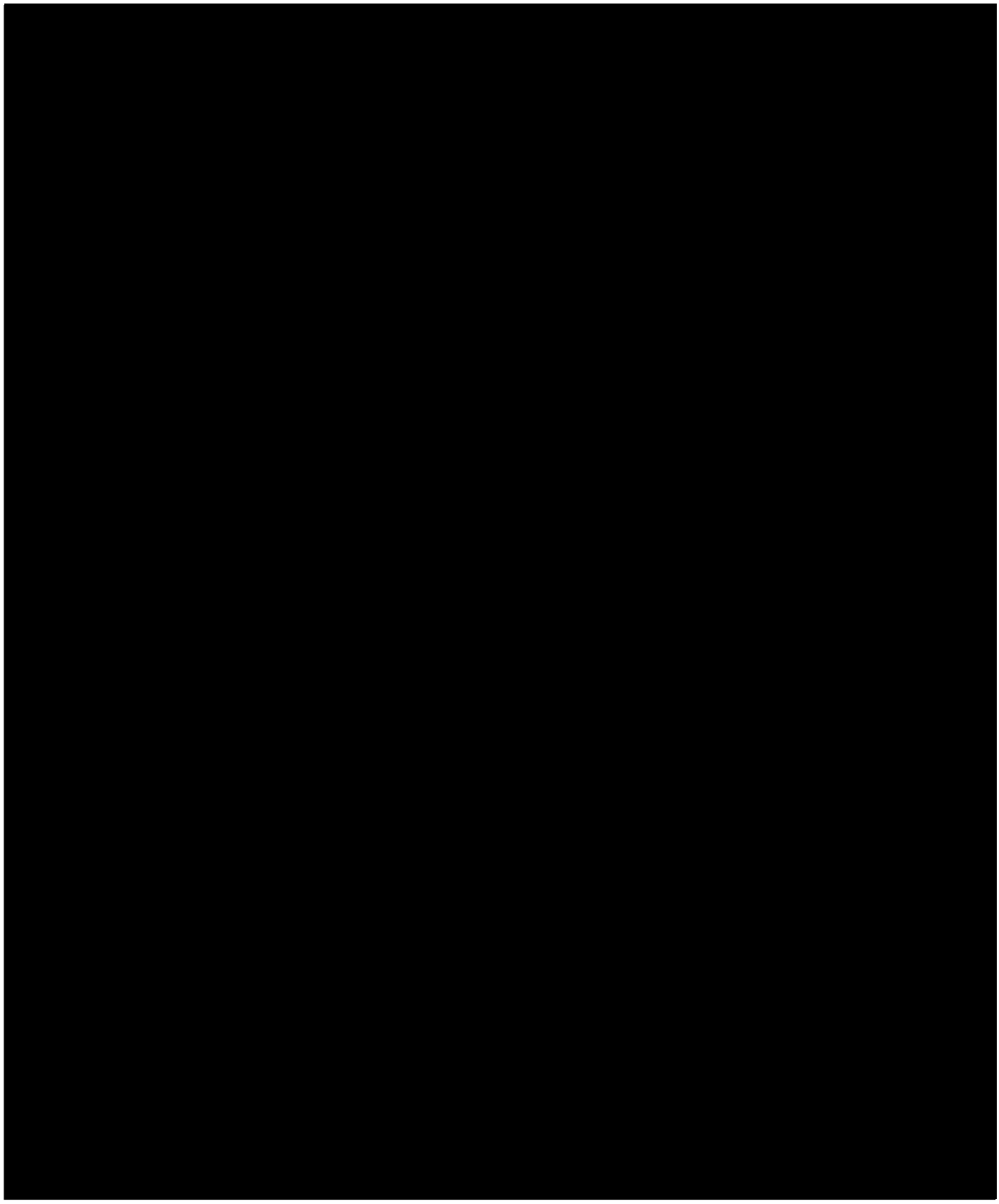

I declare under penalty of perjury that the forgoing is true and correct to the best of my personal knowledge, information and belief.

STATE STREET BANK AND TRUST COMPANY
INVESTMENT FUNDS FOR TAX EXEMPT RETIREMENT PLANS

Fourth Amended and Restated
Declaration of Trust

WHEREAS pursuant to a Declaration of Trust, dated February 21, 1991 (the "Trust Declaration") State Street Bank and Trust Company ("the Trust Company") established the STATE STREET BANK AND TRUST COMPANY INVESTMENT FUNDS FOR TAX EXEMPT RETIREMENT PLANS which amended, restated and consolidated various declarations of trust and the commingled investment funds created thereunder;

WHEREAS pursuant to a First Amendment to Declaration of Trust dated July 19, 1991 the Trust Company amended the Trust Declaration;

WHEREAS pursuant to a Second Amended and Restated Declaration of Trust dated March 13, 1997 the Trust Company further amended the Trust Declaration;

WHEREAS, pursuant to a Third Amended and Restated Declaration of Trust dated December 22, 2003, the Trust Company further amended the Trust Declaration;

WHEREAS, the Trust Company desires to make certain additional amendments to the Trust Declaration, as so amended;

NOW THEREFORE, the Trust Company hereby amends and restates the Trust Declaration as follows:

By this Fourth Amended and Restated Declaration of Trust (the "Declaration of Trust"), there is hereby continued a previously established trust known as the "STATE STREET BANK AND TRUST COMPANY INVESTMENT FUNDS FOR TAX EXEMPT RETIREMENT PLANS". This Declaration of Trust shall govern the operation of all Funds created under the Trust Declaration and its predecessors (and any other funds established pursuant to Article III of this Declaration of Trust), each with such separate classes or divisions of interests as the Trust Company may deem necessary or desirable, in all respects. The Trust Company agrees and declares that it will hold, administer and deal with all money and property received or purchased by it as trustee hereunder upon the following terms and conditions:

ARTICLE I - DEFINITIONS

Wherever used in this Declaration of Trust, unless the context clearly indicates otherwise, the following words shall have the following meanings:

1.1 "Affiliate" means any general partnership, limited partnership, corporation, joint venture, trust, business trust or similar organization controlling, controlled by, or under common control with the Trust Company.

1.2 "Business Day" means any day or part of a day on which the New York Stock Exchange and the Trust Company are open for business.

1.3 "Class" means (i) one of the separate classes or divisions of interests of a Fund that is established pursuant to Article III of this Declaration of Trust, or (ii) with respect to a Fund for which no such classes or divisions have been established, the Fund.

1.4 "Class Description" means a written description of a Class of a Fund as established by the Trustee and reflected in a written instrument by the Trustee.

1.5 "Code" means the Internal Revenue Code of 1986, as amended.

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

1.7 "Existing Funds" means the Funds as of the date hereof, each of which is listed on Schedule A hereto.

1.8 "Fiscal Year" means the fiscal year of a Fund, which shall be the 12 months ending on December 31 of each year unless otherwise specified in the Fund Declaration.

1.9 "Fund" means one of the Existing Funds or one of the investment funds which is established pursuant to Article III of this Declaration of Trust after the date hereof and, in either case, refers to the investment fund to which the particular provision hereof is being applied.

1.10 "Fund Declaration" means one of the separate declarations executed by the Trustee pursuant to Section 3.1 for the purpose of establishing a Fund hereunder or for the purpose of confirming or ratifying an Existing Fund.

1.11 "Investing Fiduciary" means the person or persons, natural or legal, including a committee, who exercise discretion with respect to the decision to invest assets of a Qualified Investor in a Fund; provided, however, that, if the person who exercises investment discretion is a participant or beneficiary entitled to benefits under the Qualified Investor and is acting in his capacity as such, then Investing Fiduciary shall mean the Qualified Investor Signatory.

1.12 "Investment Company Act" means the Investment Company Act of 1940, as amended.

1.13 "Participant" means a Qualified Investor which, with the consent of the Trustee, has made a deposit in a Fund and has a beneficial interest in a Fund.

1.14 "Plan Sponsor" means the employer establishing or maintaining the Qualified Investor, if the Qualified Investor is a single employer plan (as defined in Section 3(41) of ERISA) and, in the case of any other Qualified Investor, the board of trustees or other similar group of representatives of the parties who establish or maintain the Qualified Investor.

1.15 "Qualified Investor" means an investor described in Section 2.1 of this Declaration of Trust.

1.16 "Qualified Investor Signatory" means the person or persons, natural or legal, including a committee, who executes the agreement pursuant to which the Trust Company is appointed as trustee, co-trustee, custodian, investment manager, or agent for the trustee or trustees with respect to a Qualified Investor.

1.17 "Securities Act" means the Securities Act of 1933, as amended.

1.18 "Trust Company" means State Street Bank and Trust Company.

1.19 "Trustee" means the Trust Company in its capacity as trustee under this Declaration of Trust.

1.20 "Unit" means a book-entry record used to determine the value of the beneficial interest of each Participant in a Fund or a Class of a Fund.

1.21 "Valuation Date" means the last Business Day of each calendar month, unless otherwise specified in the Fund Declaration, and such other additional days as the Trustee may from time to time designate.

ARTICLE II - ELIGIBILITY FOR PARTICIPATION; ACCEPTANCE OF DEPOSITS; NON-DIVERSION OF ASSETS

2.1 Eligibility for Participation. An investor may participate in a Fund only if (1) the Trust Company is acting as trustee, co-trustee, custodian, investment manager, or agent of the investor, (2) the Trust Company, in its discretion, has accepted it as a Participant, and (3) one of the following conditions is met:

(a) The investor is a trust created under an employees' pension or profit sharing plan (1) which is qualified within the meaning of Code Section 401(a) and is therefore exempt from tax under Code Section 501(a); and (2) which is administered under one or more documents which authorize part or all of the assets of the trust to be commingled for investment purposes with the assets of other such trusts in a collective investment trust and which adopt each such collective investment trust as a part of the plan. If such trust covers self-employed individuals within the meaning of Section 401(c)(1) of the Code (a "Keogh Plan") and interests in the Fund are not registered under the Securities Act, then each such Keogh Plan will be permitted to invest in the Fund only to the extent permitted by the Securities Act and rules and regulations promulgated thereunder.

(b) The investor is a plan or governmental unit (1) which is described in Code Section 818(a)(6), (2) which, if interests in the Fund are not registered under the Securities Act and the Fund is not registered under the Investment Company Act, satisfies the requirements of Section 3(a)(2) or any other available exemption of the Securities Act and any applicable requirements of the Investment Company Act and rules and regulations promulgated thereunder, and (3) which is administered under one or more documents which authorize part or all of the assets of the trust to be commingled for investment purposes with the assets of other such trusts in a collective investment trust and which adopt each such collective investment trust as a part of the plan.

(c) The investor is a segregated asset account maintained by a life insurance company (1) consisting exclusively of assets of investors described in subsections (a) and/or (b) of this Section 2.1, and (2) which is administered under one or more documents which authorize part or all of the assets of the trust to be commingled for investment purposes with the assets of other such trusts in a collective investment trust and whose constituent trusts adopt each such collective investment trust as a part of their respective plans.

(d) If interests in the Fund are registered under the Securities Act and the Fund is registered under the Investment Company Act, the investor is (1) an individual retirement account exempt from taxation under Code Section 408(e), and (2) administered under one or more documents which authorize part or all of the assets of the trust to be commingled for investment purposes with the assets of other such trusts in a collective investment trust and which adopt each such collective investment trust as a part of the individual retirement account.

(e) The investor is a trust (1) for the collective investment of assets of any investor otherwise described in this Section 2.1 (including without limitation a Fund created under this Declaration of Trust), which trust qualifies as a "group trust" under Internal Revenue Service Revenue Ruling 81-100, as amended, or any successor ruling, and (2) which is administered under one or more documents which authorize part or all of the assets of the trust to be commingled for investment purposes with the assets of other such trusts in a collective investment trust and which adopt each such collective investment trust as a part of the trust.

2.2 Acceptance of Deposits. The Trustee shall accept deposits in a Fund under this Declaration of Trust only from Qualified Investors. All deposits so accepted together with the income therefrom shall be held, managed and administered pursuant to this Declaration of Trust.

2.3 Qualification as Group Trusts. It is intended that the Funds be exempt from taxation under Code Section 501(a) and qualify as "group trusts" under Internal Revenue Service Revenue Ruling 81-100, as amended, or any successor ruling, and other applicable Internal Revenue Service rules and regulations. In furtherance of this intent, each investor which seeks to invest in a Fund shall represent and warrant that such investor is a Qualified Investor.

2.4 Non-Diversion of Assets. At no time prior to the satisfaction of all liabilities with respect to the employees and their beneficiaries entitled to benefits from a Participant shall any part of the principal or income allocable hereunder to such Participant be used or diverted for or to purposes other than for the exclusive benefit of such employees or their beneficiaries except that, solely to the extent necessary to retain qualification under Section 457 of the Code, such assets shall remain subject to the claims of the general creditors of the Plan Sponsor of any Participant which is a plan within the meaning of Code Section 457.

2.5 Other Conditions of Participation. The Trustee may establish from time to time conditions or requirements for eligibility to participate in any particular Class of a Fund by setting forth such conditions in the Class Description for such Class.

ARTICLE III - INVESTMENT FUNDS

3.1 Establishment of Funds. The STATE STREET BANK AND TRUST COMPANY INVESTMENT FUNDS FOR TAX EXEMPT RETIREMENT PLANS shall consist of the Existing Funds that are currently maintained by the Trustee and described on Schedule A attached hereto and such additional Funds as may be established by the Trustee from time to time in accordance with this Declaration of Trust. The Trustee shall establish a Fund by executing a Fund Declaration which shall incorporate the terms of this Declaration of Trust by reference and shall specify such other terms applicable to the Fund as the Trustee shall determine. Each Fund shall constitute a separate trust and the assets of each Fund shall be separately held, managed, administered, valued, invested, reinvested, distributed, accounted for and otherwise dealt with as a separate trust hereunder.

3.2 Establishment of Classes. The Trustee, in its sole discretion, may divide a Fund into one or more Classes of Units representing beneficial interests in such Fund, each with its own fee and expense obligations and assessments. The Trustee shall establish each such Class by establishing a Class Description that shall specify the rate or amount of, or formula for, Trustee compensation, to the extent applicable, and the rate, amount description or type of fees, expenses, costs, charges and other liabilities specially allocable to, or assessed against, such Class of Units, as well as any conditions to, or requirements for, participation in such Class. The fact that a Fund shall have been established and designated without any specific establishment or designation of Classes, or that a Fund shall have more than one established and designated Class, shall not limit the authority of the Trustee, in its sole discretion and at any time, to subsequently establish and designate separate Classes, or one or more additional Classes, of such Fund. If no Classes are designated for a Fund, then all Units of such Fund shall be deemed to be of the same Class for purposes of this Agreement. The Trustee shall not amend a Class Description of a Fund without providing each Investing Fiduciary participating in such Class or, if such Investing Fiduciary is the Trust Company, the Qualified Investor Signatory, with written notice and a description of the amended Class Description at least 30 days prior to the Valuation Date on or immediately preceding the effective date of such amendment. Nothing herein shall require the Trustee to give the Class Description or notice of an amendment to a Class Description to any Investing Fiduciaries or Qualified Investor Signatories who are not participating in such Class.

3.3 Dealings with the Funds. All persons extending credit to, contracting with, or having any claim of any type against any Fund (including, without limitation, contract, tort and statutory claims) shall look only to the assets of such Fund for payment under such credit, contract or claim. No Participant, nor any beneficiary, trustee, employee or agent thereof, nor the Trustee, nor any of its officers, directors, shareholders, partners, employees or agents shall be personally liable for any obligation of any Fund. Every note, bond, contract, instrument, certificate, or undertaking and every other act or thing whatsoever executed or done by or on behalf of any Fund shall be conclusively deemed to have been executed or done only by or for such Fund, and no Fund shall be answerable for any obligation assumed or liability incurred by another Fund established hereunder.

3.4 Management of the Funds. The Funds shall be under the exclusive management and control of the Trustee in conformity with the provisions of this Declaration of Trust. The

Trustee, from time to time, may invest and reinvest assets of the Fund in investments which are permissible investments for employee pension benefit plans under the laws of the United States, subject, however, to the following restrictions and provisions:

(a) Assets of each Fund which the Trustee may maintain or establish hereunder shall be invested and reinvested in accordance with such investment objectives, guidelines and restrictions as the Trustee may specify in the Fund Declaration of such Fund. The Trustee shall not invest the assets of any Qualified Investor in a Fund until the Trustee has provided a copy of the relevant Fund Declaration and Class Description to the Investing Fiduciary or, if such Investing Fiduciary is the Trust Company, to the Qualified Investment Signatory. The Trustee shall not amend the Fund Declaration of any Fund without providing each Investing Fiduciary or, if such Investing Fiduciary is the Trust Company, the Qualified Investor Signatory, with written notice and a description of the amended Fund Declaration at least 30 days prior to the Valuation Date on or immediately preceding the effective date of such amendment.

(b) Notwithstanding anything to the contrary elsewhere herein provided, the Trustee is specifically authorized to establish one or more short-term investment funds (each such Fund when referred to specifically herein is sometimes referred to as a "STIF") provided that a STIF shall be subject to the following provisions:

(i) The STIF may be invested in bonds, notes, commercial paper, certificates of deposit, repurchase agreements or other evidences of indebtedness (including variable rate notes) with effective maturity dates (or rights to exercise the put or sale of such investments) not exceeding 397 days from their date of settlement after purchase by the Trustee and/or registered investment companies which invest primarily in money market instruments ("Money Market Mutual Funds"), including registered investment companies sponsored or managed by the Trust Company or its Affiliates; and

(ii) Principal of the STIF shall be valued at the close of business of each Valuation Date at original cost adjusted for amortization of premiums and accretion of discounts.

(c) Notwithstanding the investment objectives, restrictions and guidelines set forth in the relevant Fund Declaration, the assets of any Fund may be invested in obligations of the United States Government, commercial paper, certificates of deposit, savings and money market deposit accounts (including deposits bearing a reasonable rate of interest in the Trust Company or any of its Affiliates), Money Market Mutual Funds (including those sponsored or managed by the Trust Company or any of its Affiliates), or any other short-term fixed income investments (including without limitation any commingled short-term investment fund maintained by the Trust Company or any of its Affiliates for the collective investment of the assets of Qualified Investors whether such short-term investment fund is established and maintained pursuant to this Declaration of Trust or any other instrument).

(d) The decision of the Trustee as to whether an investment is of a type which may be purchased for a Fund under the relevant Fund Declaration and this Declaration of Trust shall be conclusive.

(e) Pending the selection and purchase of suitable investments, or the payment of expenses or other anticipated distributions, the Trustee may retain in cash, without liability for interest, such portion of the Fund as it shall deem reasonable under the circumstances.

(f) The Trustee may use one or more computer programs which it believes will assist it in achieving the investment objectives of the Fund or in complying with the guidelines and restrictions applicable to the Fund.

ARTICLE IV - UNITS OF PARTICIPATION

4.1 Recording of Beneficial Interests. The beneficial interest of each Participant in a Fund shall be represented by Units, which will be designated on a Class-by-Class basis. With respect to a Class of Units of a Fund, each Unit shall be of equal value to every other Unit of the same Class. Each Unit of a Class shall represent an undivided proportionate interest in all assets and liabilities of the Fund attributable to that Class, and all income, profits, and losses, as well as expenses, costs, charges, and other liabilities specifically allocable to, or assessed against, such Class shall be allocated to all Units of the same Class equally. No certificates of such Units shall be issued, but the Trustee shall keep books in which shall be recorded the number of Units standing to the credit of each Participant. The Trustee may from time to time divide the Units of any Class of the Fund into a greater number of Units of lesser value or decrease the number of Units of any Class of the Fund into a lesser number of Units of greater value provided that the proportionate interest of each Participant in such Class of the Fund shall not thereby be changed.

4.2 Apportionment of Income, Profits and Losses. Profits and losses of a Fund shall be credited or charged to the Fund; provided that, as described in Section 4.3 below, any expenses, costs, charges, or other liabilities specifically incurred or accrued by a Fund and attributable to a Class in accordance with the Class Description for such Class shall be allocated to such Class and all other fees, expenses, costs, charges, or other liabilities not specifically allocated to a Class shall be allocated to the Fund. Except as herein provided, all income earned by a Fund after expenses shall be added to the principal of the Fund and invested and reinvested as a part thereof. The Trustee in its sole discretion may make pro rata distributions of the net income attributable to a Class of the Fund to each Participant of the Class. Notwithstanding the foregoing, (a) in the case of a STIF, as of the close of business on each Valuation Date, all net income (as determined by the Trustee in accordance with uniform rules which are intended to preserve the Unit value of each Class of the STIF at $1.00 or such other constant amount as the Trustee may specify to the Participants of each Class of the STIF from time to time) attributable to a Class of the STIF shall be allocated among the Participants of such Class in proportion to the number of Units of each Participant in such Class and shall be reinvested on behalf of each such Participant in additional Units of such Class, and (b) if the Fund Declaration provides that the Fund's Unit Value shall be held constant to the extent feasible (a "Constant Value Fund"), then as of the close of business on each Valuation Date an amount equal to the sum of all net income, realized gains and losses, and unrealized appreciation and depreciation (determined in accordance with this Article IV) attributable to a Class of the Constant Value Fund shall be allocated among the Participants of such Class in proportion to the number of Units of each Participant in such Class and shall be reinvested on behalf of each such Participant in additional

Units of such Class; provided, however, that such amount, if positive, may be distributed in cash to a Participant, if the Participant so elects.

4.3 Valuation of Units. At the inception of a Fund, the value of each Unit of each Class of the Fund shall be deemed to be one dollar ($1.00) or such other amount as the Trustee shall specify in the Fund Declaration for such Fund, and thereafter, the value of each Unit of each Class shall be determined in accordance with the following provisions of this Section 4.3, except as otherwise provided elsewhere in this Declaration of Trust in the case of a STIF or a Constant Value Fund. As of the close of business on each Valuation Date, the Trustee shall determine, in accordance with the valuation rules of Section 4.4, the then fair value of the assets of the Fund (the "Total Value of the Fund"). The Trustee shall then subtract from the Total Value of the Fund any fees, expenses, charges and other liabilities incurred or accrued by the Fund and not specifically allocated to, or assessed against, a particular Class of the Fund, and the resulting value shall be the "Net Value of the Fund." The Trustee shall allocate the Net Value of the Fund among the Fund's Classes in proportion to their respective Class Percentages as of such date (as defined below) (for each Class, such amount is the "Total Class Value"). The Trustee shall then, with respect to each Class, subtract from the Total Class Value of such Class any fees, expenses, costs, charges or other liabilities specifically incurred or accrued by the Fund and attributable to such Class in accordance with the Class Description for such Class, and the resulting value shall be the "Net Class Value." The value of a Unit of a particular Class shall be calculated by dividing the Net Class Value of such Class by the number of outstanding Units of such Class.

Each valuation shall be completed within such period following each Valuation Date as may be specified by applicable law or regulation and if no such date is so specified, each valuation shall be made within ten Business Days following each Valuation Date; provided, however, that if the Trustee cannot reasonably complete such valuation within the ten-day period it shall complete such valuation as soon as reasonably possible thereafter. As used in this Section 4.3, a Fund Class's "Class Percentage" on any date is equal to (i) the aggregate fair value of the assets of the Fund attributable to such Class on such date (determined in accordance with the same principles used to determine the Total Value of the Fund), divided by (ii) the Total Value of the Fund on such date; provided that both the numerator and the denominator shall be determined before taking into account any fees, expenses, costs, charges or other liabilities allocable to the Fund (but not a Class) and any fees, expenses, costs, charges, or other liabilities specifically incurred or accrued by the Fund and attributable to a Class in accordance with the Class Description for such Class and not previously reflected in such Class's Net Class Value.

4.4 Valuation Rules. Except as otherwise provided elsewhere in this Declaration of Trust in the case of a STIF, or as may be more specifically set forth in the Fund Declaration, the assets of the Fund shall be valued by the Trustee at fair value, in accordance with generally accepted valuation principles consistently followed and uniformly applied. At the discretion of the Trustee, certain securities and investments shall be stated at fair value on the basis of valuations furnished by a pricing service, approved by the Trustee, which determines valuations for such securities using methods based on market transactions for comparable securities and various relationships between securities which are generally recognized by institutional traders. The Trustee may conclusively rely upon any regularly published reports of sale prices, bid

prices, and over-the-counter quotations for the values of any listed or unlisted securities or futures contracts. The reasonable and equitable decision of the Trustee regarding whether a method of valuation fairly indicates fair value, and the selection of a pricing service, shall be conclusive and binding upon all persons.

4.5 Suspension of Valuations and Withdrawal Rights. Notwithstanding anything to the contrary elsewhere in this Agreement, the Trustee, in its sole discretion, may suspend the valuation of the assets or Units of any Fund pursuant to this Article IV and/or the right to make withdrawals from such Fund in accordance with Article V for the whole or any part of any period when (i) any market or stock exchange on which a significant portion of the investments of such Fund are quoted is closed (other than for ordinary holidays) or during which dealings therein are restricted or suspended; (ii) there exists any state of affairs which, in the opinion of the Trustee, constitutes an emergency as a result of which disposition of the assets of such Fund would not be reasonably practicable or would be seriously prejudicial to the Participants therein; (iii) there has been a breakdown in the means of communication normally employed in determining the price or value of any of the investments of such Fund, or of current prices on any stock exchange on which a significant portion of the investments of such Fund are quoted, or when for any reason the prices or values of any investments owned by such Fund cannot reasonably be promptly and accurately ascertained; or (iv) the transfer of funds involved in the realization or acquisition of any investment cannot, in the opinion of the Trustee, be effected at normal rates of exchange.

ARTICLE V - DEPOSITS AND WITHDRAWALS

5.1 Deposits. With the consent of the Trustee and upon such prior notice as the Trustee may specify from time to time to the Qualified Investors, a Qualified Investment may, as of any Valuation Date (or, in the case of a STIF, as of such Valuation Dates as the Trustee may designate from time to time), deposit assets in such proportions among the Funds as the Investing Fiduciary of such Qualified Investor shall instruct. The Trustee shall be fully protected in following the instructions of the Investing Fiduciary as to the amounts and proportions of the assets of any deposit to be placed in each of the Funds. If, with the consent of the Trustee, assets that are to be deposited in a Fund other than the STIF are received by the Trustee prior to a Valuation Date, the Trustee may, in its sole discretion, invest such assets in such other Fund or Funds (including, without limitation, any STIF) as the Trustee deems appropriate until the next Valuation Date following receipt of such assets. Only money and such other assets as are permissible investments for the Fund, and acceptable to the Trustee, may be deposited in such Fund. Assets other than money deposited in a Fund shall be valued at their fair value (as determined under Section 4.4) as of the close of business on the Valuation Date on which the deposit is made. The Trustee shall credit to the account of such Participant which makes a deposit in the Fund that number of Units of a Class which the deposit will purchase at the then value of each such Unit. All deposits to a Fund shall be deemed to have been made as of the close of business on the relevant Valuation Date.

5.2 Withdrawals. Subject to Section 4.5 of this Declaration of Trust, the Investing Fiduciary of a Participant may, as of the close of business on any Valuation Date (or, in the case of a STIF, as of the close of business on such Valuation Dates as the Trustee may designate from

time to time), withdraw any number of Units from the Fund provided that such right of withdrawal may be further limited in the Fund Declaration applicable to such Fund. Notice of withdrawal must be received by the Trustee no later than 15 days prior to such Valuation Date or within such other prior notice period as the Trustee may establish in the Fund Declaration, but the Trustee may waive this requirement in any case.

5.3 Distributions Upon Withdrawal. Upon the withdrawal of Units from a Fund, the Trustee shall distribute to the Participant making such withdrawal a sum arrived at by multiplying the number of Units withdrawn by the value of each Unit as of the close of business on the relevant Valuation Date. The sum shall be distributed in cash or in kind or partly in cash and partly in kind, in any manner consistent with applicable Massachusetts law, as the Trustee in its sole discretion shall determine. The value of any asset other than cash which is transferred shall be deemed to be the value thereof (as determined under Section 4.4) as of the close of business on the Valuation Date on which the withdrawal is made. Such distribution shall be effected within a reasonable time following the applicable Valuation Date except that such distribution may be delayed if the Trustee determines that it cannot reasonably make such distribution on account of any order, directive or other interference by an official or agency of any government or any other cause reasonably beyond its control including, but not limited to, illiquid markets or illiquid securities. The Participant receiving such distribution shall not be entitled to any interest or income earned on such monies pending distribution.

5.4 Distribution Upon Disqualification. Notwithstanding any provision herein to the contrary, if the Trustee receives notice that a Participant has ceased to be a Qualified Investor (as defined in Section 1.13), then all Units allocated to such Participant shall be withdrawn from the Fund as of the close of business on the first Valuation Date which is more than 15 days (or such other period as the Trustee determines to be reasonable) after the date the Trustee receives such notice and distribution shall be made in accordance with Section 5.3 as soon as reasonably possible.

5.5 Title To Assets. All of the assets of each Fund shall at all times be considered as vested in the Trustee in a fiduciary capacity. No Participant shall be deemed to have severable ownership in any individual asset in any Fund or any right of participation or possession thereof. Except as otherwise specifically provided herein, each Participant shall have a proportionate, undivided, beneficial interest in each Fund in which such Participant participates and shall share ratably in the income, profits and losses thereof with the other Participants participating in such Fund.

5.6 Expenses Chargeable to the Participant. Notwithstanding any provision of this Declaration of Trust to the contrary, brokerage fees and other expenses (including, but not limited to, settlement, stamp taxes, duty, stock listing and related expenses) incurred in connection with the purchase or sale of securities relating to or arising out of the deposit of assets in a Fund or the withdrawal of assets from a Fund by a Participant may, in the Trustee's discretion, be charged to such Participant. Such charge may be effected either by a corresponding adjustment in the number of Units of such Fund credited to such Participant or by a direct assessment against such Participant.

For purposes of clarity, such expenses may also include intra-day market gain or loss attributable in the determination of the Trustee to the purchase or sale of securities by the fund in connection with Participant contributions or withdrawals, and may be aggregated across contributing or withdrawing Participants, as the case may be, on a weighted average basis as determined by the Trustee for any given trading period.

ARTICLE VI - RIGHTS AND DUTIES OF TRUSTEE

6.1 Powers of the Trustee. In exercising its exclusive right to manage and control the Funds created hereby, the Trustee shall have the following rights and powers which are in addition to any other powers or rights conferred by law or by other Articles of this Declaration of Trust or by a Fund Declaration:

(a) to hold, manage, and control all property at any time forming part of a Fund and, consistently with the investment objectives, restrictions and guidelines set forth in the relevant Fund Declaration, to invest and reinvest any or all of the assets of a Fund in any property, real, personal or mixed, wherever situated, and whether or not productive of income or consisting of wasting assets, including, without limitation, common and preferred stocks; bonds; notes; debentures; foreign securities; commodities; futures contracts and options thereon of any type; stock options and option contracts of any type, whether or not traded on any exchange; contracts for the immediate or future delivery of financial instruments and other property; direct or indirect investments in real property through fee ownership, leases, loans secured by primary or subordinated liens or mortgages on real property (including, without limitation, any collective or part interest in any bond and mortgage or note and mortgage), or stock or other securities of corporations, partnerships or other entities holding or investing in real property, including mortgage-backed securities, or other assets, including asset-backed securities; certificates of deposit, demand or time deposits (including deposits bearing a reasonable rate of interest in the Trust Company or any of its Affiliates); bills; certificates; acceptances; repurchase agreements; commercial paper; variable rate or master notes; interests in trusts; limited partnership interests; interests in or shares of mutual funds or other investment companies (whether or not incorporated and whether or not registered under the Investment Company Act of 1940, as amended, including any such mutual funds or investment companies managed or sponsored by the Trust Company or any of its Affiliates); interests in collective investment trusts which are exempt from tax under applicable Internal Revenue Service rulings and regulations (including, without limitation, any collective investment trust maintained by the Trust Company or any of its Affiliates for the collective investment of the assets of Qualified Investors whether such collective investment trust is established and maintained pursuant to this Declaration of Trust or any other instrument), and, while the assets of any Fund are so invested, such collective investment trusts shall constitute a part of this Declaration of Trust with respect to such Fund; foreign currencies; contracts for the immediate or future delivery of foreign currencies; insurance policies and contracts; annuity contracts; oil, mineral or gas properties, royalties, interests or rights (including equipment pertaining thereto); gems, works of art, gold, bullion and coin; evidences of indebtedness or ownership in foreign corporations or other enterprises; indebtedness of foreign governments, foreign agencies or international organizations; patents, copyrights, trade secrets, licenses, or royalties; or any other property of any kind, real or personal, tangible or intangible, as the Trustee may deem advisable; without being limited to

classes of property in which trustees are authorized to invest trust funds by any law, or any rule of court, of any state and without regard to the proportion any such property or interest may bear to the entire amount of the STATE STREET BANK AND TRUST COMPANY INVESTMENT FUNDS FOR TAX EXEMPT RETIREMENT PLANS or of any Fund;

(b) to retain any property, real or personal, tangible or intangible, at any time received by it;

(c) to sell, convey, transfer, exchange, pledge, grant options on or otherwise dispose of the property of the Fund from time to time in such manner, for such consideration and upon such terms and conditions as the Trustee, in its discretion, shall determine;

(d) to employ such brokers, agents, consultants, custodians (including foreign custodians), depositories, advisers, and legal counsel as may be reasonably necessary or desirable in the Trustee's judgment in managing and protecting a Fund including, but not limited to, Affiliates and, subject to applicable law, to pay their reasonable expenses and compensation out of the Fund;

(e) to settle, compromise, abandon or submit to arbitration all claims and demands in favor of or against a Fund and to establish reserves in connection therewith; to commence or defend suits or legal proceedings whenever, in its judgment, any interest of a Fund requires it; and to represent a Fund in all suits or legal proceedings in any court or before any other body or tribunal;

(f) to borrow money, with or without security, for a Fund; to encumber property of a Fund by mortgages or deeds of trust to secure repayment of indebtedness; to assume existing mortgages or deeds of trust on properties acquired by a Fund; and to acquire properties subject to existing mortgages or deeds of trust, all subject to Section 3.3;

(g) except as may be provided otherwise in the Fund Declaration, to vote any security forming part of a Fund either in person or by proxy for any purpose; to exercise any conversion privilege or subscription right given to the Trustee as the owner of any security forming part of a Fund; to consent to take any action in connection with, and receive and retain any securities resulting from, any reorganization, consolidation, merger, readjustment of the financial structure, sale, lease or other disposition of the assets of any corporation or other organization, the securities of which may constitute a portion of a Fund;

(h) to cause any securities or other property which may at any time form a part of a Fund to be issued, held or registered in the individual name of the Trustee, or in the name of its nominee or agent (including any custodian employed by the Trustee, any nominee of such a custodian, and any depository, clearing corporation or other similar system), or in such form that title will pass by delivery;

(i) to enter into stand-by agreements for future investment either with or without a stand-by fee;

(j) to lend any securities and to secure the same in any manner, and during the term of such loan to permit the securities so lent to be transferred in the name of and voted by the borrower, or others, provided that in lending securities of a Fund the Trustee shall comply with ERISA Prohibited Transaction Class Exemptions 81-6 and 82-63 to the extent applicable;

(k) to collect and receive any and all money and other property due to any Fund and to give full discharge thereof;

(l) to maintain the indicia of ownership of assets outside the United States to the extent permitted by applicable Federal regulations;

(m) to organize corporations or partnerships or trusts for the purpose of acquiring and holding title to any property which the Trustee is authorized to acquire under subparagraph (a) of this Paragraph 6.1;

(n) to manage, improve, repair, mortgage, lease for any term and control all property, real or personal, at any time forming part of the Fund upon such terms and conditions as the Trustee, in its discretion, shall determine;

(o) to enter into custodian and sub-custodian agreements with one or more banks located outside the United States to the extent permitted by ERISA pursuant to which such foreign banks will, in addition to acting as custodian, provide brokerage services with respect to Fund assets held in custody, but only if the Trustee has determined that the total compensation paid to such foreign bank is reasonable in light of all the services being rendered;

(p) to convert any monies into any currency through foreign exchange transactions to the extent permitted under ERISA;

(q) on behalf of each of the Participants, to delegate responsibility for the management of all or any of the assets of the Funds to one or more investment managers (as such term is defined in Section 3(38) of the Employee Retirement Income Security Act of 1974, as amended).

(r) to do all other acts in its judgment necessary or desirable for the proper administration of a Fund or with respect to the investment, disposition or liquidation of any assets of a Fund, although the power to do such acts is not specifically set forth herein.

6.2 Records and Accounts. The Trustee shall keep full records and books of account. The Trustee's accounts shall be kept on an accrual basis. Annually, within a reasonable period after the close of each Fund's Fiscal Year, the Trustee shall furnish a written account of the operation of the Fund for the preceding Fiscal Year to the Investing Fiduciary of each Participant having an interest in such Fund during the Fiscal Year, or, if such Investing Fiduciary is the Trust Company, to the Qualified Investor Signatory. Any person to whom an account of the Trustee is furnished may approve such account by an instrument in writing delivered to the Trustee. If objections to specific items in such account are filed with the Trustee within 60 days after the account has been furnished and the Trustee believes such objections to be valid, the Trustee may adjust the account in such manner as it deems equitable under the circumstances.

Each person to whom the Trustee furnishes an account shall be notified by the Trustee of any adjustments so made. If

(a) all persons to whom such account of the Trustee is furnished approve such account, or

(b) no objections to specific items in such account are filed with the Trustee within sixty (60) days after the account has been furnished, or

(c) the Trustee shall give notice of an adjustment of the account and legal proceedings are not commenced against the Trustee within 60 days after notice of such adjustment has been furnished,

then the account of the Trustee, with respect to all matters contained therein (as originally furnished if no adjustment was made, or as adjusted if an adjustment was made), shall be deemed to have been approved with the same effect as though judicially approved by a court of competent jurisdiction in a proceeding in which all persons interested were made parties and were properly represented before such court. The Trustee hereunder, nevertheless, shall have the right to have its accounts settled by judicial proceeding if it so elects, in which case the only necessary parties shall be the Trustee hereunder and each person to whom the Trustee furnishes an account.

6.3 Audits and Reports. The Trustee shall at least once each year cause an independent certified public accountant to audit each Fund. The reasonable expense of such audit shall be charged to the Fund. A copy of the report of such audit shall be furnished, or a notice given that a copy of such report is available and will be furnished without charge upon request, to each person entitled to receive a copy of the annual account of the Trustee hereunder. The cost of distribution of the report shall be borne by the Trustee.

6.4 Governmental Filings. The Trustee shall make direct filings on behalf of the Participants with the Department of Labor of the information described in 29 C.F.R. Section 2520.103-12.

6.5 Expenses and Fees. The Trustee may pay all reasonable expenses of the Fund (or any Class thereof) (including counsel fees and expenses of litigation) that may be lawfully charged to the Fund (or such Class) under applicable laws and regulations. The Trustee shall be entitled to receive a reasonable fee for its services as Trustee and, if the Fund Declaration and/or Class Description applicable to the Fund so provides and to the extent not inconsistent with Section 406(b) or any other provision of ERISA, for its services as custodian with respect to a Fund. The amount of such fees or the basis on which such fees shall be determined and charged may be (i) established in the Fund Declaration and/or Class Description applicable to the Fund, as amended from time to time, (ii) established in such schedules as the Trustee may furnish to the affected Participants from time to time, or (iii) negotiated separately with each Participant in the Fund. Such fees may be charged against the Fund (as long as the fees charged against the Fund are uniform for all Participants) or against a Class of the Fund (as long as the fees charged against the Class are uniform for all Participants in that particular Class) or may be paid directly by the individual Participants or Plan Sponsors. If the fees are to be charged to each Participant

separately, the Trustee may, in its discretion, charge the fees against the interest of a Participant in the Fund by redemption of such Participant's Units. The expenses incurred in connection with a deposit of assets in a Fund or a withdrawal of assets from a Fund by a Participant may be charged to such Participant pursuant to the provisions of Section 5.6.

6.6 Mailing of Notices, Accounts and Reports. Notices, accountings and reports required to be given or furnished by the Trustee may be given or furnished by actual delivery, or by mailing by first class mail, postage prepaid, to the most recent address known, to the person or persons entitled to receive such notice, accounting or report. The date of such actual delivery or of such mailing, as the case may be, for all purposes hereunder, shall be deemed to be the date as of which such notice, accounting or report was given in the case of actual delivery or the date upon which such mailing was made.

6.7 Reliance on Authority of Trustee. Persons dealing with the Trustee shall be under no obligation to see to the proper application of any money paid or property delivered to the Trustee or to acquire into the Trustee's authority as to any transaction.

6.8 Reliance on Experts and Others. The Trustee shall, in the performance of its duties, be fully protected by relying in good faith upon the books of account or other records of the Trust, or upon reports made to the Trustee by (a) any of the officers or employees of the Trust, (b) the custodians, depositories, any valuation committee or agents, pricing agents, or transfer agents of the Trust, or (c) any accountants, attorneys, or appraisers or other agents, experts or consultants selected with reasonable care by the Trustee. The Trustee, officers, employees, and agents of the Trust may take advice of counsel with respect to the meaning and operation of this Declaration of Trust or any Fund Declarations or Class Description applicable to a Fund, and shall be under no liability for any act or omission in accordance with such advice or for failing to follow such advice. The exercise by the Trustee of its powers and discretion hereunder and the construction in good faith by the Trustee of the meaning or effect of any provisions of this Declaration of Trust or a Plan applicable to a Fund shall be binding upon everyone interested.

6.9 Limitation on Liability. Except as otherwise provided by applicable law, (i) the Trustee shall not be liable by reason of the purchase, retention, sale, or exchange of any investment, or for any loss in connection therewith, except to the extent such loss shall have been caused by its own negligence, willful misconduct, or lack of good faith, and (ii) the Trustee shall not be liable for any mistake made in good faith in the administration of the Fund if, promptly after discovering the mistake, the Trustee takes whatever action the Trustee, in its sole discretion, may deem to be advisable under the circumstances to remedy the mistake.

ARTICLE VII - AMENDMENT; TERMINATION; MERGER

7.1 Amendment. This Declaration of Trust may be amended from time to time by the Trust Company. Such an amendment may be retroactive and, in any event, shall become effective on the date specified by the Trust Company; provided that no amendment may either directly or indirectly operate to deprive any Participant of its beneficial interest in any Fund as it is then constituted. Notice of such amendment shall be sent to each person entitled to receive a copy of the Trustee's annual account for such Fund. A Fund Declaration may be amended from

time to time by the Trust Company as provided in Section 3.4(a) of this Declaration of Trust. A Class Description may be amended from time to time by the Trust Company as provided in Section 3.2 of this Declaration of Trust.

7.2 Termination. Subject to the terms of the Fund Declaration applicable to a Fund, the Trustee may, on any Valuation Date, without advance notice to any person, terminate a Fund, and thereupon the value of each Unit in such Fund shall be determined and there shall be distributed to each Participant in cash or in kind or partly in cash and partly in kind a sum arrived at by multiplying the number of Units in the account of each Participant by the value of each Unit at the close of business on such Valuation Date all as provided in Section 5.3.

7.3 Merger

(a) From time to time, the Trust Company in its discretion may merge any two or more of the Funds (or any two or more Classes of a Fund) now or hereafter established or maintained pursuant to this Declaration of Trust in whole or in part, in such manner and under such terms and conditions as the Trust Company in its discretion may determine. Any such merger shall be consistent with this Article VII and shall become effective only as of a Valuation Date. Such merger shall thereupon be binding upon every Participant of the Funds (or Classes) which are merged and upon every fiduciary thereof and upon every person beneficially interested therein. Notice of any proposed merger shall be sent to each Investing Fiduciary (or if the Investing Fiduciary is the Trustee, to the Qualified Investor Signatory) of the Participants in the Funds (or Classes) being merged at least thirty days prior to the effective dates of such merger.

(b) As of the effective date of any merger authorized by subsection (a), the assets of each of the Funds (or Classes) involved shall be valued in accordance with Section 4.4 of this Declaration of Trust, and the value of the Units of each merging Fund (or Class) shall be determined. Thereupon all the combined assets of all Funds (or Classes) involved in the merger shall be divided by the Trustee into such number of equal Units of the Fund (or Class) created by the merger (the "Merged Fund" (or the "Merged Class," as the case may be)) as the Trustee shall determine. There then shall be allocated to each Participant in the Funds (or Classes) being merged such number of Units of the Merged Fund (or the Merged Class) as will have a total net value equal to the value of the aggregate Units held by each Participant in one or the other or both of the respective Funds (or Classes) prior to the Merger. The value of the beneficial interest of each Participant in the Merged Fund (or the Merged Class) shall be equal to the aggregate value of such Participant's beneficial interest(s) in the separate Funds (or Classes) involved in such merger immediately prior to the merger.

ARTICLE VIII - LIQUIDATING ACCOUNTS

8.1 Establishment of Liquidating Accounts. The Trustee may from time to time in its discretion transfer any investment of a Fund to a liquidating account or accounts. Each liquidating account shall be maintained and administered solely for the ratable benefit of the Participants interested in the Fund at the time such account is established. The primary purpose of liquidating accounts shall be to provide a method of liquidation of the assets contained

therein, but the period during which the Trustee may continue to hold any such assets shall rest in its discretion.

8.2 Powers and Duties of Trustee. The Trustee shall have, in addition to all of the powers granted to it by law and by the terms of this Declaration of Trust, each and every discretionary power of management of the assets contained in a liquidating account and of all proceeds of such assets which the Trustee shall deem necessary or convenient to accomplish the liquidation of such assets. At the time of the establishment of a liquidating account, the Trustee shall prepare a schedule showing the interest of each Participant therein. When the assets of such liquidating account shall have been completely distributed, such schedule shall be thereafter held as part of the permanent records of the Fund to which the liquidating account relates. The Trustee shall include in any report of audit for a Fund, a report for each liquidating account established in connection with such Fund.

8.3 Limitation on Investment of Further Money. No further money shall be invested in any liquidating account except that the Trustee shall have the power and authority, if in the Trustee's opinion such action is advisable for the protection of any asset held therein, to borrow money from others to be secured by the assets held in such liquidating account and to give and renew such note or notes therefor as the Trustee may determine.

8.4 Distributions. The Trustee may make distributions from a liquidating account in cash or in kind or partly in cash and partly in kind, and, except as otherwise provided in the Fund Declaration for the Fund to which such liquidating account relates, the time and manner of making all such distributions shall rest in the sole discretion of the Trustee; provided that all such distributions as of any one time shall be made in a manner consistent with applicable Massachusetts law.

8.5 Effect of Establishing Liquidating Accounts. After an asset of a Fund has been set apart in a liquidating account, it shall be subject to the provisions of this Article VIII, but such asset shall also be subject to all other provisions of this Declaration of Trust so far as the same shall be applicable thereto and not inconsistent with the provisions of this Article VIII. For the purpose of deposits to and withdrawals from a Fund, the value of any investment transferred therefrom to a liquidating account shall be excluded.

ARTICLE IX - MISCELLANEOUS

9.1 Spendthrift Provision. The beneficial interests of the Participants in a Fund shall not be assignable or subject to attachment or receivership nor shall such interests pass to any trustee in bankruptcy or be reached or applied by any legal process for the payment of any obligation of any Participant except as otherwise required to retain qualification under Code Section 457 in the case of a Participant which is a plan within the meaning of Code Section 457.

9.2 CFTC Matters. The Trustee is exempt from registration with the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA") as a commodity pool operator in connection with the Trustee's operation of each Fund pursuant to an exemption with respect to operation of a "qualifying entity" by a trust company subject to regulation by a state, as set forth in Rule 4.5(a)(3) under the Commodity Exchange Act (the

"CEA"). Unlike a registered commodity pool operator, the Trustee is not subject to regulation by the CFTC and NFA and is not required to deliver a disclosure document prepared in accordance with Rules 4.24 and 4.25 under the CEA or a certified annual report to participants in a Fund and the participants in a Fund are not subject to the protective provisions afforded under the CEA.

9.3 Judicial Proceedings Involving Funds. The Trustee shall be deemed to represent all persons, natural or legal, having an interest in a Fund for the purposes of all judicial proceedings affecting the Fund or any asset thereof, and only the Trustee need be made a party to any such action.

9.4 Successors and Assigns. In the event that the Trust Company shall at any time merge or consolidate with, or shall sell or transfer substantially all of its assets to, another trust company or corporation, state or federal, the trust company or corporation resulting from such merger or consolidation or the trust company or corporation into which it is converted, or to which such sale or transfer shall be made, shall thereupon become and be substituted hereunder in the place of the Trust Company and shall become the Trustee hereunder with the same effect as though originally so named.

9.5 Controlling Law. The powers and duties of the Trustee and all questions of interpretation of this Declaration of Trust shall be governed by ERISA, as amended, and to the extent permitted by such law, by the laws of the Commonwealth of Massachusetts. The Trust established by this Declaration of Trust is organized in the United States and will be maintained at all times as a domestic trust in the United States.

9.6 Effective Dates. This Fourth Amended and Restated Declaration of Trust shall be effective as of October 1, 2005.

IN WITNESS WHEREOF, STATE STREET BANK AND TRUST COMPANY has caused its name to be hereunto signed by its proper officer as of the 15th day of August, 2005.

ATTEST

Name: Christopher W. Thome
Title: Principal and Counsel

STATE STREET BANK AND TRUST COMPANY

By:
Name: Timothy Connolly
Title: Senior Principal

LIBB/1324892.4

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COMMONWEALTH OF MASSACHUSETTS)
) SS.
COUNT OF SUFFOLK)

On this 15th day of August, 2005, before me personally came Christopher Thorne and Timothy Connolly to me personally known, who being by me duly sworn did depose and say that they reside in Stoughton, Massachusetts and Marshfield, Massachusetts, respectively; that they are the Principal and Counsel and Senior Principal, respectively, of STATE STREET BANK AND TRUST COMPANY, the Trust Company described in and which executed the foregoing instrument; that they know the seal of said Trust Company; that the seal was affixed by the authority of the Board of Directors of said Trust Company; and that they signed their names thereto by like authority; and the said Christopher Thorne and Timothy Connolly severally acknowledged said instrument to be their free act and deed and the free act and deed of said Trust Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at the City of Boston, in the County of Suffolk and Commonwealth of Massachusetts, on the day and year above appearing.

Kelly A. Broderick
Notary Public: Kelly A. Broderick
My commission expires: June 11, 2010

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STATE STREET BANK AND TRUST COMPANY
INVESTMENT FUNDS FOR TAX EXEMPT RETIREMENT PLANS

FIFTH AMENDED AND RESTATED DECLARATION OF TRUST

STATE STREET BANK AND TRUST COMPANY

INVESTMENT FUNDS FOR TAX EXEMPT RETIREMENT PLANS

FIFTH AMENDED AND RESTATED DECLARATION OF TRUST

This FIFTH AMENDED AND RESTATED DECLARATION OF TRUST (the "Declaration of Trust") made at Boston, Massachusetts this 30th day of September, 2011.

WITNESSETH, that

WHEREAS, the State Street Bank and Trust Company Investment Funds For Tax Exempt Retirement Plans (the "Trust") was organized by State Street Bank and Trust Company ("SSBT"), a Massachusetts trust company with its principal offices in Boston, Massachusetts, pursuant to a Declaration of Trust dated February 21, 1991, and which Declaration of Trust was amended in its entirety pursuant to the First Amendment to Declaration of Trust dated July 19, 1991, the Second Amended and Restated Declaration of Trust dated March 13, 1997, the Third Amended and Restated Declaration of Trust dated December 22, 2003, and the Fourth Amended and Restated Declaration of Trust dated August 15, 2005 (the "Amended Declaration of Trust");

WHEREAS, SSBT now wishes by this instrument to amend and restate the Amended Declaration of Trust in its entirety as of this date; and

NOW, THEREFORE, SSBT hereby declares that all existing Funds previously established by SSBT under the Amended Declaration of Trust and all Funds established after the date hereof shall be subject to, and governed by, this Declaration of Trust, and SSBT will hold in trust as Trustee all cash, securities, and other assets which it may from time to time hold or acquire in any manner in accordance with the following terms and conditions:

ARTICLE 1- DEFINITIONS

1.01 "Affiliate" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, investment fund or trust, or similar organization or entity controlling, controlled by, or under common control with SSBT. Affiliate shall also mean any registered or unregistered investment company, common trust fund, collective investment fund, and any other fund or trust managed or sponsored by SSBT or any of its Affiliates.

1.02 "Amended Declaration of Trust" has the meaning specified in the recitals hereto.

1.03 "Business Day" means any day when both the New York Stock Exchange and SSBT are open for business.

1.04 "Class" shall mean any of the classes of Units established by the Trustee pursuant to Section 2.02.

1.05 "Class Description" has the meaning specified in Section 2.02.

1.06 "Code" means the Internal Revenue Code of 1986 and the applicable rules and regulations thereunder, as amended from time to time. Any reference to a provision of the Code in this Declaration of Trust also shall be deemed to refer to any successor provision.

1.07 "Declaration of Trust" means this Fifth Amended and Restated Declaration of Trust of the State Street Bank and Trust Company Investment Funds for Tax Exempt Retirement Plans.

1.08 "Dedicated Account" means a segregated account established and maintained in accordance with Article 8.

1.09 "Dedicated Assets" has the meaning specified in Section 8.01(b).

1.10 "Duties" has the meaning specified in Section 4.01(b).

1.11 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the applicable rules and regulations thereunder, as amended from time to time.

1.12 "Fund" shall mean any of the funds established by the Trustee pursuant to Section 2.01.

1.13 "Fund Declaration" has the meaning specified in Section 2.01.

1.14 "Fund General Assets" has the meaning specified in Section 2.03 (i).

1.15 "General Assets" has the meaning specified in Section 2.03 (i).

1.16 "Investing Fiduciary" means the person or persons, natural or legal, including a committee, who exercise discretion with respect to the decision to invest assets of a Qualified Investor in a Fund; provided, however, that, if the person who exercises such investment discretion is a participant or beneficiary entitled to benefits under the Qualified Investor and is acting in his capacity as such, then Investing Fiduciary shall mean the plan fiduciary who has authorized the use of the Funds as an investment option for participants and beneficiaries of the relevant Qualified Investor.

1.17 "Investment Company Act" means the Investment Company Act of 1940 and the applicable rules and regulations thereunder, as amended from time to time.

1.18 "Liquidating Account" means a segregated account established and maintained in accordance with Article 8 primarily in order to facilitate the liquidation, pricing, and close-out of the assets contained therein for the benefit of the Participants participating therein.

1.19 "Net asset value" of Units of a Fund without Classes shall mean: (i) the value of all the securities and other assets of such Fund; (ii) less total liabilities of such Fund; (iii) divided by the number of Units of such Fund outstanding, in each case at the time of each determination. In the case of a Class of Units within a Fund, "net asset value" shall mean (i) the value of all of

the securities and other assets of such Fund allocated to such Class; (ii) less the total liabilities of such Fund allocated to such Class; (iii) divided by the number of Units of such Class outstanding, in each case at the time of each determination.

1.20 "Participant" means a Qualified Investor which, with the consent of the Trustee, has made a deposit in a Fund and has a beneficial interest in a Fund.

1.21 "Plan Sponsor" means the employer establishing or maintaining the Qualified Investor, if the Qualified Investor is a single employer plan (as defined in Section 3(41) of ERISA) and, in the case of any other Qualified Investor, the board of trustees or other similar group of representatives of the parties who establish or maintain the Qualified Investor.

1.22 "Qualified Investor" has the meaning specified Section 3.01.

1.23 "Qualified Investor Signatory" means the person or persons, natural or legal, including a committee, who executes the agreement pursuant to which SSBT is appointed as trustee, co-trustee, investment manager, or agent for the trustee or trustees with respect to a Qualified Investor.

1.24 "Securities Act" means the Securities Act of 1933 and the applicable rules and regulations thereunder, as amended from time to time.

1.25 "SSBT" has the meaning specified in the recitals hereto.

1.26 "STIF" has the meaning specified in Section 2.01.

1.27 "Strategy Disclosure Document" has the meaning specified in Section 2.01.

1.28 "Transaction Charges" means brokerage and related transaction fees and expenses incurred or estimated by the Trustee to be incurred (including, but not limited to, broker, dealer, and underwriting fees, commissions, and spreads, stamp taxes, duties, settlement, stock listing, registration, and similar fees and charges, and all transaction-related expenses) and the market effect arising out of, or in connection with, the purchase, sale, transfer, or re-registration of securities or other assets of a Fund relating to or arising out of the contribution of cash, securities, or other assets to a Fund by a Participant or the withdrawal of Units by a Participant in a Fund, all as determined in the sole discretion of the Trustee. For purposes of clarity and without limiting the foregoing, Transaction Charges may also include actual or estimated intra-day market gain or loss attributable in the sole determination of the Trustee to the purchase or sale of securities or other assets by a Fund in connection with any such contribution or withdrawal, and may be aggregated across contributing or withdrawing Participants, as the case may be, on a weighted average basis for any given trading period or trading periods or on such other basis as may be determined by the Trustee in its sole discretion. The Trustee may also in its sole discretion from time to time or in particular circumstances calculate Transaction Charges for a Fund based upon the utilization of a formula based upon a pre-determined or other specified percentage or amount of the cash and/or securities or other assets that are contributed to a Fund by a Participant in a Fund or withdrawn by a Participant in such Fund. Transaction Charges may be described in a Fund Declaration, Strategy Disclosure Document or in any other communication to Participants as the Trustee may determine from time to time.

1.29 "Trustee" means SSBT, as trustee of a Fund, or any successor trustee in accordance with Section 6.01.

1.30 "Unit" means a unit of the beneficial interest of a Fund or a Class of a Fund, as the case may be.

1.31 "Valuation Date" of a Fund means a day on or as of which the Trustee determines the value of the Units of such Fund.

ARTICLE 2- ESTABLISHMENT OF FUNDS AND CLASSES OF UNITS

2.01 Establishment of Funds. The Trustee shall have the authority to establish any one or more Funds from time to time without consent or vote by Participants. The Trustee shall establish a Fund by executing a declaration (the "Fund Declaration") which shall incorporate the terms of this Declaration of Trust by reference and shall set out the name of such Fund and such other terms, conditions, rights, and preferences and special or relative rights and privileges (including conversion rights, if any) of such Fund as the Trustee shall in its discretion determine. A Fund Declaration may, but need not, set out the investment policies relating to the Fund in question. Each Fund shall constitute a separate trust and the Trustee shall separately hold, manage, administer, value, invest, reinvest, account for, and otherwise deal with each such Fund. Notwithstanding anything to the contrary herein, as to Short-Term Investment Funds ("STIFs") referred to in Appendix A, STIFs shall be subject to the provisions of Appendix A and, to the extent not inconsistent with Appendix A, the generally applicable rules of this Declaration of Trust.

(a) The Trustee may from time to time provide to each of the Participants of a Fund a written statement, as such may be amended, modified, or supplemented from time to time (the "Strategy Disclosure Document"), setting out information as to the investment policies and other terms or conditions of or relating to such Fund, together with any instrument or document incorporating all or any part of such Strategy Disclosure Document into the Fund Declaration relating to such Fund, whereupon all or such part of such Strategy Disclosure Document, as the case may be, shall in the sole discretion of the Trustee be deemed, from the date designated by the Trustee, to have become part of such Fund Declaration; the Trustee may, at any time by notice to the Participants of such Fund, terminate such incorporation by reference or revise, amend, or supplement all or any part of the provisions previously so incorporated by reference into such Fund Declaration.

2.02 Establishment of Classes. The establishment and designation of any Class of Units shall be effective upon the adoption by the Trustee of a written Class description (a "Class Description"), setting forth such establishment and designation and the relative rights and preferences of such Class.

2.03 Rights and Preferences, etc. Units of each Fund or Class established pursuant to this Section 2, unless otherwise provided in the Fund Declaration establishing such Fund or Class Description establishing such Class, shall have the following relative rights and preferences:

(i) Assets Belonging to Fund. All consideration received by the Trust for the issue or sale of Units of a particular Fund, together with all securities and other assets in which such consideration is invested or reinvested, all income, earnings, profits, and proceeds thereof from whatever source derived, including, without limitation, any proceeds derived from the sale, exchange, or liquidation of such assets, and any funds or payments derived from any reinvestment of such proceeds in whatever form the same may be, shall irrevocably belong to that Fund for all purposes, subject only to the rights of creditors with claims against the particular Fund, and shall be so recorded upon the books of account of the Fund. Such considerations, securities and other assets, income, earnings, profits, and proceeds thereof, from whatever source derived, including, without limitation, any proceeds derived from the sale, exchange, or liquidation of such assets, and any funds or payments derived from any reinvestment of such proceeds, in whatever form the same may be, are herein referred to as "assets belonging to" that Fund. In the event that there are any securities and other assets, income, earnings, profits, and proceeds thereof, funds, or payments which are not readily identifiable as belonging to any particular Fund (collectively "General Assets"), the Trustee shall allocate such General Assets to, between, or among any one or more of the Funds in such manner and on such basis as it, in its sole discretion, may deem fair and equitable, and any General Asset so allocated to a particular Fund shall belong to that Fund; and, in the event that there are any assets, income, earnings, profits, and proceeds thereof, funds, or payments belonging to any Fund which are not readily identifiable as belonging to any particular Class (collectively "Fund General Assets"), the Trustee shall allocate such Fund General Assets to, between, or among any one or more of the Classes of such Fund in such manner and on such basis as it, in its sole discretion, may deem fair and equitable, and any Fund General Asset so allocated to a particular Class shall belong to that Class. Each such allocation by the Trustee shall be conclusive and binding upon the Participants of all Funds and Classes for all purposes.

(ii) Liabilities Belonging to Fund. The securities and other assets belonging to each particular Fund shall be charged with the liabilities of the Trust in respect of that Fund and all expenses, costs, charges, and reserves attributable to that Fund and any general liabilities of the Trust, or of any Fund, which are not readily identifiable as belonging to any particular Fund, or any particular Class of any Fund, shall be allocated and charged by the Trustee to and among any one or more of the Funds, or to and among any one or more of the Classes of a Fund, as the case may be, in such manner and on such basis as the Trustee in its sole discretion may deem fair and equitable. The liabilities, expenses, costs, charges, and reserves so charged to a Fund or Class are herein referred to as "liabilities belonging to" that Fund or Class. Each allocation of liabilities, expenses, costs, charges, and reserves by the Trustee shall be conclusive and binding upon the Unit holders of all Funds and Classes for all purposes. Under no circumstances shall the assets allocated or belonging to any particular Fund be charged with liabilities belonging to any other Fund. All persons who have extended credit which has been allocated to a particular Fund, or who have a claim or contract which has been allocated to any particular Fund, shall look only to the assets of that particular Fund for payment of such credit, claim, or contract.

(iii) Dividends, Distributions, and Withdrawals. No dividend or distribution (including, without limitation, any distribution paid upon termination of any Fund) with respect to, nor any payment upon withdrawal of, the Units of any Fund shall be effected by the Fund other than from the securities and other assets belonging to such Fund, nor shall any Participant of any particular Fund otherwise have any right or claim against the assets belonging to any other

Fund except to the extent that such Participant has such a right or claim hereunder as a Participant of such other Fund. The Trustee shall have full discretion to determine which items shall be treated as income and which items as capital; and each such determination and allocation shall be conclusive and binding upon the Participants.

(iv) Fractions. Any fractional Unit of a Fund or Class of any Fund shall carry proportionately all the rights and obligations of a whole share of that Fund or Class, as the case may be, including rights with respect to receipt of dividends and distributions, withdrawals of Units, and termination of the Fund.

(v) Combination of Fund. The Trustee shall have the authority, without the approval of the Participants of any Fund or Class of any Fund unless otherwise required by applicable law, to combine the assets and liabilities belonging to any two or more Funds or Classes into assets and liabilities belonging to a single Fund or Class.

2.04 Change in the Units. The Trustee may from time to time divide or combine the Units of any Fund or Class into a greater or lesser number without thereby changing the proportionate beneficial interest in the Fund or Class.

2.05 No Certificates. No certificates shall be issued to evidence the interest of any Participant in any Fund. The record books of the Fund as kept by the Trustee or any transfer or similar agent, as the case may be, shall be conclusive as to who are the Participants of each Fund and Class and as to the number of Units of each Fund and Class held from time to time by each Participant. In addition, the Trustee shall maintain, and shall keep a record of, separate accounts as evidenced by the Units held by each Participant in the Fund to reflect the interest of each Participant in the Fund, including separate accounting for contributions to the Fund by each Participant, disbursements and withdrawals made from each Participant's account in the Fund and the investment experience of the Fund allocable to each Participant. For the avoidance of doubt, the maintenance of Units on the books and records of the Fund reflecting each Participant's interest in the Fund shall be sufficient to satisfy the foregoing requirement.

ARTICLE 3- PARTICIPATION

3.01 Conditions of Participation; Acceptance of Assets; Funds as "Group Trusts".

The Trustee shall accept investments in the Trust from such persons and on such terms and for such consideration, which may consist of cash or securities or other assets or a combination thereof, as it may from time to time in its sole discretion determine.

An investor may participate in a Fund only if (1) SSBT is acting as trustee, co-trustee, investment manager, or agent of the investor, (2) SSBT, in its sole discretion, has accepted it as a Participant, and (3) one of the following conditions is met:

(a) The investor is a trust created under an employees' pension or profit sharing plan) (1) which is qualified within the meaning of Code Section 401(a) and is therefore exempt from tax under Code Section 501(a); and (2) which is administered under one or more documents which specifically authorize part or all of the assets of the trust to be commingled for investment purposes with the assets of other such trusts in a

collective investment trust, which specifically or in substance and effect, adopt each such collective investment trust as a part of the plan and which expressly and irrevocably provide that it is impossible for any part of the corpus or income of such trust to be used for, or diverted to, purposes other than for the exclusive benefit of its participants and their beneficiaries consistent with the requirement of Treasury Regulation §1.401(a)-2 (as the same may be modified by amendment or statute). If such trust covers self-employed individuals within the meaning of Section 401(c)(1) of the Code (a "Keogh Plan") and interests in the Fund are not registered under the Securities Act, then each such Keogh Plan will be permitted to invest in the Fund only to the extent permitted by the Securities Act and rules and regulations promulgated thereunder;

(b) To the extent permitted by applicable Internal Revenue Service rulings, the investor is a trust created under an employees' pension or profit sharing plan (1) which is a Puerto Rican plan described in Section 1022(i)(1) of ERISA; and (2) which is administered under one or more documents which specifically authorize part or all of the assets of the trust to be commingled for investment purposes with the assets of other such trusts in a collective investment trust, which specifically or in substance and effect, adopt each such collective investment trust as a part of the plan and which expressly and irrevocably provide that it is impossible for any part of the corpus or income of such trust to be used for, or diverted to, purposes other than for the exclusive benefit of its participants and their beneficiaries;

(c) The investor is a plan (1) which is described in Code Section 401(a)(24) or 457(b) and is not subject to Federal income taxation, (2) which, if interests in the Fund are not registered under the Securities Act and the Fund is not registered under the Investment Company Act, satisfies the requirements of Section 3(a)(2) or any other available exemption of the Securities Act and any applicable requirements of the Investment Company Act and rules and regulations promulgated thereunder, and (3) which is administered under one or more documents which specifically authorize part or all of the assets of the plan to be commingled for investment purposes with the assets of other such plans in a collective investment trust, which specifically or in substance and effect, adopt each such collective investment trust as a part of the plan and which expressly and irrevocably provide that it is impossible for any part of the corpus or income of such trust to be used for, or diverted to, purposes other than for the exclusive benefit of its participants and their beneficiaries, consistent (in the case of a plan described in Code Section 457(b)) with the requirements of Treasury Regulation §1.457-8(a)(2) (as the same may be modified by amendment or statute);

(d) To the extent permitted by applicable Internal Revenue Service rulings, the investor is a segregated asset account maintained by a life insurance company (1) consisting exclusively of assets of investors described in subsections (a) and/or (c) of this Section 3.01, and (2) which is administered under one or more documents which authorize part or all of the assets of the account to be commingled for investment purposes with the assets of other such accounts in a collective investment trust and which expressly and irrevocably provides that it is impossible for any part of the corpus or income of such account to be used for, or diverted to, purposes other than the exclusive benefit of its participants and their beneficiaries and whose constituent trusts adopt,

specifically or in substance and effect, each such collective investment trust as a part of their respective plans;

(e) The investor is a trust (1) for the collective investment of assets of any investor otherwise described in this Section 3.01 (including without limitation a Fund created under this Declaration of Trust), which trust qualifies as a "group trust" under Internal Revenue Service Revenue Ruling 2011-1, as amended, or any successor ruling, and (2) which is administered under one or more documents which authorize part or all of the assets of the trust to be commingled for investment purposes with the assets of other such trusts in a collective investment trust, which specifically or in substance and effect, adopt each such collective investment trust as a part of the trust and which expressly and irrevocably provide that it is impossible for any part of the corpus or income of such trust to be used for, or diverted to, purposes other than the exclusive benefit of its participants and their beneficiaries consistent with the requirement of Treasury Regulation §1.401(a)-2 (as the same may be modified by amendment or statute).

(f) The Trustee shall accept assets in a Fund under this Declaration of Trust only from investors meeting the conditions set forth in this Section 3.01 (each, a "Qualified Investor"). All assets so accepted together with the income therefrom shall be held, managed and administered pursuant to this Declaration of Trust. At no time prior to the satisfaction of all liabilities with respect to the employees and their beneficiaries entitled to benefits from a Participant shall any part of the principal or income allocable hereunder to such Participant be used or diverted for or to purposes other than for the exclusive benefit of such employees or their beneficiaries. Investments in a Fund shall be accepted only as of a Valuation Date and on the basis of the Unit value of such Fund (or of the Class in question, as the case may be) as of the Valuation Date, as provided in Section 5.01; provided that the Trustee in its sole discretion may, to the extent permitted by applicable law, including any applicable rules and requirements of ERISA, assess Transaction Charges to a Participant making contributions and may allocate such Transaction Charges in any manner that the Trustee deems reasonable, including, without limitation, by aggregating across contributing Participants on a weighted average basis as determined by the Trustee for a given trading period. No Participant may cancel or countermand an investment in a Fund unless in accordance with the Fund Operating Guidelines for SSgA U.S. Bank Maintained Commingled Funds or otherwise approved by the Trustee. Securities and other assets other than cash accepted by the Trustee shall be valued as determined by the Trustee, on the Valuation Date in accordance with the provisions of Article V hereof.

It is intended that the Funds be exempt from taxation and qualify as "group trusts" under Internal Revenue Service Revenue Ruling 2011-1, as amended, or any successor ruling, and other applicable Internal Revenue Service rules and regulations. In furtherance of this intent, each investor which seeks to invest in a Fund shall represent and warrant that such investor is a Qualified Investor.

3.02 Other Conditions of Participation. The Trustee may in its discretion establish from time to time conditions for eligibility to participate in a Fund or in any particular Class of a

Fund. Participants shall have no preemptive or other right to acquire any additional Units or other securities issued by any of the Funds.

3.03 Withdrawals from Participation; Suspension of Withdrawal Rights.

(a) Except as otherwise provided in Section 3.03(b), any Participant may, as of any Valuation Date, withdraw any number of Units from a Fund pursuant to notice received by the Trustee at least 15 days, or such lesser period as may be determined by the Trustee in its discretion, prior to such Valuation Date (which notice period may be waived by the Trustee in its discretion). No withdrawal by a Participant may be canceled or countermanded on or after the Valuation Date to which it relates. Within a reasonable time following the Valuation Date, the Trustee shall, subject to Section 3.05, distribute from such Fund to the Participant making such withdrawal a sum arrived at by multiplying the number of Units withdrawn by the net asset value of each Unit as of the close of business on the Valuation Date on which such withdrawal is effected. Such sum shall be distributed in cash, in kind, or in a combination of cash and in kind, or in any other manner as the Trustee in its sole discretion shall determine. For the purpose of this Declaration of Trust, "in kind" refers to securities and all other assets (excepting cash only). In making distributions of securities or other assets in whole or in part along with cash under this Section 3.03(a) or any other provision of this Declaration of Trust, the Trustee is authorized to adjust in its good faith discretion the relative proportion, mix, amount, and number of securities and other assets and the amount of cash distributed to withdrawing Participants to reflect any trading, legal, contractual, securities exchange, and market requirements, practices, restrictions and/or practical considerations applicable to any securities or other assets being distributed to such Participants, including, without limitation, minimum trade size requirements for securities and other assets (such as odd lot holdings or fractional interests), Rule 144A of the Securities Act of 1933, as amended, or other legal or regulatory requirements applicable to such securities or other assets or the eligibility of particular beneficial owners to receive such securities or other assets, trading limits or requirements established by securities exchanges, government regulators, brokers, dealers, or other market participants, and similar limits and requirements. To the extent permitted under ERISA, each Participant and any person or entity claiming through such Participant waives any and all claims and potential claims against SSBT and its Affiliates, with respect to any distribution of securities, cash and other assets that has been adjusted by SSBT in its capacity as Trustee as provided above in good faith to reflect the same approximate value per Unit of securities, cash and other assets distributed to each Participant at any particular time notwithstanding that the percentage, mix and/or amount of securities, assets and cash differs on a per-Unit basis to some degree among such withdrawing Participants for any of the foregoing reasons. All distributions from the Trust to the Participant shall be deemed to be for the exclusive benefit of participants and their beneficiaries under such Participant.

(b) Notwithstanding any other provision of this Declaration of Trust or a Fund Declaration, and in addition to any other authority granted to the Trustee hereunder and thereunder, in the interest of the protection of one or more Funds and the fair and equitable treatment of Participants, the Trustee may in its sole discretion, at any time and from time to time, suspend valuations of the securities and other assets of one or more

Funds and/or the Units of one or more Funds and may adopt and implement withdrawal practices and policies with respect to the rights of Participants to withdraw or redeem Units from one or more Funds when, in the sole discretion of the Trustee, prevailing market conditions or other circumstances, events, or occurrences make the disposition or valuation of investments of a Fund impracticable or inadvisable or when the Trustee in its sole discretion otherwise considers such action to be in the best interests of the Fund or its Participants or believes that such action would assist in eliminating or mitigating an adverse effect on the Fund or its Participants. In exercising its authority under this Section 3.03(b), the Trustee may take into account such factors as the Trustee deems appropriate in its sole discretion, including the current and anticipated market conditions that are or may be experienced by the Fund, the liquidity (including known and anticipated requirements for liquidity) of the Fund and the liquidity and trading volume of the securities and other assets of the Fund, including the reported and anticipated sales prices, bid/ask spreads, and participation of market makers and dealers in the markets for such securities and other assets, the current and anticipated volatility of the relevant securities markets, the current and anticipated impact of any sales made by the Fund on the values of the securities and other assets held by the Fund, the absolute and relative sizes of the number of Units requested for withdrawal by one or more Participants, prior and any anticipated future withdrawals of Units by one or more Participants, the reason or reasons for any pending or anticipated requested withdrawals, the Fund's ability to generate cash to fund withdrawals and satisfy other obligations of the Fund, and the likelihood and materiality of losses or gains relating thereto; a particular Participant's absolute or relative ownership interest in the Fund; amounts previously withdrawn by one or more particular Participants; the length of time and frequency of any outstanding or accrued withdrawal requests by particular Participants; and such other factors and considerations as may be deemed relevant by the Trustee.

Any such practices and policies may include, without limitation, suspending or limiting the frequency of withdrawal rights for some or all Participants; effecting withdrawals wholly or partially in-kind; varying the per Unit withdrawal amount paid to Participants based on such factors as the Trustee may determine, such as the amount and timing of a Participant's withdrawal requests; limiting withdrawal rights for some or all Participants to specified dollar amounts or percentage interests in the Fund; and permitting one or more (but less than all) Participants to withdraw on a priority or preferential basis relative to one or more other Participants based upon such factors as the Trustee determines to be equitable, including time, amount or frequency of withdrawals and/or withdrawal requests by Participants. The Trustee may in its sole discretion treat one or more Participants differently from other Participants in determining the extent to which a particular Participant is entitled to withdraw, the per Unit withdrawal amount to be paid to a particular Participant, the timing, manner (cash, in-kind or a combination thereof) and frequency of withdrawal payments, and any other matters relevant to a Participant's withdrawal. Any such action by the Trustee will be evaluated and implemented in its sole discretion and undertaken by the Trustee as part of a plan designed to protect the Fund and be in the best interests of all Participants over time and will seek to preserve the Fund's liquidity, avoid or mitigate losses to the Fund, permit the Fund to achieve its investment objectives and to otherwise avoid any adverse consequences to the Fund and its Participants. Such practices and policies may be

adopted, modified or terminated (in whole or in part) by the Trustee at any time in its sole discretion. The Trustee shall, to the extent practicable, provide reasonable notice (which need not be prior notice) to the relevant Participants of any such withdrawal practices and policies as they may be in effect from time to time.

(c) Notwithstanding any other provision of this Declaration of Trust or the applicable Fund Declaration, and in addition to any other authority granted to the Trustee hereunder and thereunder, if the Participant or any person or entity with investment authority on behalf of such Participant is, or may be, following a market-timing strategy or is, or may be, otherwise engaged in excessive trading or illegal activities as determined in the sole discretion of the Trustee, the Trustee may cause or require such Participant or any person or entity with investment authority on behalf of such Participant to (i) suspend purchases and/or withdrawal of Units on a temporary basis, (ii) cease any additional purchases of Units of a Fund for a specified period of time or on a permanent basis, (iii) withdraw some or all of its Units from a Fund, and/or (iv) liquidate sufficient Units of any such Participant (including those attributable to any person or entity that directed or engaged in the conduct described above) and apply all or part of the net proceeds realized upon such liquidation to satisfy and/or reimburse the Fund for any losses or damages suffered by the Fund.

(d) If any tax or charge shall be payable out of the assets of a Fund, in respect of some but not all Units or Participants in the Fund, an equalizing distribution from the assets of the Fund may, in the sole discretion of the Trustee, be made with respect to such other Units or to such other Participants that were not subject to any such tax or charge, and such equalizing distribution shall not reduce the number or value of the Units in the Fund held by such other Participants that have received any such equalizing distribution; or the Trustee may require payment to such other Participants that were not subject to such tax or charge of part or all of such tax or charge by the Participants whose Units are affected or for which such taxes or charges are assessed, and any such Participants that are required to make such payments will have no right to the issuance of any additional Units or any increase in the value of their Units by reason of the payment of any such assessment.

3.04 Adjustments. The Trustee may make, in its good faith discretion, retroactive or subsequent adjustments to reflect the actual expenses, liabilities, and obligations allocable to assets held in the Fund or in any Liquidating Account or Dedicated Account and to reflect the correct pricing of any assets of the Fund or any Liquidating Account or Dedicated Account not later than 15 months after the date in question. In such event, the Trustee shall make appropriate additions to, or deductions from, as the case may be, the net asset value of the Units held by the Participants in the Fund or their interests in any Liquidating Account or Dedicated Account, as the case may be, or take such other actions as the Trustee in its discretion considers appropriate. If a Participant has withdrawn all its Units in the Fund or interests in the Liquidating Account or Dedicated Account and any such adjustment results in a deduction to the value of the withdrawn Units or interests as of the relevant time, then the Participant will be liable to the Fund to repay promptly the amount of any such deduction which has been so previously allocated by the Trustee to such Participant. If any such Participant is entitled to a credit, then the Trustee shall promptly issue additional Units to the Participant equal to the value of the credit or, to the extent

the Trustee deems appropriate, promptly remit from the assets of the Fund payment of the same to such Participant if the Participant has withdrawn all of its Units in the Fund.

3.05 Transaction Charges in respect of Acquisition of Units and Withdrawals. Transaction Charges incurred in connection with, or relating to, any purchase or withdrawal of Units in a Fund may, to the extent permitted by applicable law, including ERISA, in the sole discretion of the Trustee, be allocated and charged to the Participant making such acquisition or withdrawal of Units and applied to reduce (i) the number of Units purchased by any such Participant, and (ii) the net cash proceeds, if any, payable upon any withdrawal of Units by any Participant and/or, to the extent applicable, the net asset value of any securities or other assets distributed to any Participant in connection with the withdrawal of any such Units.

ARTICLE 4- INVESTMENTS AND ADMINISTRATION

4.01 Management and Administrative Powers. The Trustee shall have the rights, powers, and privileges of an absolute owner in the management, operation and administration of the Funds established pursuant to this Declaration of Trust. In addition to and without limiting the powers and discretion conferred on the Trustee elsewhere in this Declaration of Trust, but subject to applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof, and any restrictions in the Fund Declaration with respect to a Fund, the Trustee shall have the following discretionary powers with respect to any Fund:

(a) To subscribe for and to invest and reinvest funds in, to enter into contracts with respect to, and to hold for investment and to sell or otherwise dispose of any property, real, personal, or mixed, wherever situated, and whether or not productive of income or consisting of wasting assets, including, but not limited to, obligations issued or guaranteed by the U.S. Government or any foreign country (including, but not limited to, its agencies, government sponsored entities, and instrumentalities), bonds, debentures, notes (including, but not limited to, structured notes), mortgages, commercial paper, bankers' acceptances, and all other evidences of indebtedness; trust and participation certificates; certificates of deposit, demand, savings, or time deposits (including, but not limited to, any such deposits bearing a reasonable rate of interest in the banking department of SSBT or any Affiliate); foreign and domestic securities; commodities of all kinds; options on securities, commodities, financial instruments, indexes, futures contracts, foreign and U.S. currencies, or other assets; contracts for the immediate or future delivery of securities, commodities, financial instruments, indexes, foreign and U.S. currencies, or other assets; spot and forward contracts, puts, calls, straddles, spreads or any combination thereof on or with respect to any of the securities or other assets described in this subsection (a), and options on all of the foregoing contracts and instruments; swap contracts; beneficial interests in any trusts (including, but not limited to, structured trusts); mortgage-backed securities and other asset-backed securities; securities issued by registered or unregistered investment companies and exchange-traded funds and other products (including, but not limited to, securities, companies, funds and products maintained, sponsored, managed, issued, and/or advised by SSBT or any of its Affiliates to the extent permitted by ERISA); interests in common trust funds or collective investment trusts, including those funds or trusts for which SSBT or any of its Affiliates acts as trustee, investment manager or adviser, or in any other capacity and

while the assets of a Fund are so invested in collective investment trusts, such collective investment trusts (and the instruments pursuant to which such trusts are established) shall constitute a part of this Declaration of Trust with respect to such Fund; interests in structured investment vehicles; repurchase agreements and reverse repurchase agreements; variable and indexed interest notes and investment contracts; common and preferred stocks, equity securities of any kind or nature, convertible securities, subscription rights, warrants, limited or general partnership interests, profit sharing interests or participations and all other contracts for or evidences of equity interests or securities of any kind or nature; direct or indirect interests in real estate; and any other assets; and to hold cash uninvested pending investment or distribution;

(b) In accordance with and subject to Section 9.03 hereof, to purchase, sell, lend, pledge, mortgage, hypothecate, write options on and lease any of the securities, instruments, commodities, currencies, futures, or other assets referred to in subsection (a) of this Section, including without limitation, those issued, originated, sold, loaned, structured, held, owned, purchased, or borrowed by, or from, as the case may be, SSBT or its Affiliates, and without limiting the foregoing, to engage in any securities lending program on behalf of a Fund (and in connection therewith to direct the investment of cash collateral and other assets received as collateral in connection therewith), and during the term of such loan of securities to permit the securities so lent to be transferred into the name of and voted by the borrower or others and without limiting the foregoing, to the extent consistent with applicable law including ERISA and any applicable exemptions from the prohibited transaction provisions thereof, SSBT and its Affiliates are authorized to borrow securities and other assets from any Fund or Funds for their own accounts or for the accounts of others and engage in and effect as a principal, conduit, or agent the other transactions described above in good faith without such borrowings or other transactions being considered a breach of SSBT's or its Affiliates' fiduciary, legal, common law, contractual, or other duties or obligations (collectively, the "Duties") and the power and authorization granted to SSBT and its Affiliates herein are granted expressly for the purpose of eliminating and causing to be waived any and all claims or potential claims by any person or entity, including without limitation the Trust or any Funds or any Participant, that the exercise in good faith of any such power or authority resulted in or gave rise to any breach or violation of the Duties by SSBT or its Affiliates to the Trust or any Funds or any Participant, and in no circumstance will any such exercise constitute a breach or violation of the Duties on the part of SSBT or its Affiliates or require that SSBT or its Affiliates disgorge, repay, or rebate to the Trust or any Funds or any Participant any profits, gains, income, fees or compensation by reason of any of the borrowings or other transactions described herein as long as such borrowings or other transactions are effected in good faith by SSBT or its Affiliates and in compliance with applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof;

(c) To make distributions to Participants, payable in cash, securities, or other assets or any combination of cash, securities or other assets as determined by the Trustee in its sole discretion, out of the assets of a Fund;

(d) In accordance with and subject to Section 9.03 hereof, to establish and maintain bank, custodial, brokerage, commodity, futures, currency, and other similar accounts, whether domestic or foreign, to enter into agreements and engage in principal, agency and other transactions in connection therewith, including agreements for the purchase and sale of securities, commodities, currency and other assets and, from time to time, to deposit securities, cash, or other Fund assets in such accounts and without limiting the foregoing, to the extent consistent with applicable law including ERISA and any applicable exemptions from the prohibited transaction provisions thereof, each Fund may establish and maintain any such accounts and engage in any such agency, principal, and other transactions with, and deposit any securities, cash, and other Fund assets in, such accounts as may from time to time be established and maintained by the Trustee at SSBT and its Affiliates without any such accounts and transactions and any related services and actions being considered a breach of SSBT's or its Affiliates' Duties, and the power and authorization granted to SSBT and its Affiliates herein are granted expressly for the purpose of eliminating and causing to be waived any and all claims or potential claims by any person, including without limitation any Participant, that the exercise in good faith of any such power or authority resulted in or gave rise to any breach or violation of the Duties by SSBT or its Affiliates to the Trust or any Funds, and in no circumstance will any such exercise constitute a breach or violation of the Duties on the part of SSBT or its Affiliates as long as such borrowings or other transactions are effected in good faith by SSBT or its Affiliates and in compliance with applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof;

(e) To sell for cash or upon credit, to convert, withdraw, or exchange for other securities or assets, to tender securities pursuant to tender offers, or otherwise to dispose of any securities or other assets at any time held by a Fund or the Trustee on behalf of a Fund;

(f) In accordance with and subject to Section 9.03 hereof, to borrow money or other funds and in connection with any such borrowing to issue notes or other evidences of indebtedness, to secure such borrowing by mortgaging, pledging, or otherwise subjecting the Fund assets to security interests, to borrow securities and other assets and in connection with any such borrowings, pledge or transfer cash, securities, or other assets to secure such borrowing, to endorse or guarantee the payment of any notes or other obligations of any person, and to make contracts of guaranty or suretyship, or otherwise assume liability for payment thereof and without limiting the foregoing, to the extent consistent with applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof, SSBT and its Affiliates are authorized to lend cash, securities and other assets to, and borrow cash, securities and other assets from, any Fund or Funds for its own account as principal or as agent for the account of others, to act as agent for any Fund or Funds in connection with any securities lending or borrowing transactions by such Funds for compensation, and to engage as principal, agent, broker or in any other capacity in the lending, borrowing and other transactions described above in good faith without such loans, borrowings or other transactions being considered a breach of SSBT's or its Affiliates' Duties and the power and authorization granted to SSBT and its Affiliates herein are given expressly for the purpose of

eliminating and causing to be waived any and all claims or potential claims by any person or entity, including without limitation any Participant or Fund, that the exercise in good faith of any such power or authority resulted in or gave rise to any breach or violation of the Duties by SSBT or its Affiliates to the Trust or any Participant or any Funds, and in no circumstance will any such exercise constitute a breach or violation of the Duties on the part of SSBT or its Affiliates or require that SSBT or its Affiliates disgorge, repay or rebate to the Trust or any Funds or any Participants any profits, gains, income, interest, fees, or compensation paid to, earned or received by, SSBT or its Affiliates by reason of any such lending, borrowing or other transactions as long as such lending, borrowing or other transactions are effected in good faith by SSBT or its Affiliates and in compliance with applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof;

(g) To incur and pay out of the assets of a Fund or Class of a Fund any compensation, fees, charges, taxes, and expenses which in the opinion of the Trustee are necessary or appropriate to, or in support of, the carrying out of any of the purposes of this Declaration of Trust or the Fund Declaration applicable to such Fund or Class of a Fund (including, but not limited to, the compensation, fees, charges, and expenses of the Trustee, custodians, investment advisers, investment managers, the valuation committees or agents, depositories, pricing and valuation agents, administrators, recordkeepers, tax return preparers, auditors, agents, accountants, attorneys, brokers and broker dealers, and other agents and service providers, whether or not some or all of these are Affiliates of the Trustee) and in compliance with applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof;

(h) To allocate assets, liabilities, income, and expenses of the Trust to a particular Fund or to apportion the same among two or more Funds and to allocate assets, liabilities, income, and expenses of a Fund to a particular Class of Units of that Fund or to apportion the same among two or more Classes of Units of that Fund;

(i) To join with other holders of any securities or debt instruments in acting through a committee, depositary, voting trustee or otherwise, and in that connection to deposit any security or debt instrument with, or transfer any security or debt instrument to, any such committee, depositary or trustee, and to delegate to them such power and authority with relation to any security or debt instrument (whether or not so deposited or transferred) as the Trustee shall deem proper, and to agree to pay, and to pay, such portion of the expenses and compensation of such committee, depositary or trustee as the Trustee shall deem proper;

(j) To enter into joint ventures, general or limited partnerships, limited liability companies, business trusts, investment trusts, and any other combinations or associations;

(k) To collect and receive any and all money and other assets due to any Fund and to give full discharge thereof;

(l) To maintain the indicia of ownership of assets outside the United States, to the extent permitted by applicable law, including subject to compliance with ERISA to the extent applicable;

(m) To transfer any securities and other assets of a Fund to one or more custodians or sub custodians (which may be Affiliates) employed by the Trustee and to delegate to one or more investment advisers or investment managers (which may be Affiliates) the authority to invest certain assets of a Fund to the extent permitted under ERISA; provided that no such delegation shall cause the Trustee to not have ultimate investment discretion with respect to such Fund;

(n) To retain any securities and other assets received by it at any time and to sell or exchange any securities and other assets, for cash, on credit or for other consideration of any kind or nature, at public or private sale;

(o) In accordance with and subject to Section 9.03 hereof, to borrow money as may be necessary or desirable to protect the securities and other assets of a Liquidating Account or Dedicated Account and to encumber or hypothecate the securities and other assets of such Liquidating Account or Dedicated Account to secure repayment of such indebtedness;

(p) To exercise or dispose of any conversion, subscription, or other rights, discretionary or otherwise, including, but not limited to, the right to vote and grant proxies, appurtenant to any assets held by the Fund at any time; and to vote and grant proxies with respect to all investments held by the Fund at any time;

(q) To renew or extend any obligation held by the Fund;

(r) To register or cause to be registered any assets of the Fund in the name of a nominee of the Trustee or any custodian or sub-custodian or any agent appointed by the Trustee; provided, the records of the Trustee and any such custodian or any such agent shall show that such assets belongs to such Fund;

(s) To deposit securities and other assets of the Fund with a securities depository or clearing corporation and to permit the securities so deposited to be held in the name of the depository's or clearing corporation's nominee, and to deposit securities issued or guaranteed by the U.S. Government or any agency or instrumentality thereof, including, but not limited to, securities evidenced by book-entry rather than by certificate, with the U.S. Department of the Treasury, a Federal Reserve Bank, or other appropriate custodial entity or agent; provided the records of the Trustee or any custodian or agent appointed by the Trustee shall show that such securities belong to such Fund;

(t) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Fund; to commence or defend suits or legal proceedings whenever, in the Trustee's judgment, any interest of the Fund so requires; and to represent the Fund in all suits or legal proceedings in any court or before any other body or tribunal; and to pay from the Fund all costs and attorneys' fees in connection therewith;

(u) To organize or acquire one or more corporations, limited partnerships, limited liability companies, business or statutory trusts, or other similar entities, wholly or partly owned by the Fund, any of which may be exempt from federal income taxation under the Code; to appoint ancillary or subordinate trustees, custodians or agents to hold title to or other indicia of ownership of assets of the Fund and to define the scope of the responsibilities of such trustees, custodians or agents;

(v) To employ suitable agents or service providers, including, but not limited to, pricing agents or pricing services to perform pricing and valuations of the securities, foreign currencies, and other assets of the Fund, custodians, investment advisers, investment managers, administrators, recordkeepers, tax preparers, marketing agents, consultants, auditors, accountants, depositories, and attorneys, domestic or foreign (including, but not limited to, SSBT and entities that are Affiliates of SSBT), and, subject to applicable law, to pay their expenses and compensation from the Fund;

(w) To make, execute, and deliver any and all contracts and other instruments and documents deemed necessary and proper for the accomplishment of any of the Trustee's powers and responsibilities under this Declaration of Trust;

(x) To utilize such means of communication as the Trustee deems appropriate, including without limitation telephonic and electronic communications of all kinds (such as electronic mail), and to accept and recognize instructions and signatures (and all other forms of validation) in electronic or other format;

(y) To enter into (or to cause any Affiliate to enter into) any agreement, arrangement, transaction, or other dealing or course of dealing with the Trust or any Fund, whether as agent or principal, in good faith in a manner the Trustee considers, in its sole discretion, to be in the interest of the Trust or the Fund in question or consistent with the purposes or policies of the Trust or such Fund (for clarity, the specific grant of any power or authority to the Trustee elsewhere in this Declaration of Trust to enter into any such agreement, arrangement, transaction, or other dealing or course of dealing with the Trust or any Fund shall not be deemed directly or indirectly to be a limitation on the power and authority granted pursuant to this clause (y)) and in compliance with applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof; and

(z) To do all other acts in its judgment necessary or desirable for the proper administration of the Fund or with respect to the investment, management, disposition, or liquidation of any securities and other assets of the Fund, although the power to do such acts is not specifically set forth herein.

Notwithstanding any custom or implied obligation or duty on the part of trustees, investment managers, or investment advisers under common law or otherwise, neither the Trustee nor any investment adviser, investment manager or other person charged with managing, or providing investment advice with respect to, all or any portion of the investment portfolio of a Fund shall have any obligation or responsibility for considering or taking into account or determining the effect of any investment held in such portfolio, the risks associated with such

investment portfolio, or of an investment in the portfolio generally, on the overall investment portfolio or investment program of any Participant, including without limitation in respect of the diversification or risk profile of the investments of any such Participant in one or more Funds and/or in or through any other investment funds, accounts, or products.

In construing the provisions of this Declaration of Trust, the presumption shall be in favor of a grant of power to the Trustee. Such powers of the Trustee may be exercised without order of or resort to any court or governmental authority or agency, and without the posting of any bond or collateral by the Trustee. The determination of the Trustee as to whether an investment is of a type consistent with the provisions of the Fund Declaration of a Fund or any Strategy Disclosure Document, as the case may be, and this Declaration of Trust shall be conclusive and binding on all persons having an interest in the Fund. In the case of any conflict between the specific terms of the Fund Declaration or any Strategy Disclosure Document, as the case may be, and this Declaration of Trust, the Fund Declaration or any Strategy Disclosure Document, as the case may be, shall control, except that no term of the Fund Declaration or any Strategy Disclosure Document, as the case may be, may vary any term or condition of this Declaration of Trust which would cause such Fund to fail to satisfy the requirements of Revenue Ruling 2011-1 (or any successor provision).

4.02 Cash Balances. The Trustee is authorized in its discretion to hold all or any part of the assets of a Fund uninvested as may be reasonably necessary for orderly administration of the Fund, and to deposit cash awaiting investment or distribution in accounts maintained in the commercial or savings department of any bank, trust company, or savings association, including SSBT or any bank, trust company, or savings association that is an Affiliate and in compliance with applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof.

4.03 Loans. SSBT and any Affiliate may lend money to a Fund and receive interest on such loans provided, however, that such lending is consistent with Section 9.03.

4.04 Ownership of Assets. The Trustee shall have legal title to the assets of the Fund. No Participant shall have an individual ownership of any asset of any Fund, but each Participant shall have an undivided interest in such Fund and shall share proportionately with all other Participants in the net income, profits, and losses thereof, to the extent permissible under applicable law and subject to the allocation of certain fees and expenses with respect to the various Classes, if any, of the Fund, provided that nothing in this Declaration of Trust shall preclude the Trustee from directly charging any one or more Participants fees and expenses (which fees and expenses may differ among one or more of such Participants).

4.05 Dealings with the Funds. All persons extending credit to, contracting with, or having any claim of any type against any Fund (including, but not limited to, contract, tort, and statutory claims) shall look only to the assets of such Fund (and not to the assets of any other Fund) for payment under such credit, contract or claim, and no expense or charge specifically allocable to any one Class shall otherwise be allocable to or borne by any other Class or Classes. No Participant, nor any beneficiary, trustee, employee, or agent thereof, nor SSBT (or any Affiliate of SSBT), nor any of the officers, directors, shareholders, partners, employees or agents of SSBT (or any Affiliate of SSBT) shall be personally liable for any debt, liability, or obligation

of the Trust or any Fund. Every note, bond, contract, instrument, certificate, or undertaking and every other act or thing whatsoever executed or done by or on behalf of the Trust or any Fund shall be conclusively deemed to have been executed or done only by or for the Trust or such Fund, as the case may be, and no Fund shall be answerable for any obligation assumed or liability incurred by another Fund established hereunder.

4.06 Management Authority and Delegation. The Trustee shall have full management and investment authority with respect to any Fund established pursuant to this Declaration of Trust. The Trustee may retain and consult with such investment advisers, investment managers, or other agents or service providers, including, but not limited to, any Affiliate of the Trustee, as the Trustee, in its sole discretion, may deem advisable to assist it in carrying out its responsibilities under this Declaration of Trust, and may also delegate all or part of its duties and obligations to any agents or service providers, which may be Affiliates of SSBT.

ARTICLE 5- VALUATION, ACCOUNTING, RECORDS, AND REPORTS

5.01 Valuation of Units. As of each Valuation Date in respect of a Fund or a Class, the Trustee or its agents shall determine the net asset value of the Units of such Fund or Class, as the case may be.

(a) In valuing the securities and other assets of any Fund for the determination of the net asset value per Unit of such Fund or any Class thereof, securities and other assets for which market prices or quotations are readily available shall be valued at prices which, in the opinion of the Trustee or the pricing services or agents designated by the Trustee to make the determination, represent or most nearly represent the market value of such securities and other assets, and other securities and other assets without such market prices or quotations shall be valued at their fair values as determined by or pursuant to the direction of the Trustee, which in the case of debt obligations, mortgage-backed securities, asset-backed securities, commercial paper, repurchase agreements, and similar fixed income securities, may, but need not, be on the basis of yields or prices for customary institutional-sized trading units for debt obligations, fixed income securities or repurchase agreements of comparable maturity, quality, rating, and type, or on the basis of amortized cost, or on such other basis as the Trustee or the pricing services or agents may deem appropriate under the circumstances. Expenses and liabilities of the Fund shall be accrued each day. Liabilities may include such reserves for taxes, estimated accrued expenses, and contingencies as the Trustee or its designees may in their sole discretion deem appropriate under the circumstances. The Trustee may in its sole discretion rely on one or more pricing agents or services in determining the value of any securities or other assets of a Fund, or delegate the determination of such value to any such agent or service. The Trustee or pricing services or agents shall have a reasonable period of time within which to determine the value of the Units as of the relevant Valuation Date and the aggregate value of the beneficial interest of each Participant in the Fund as of such Valuation Date.

(b) To the extent permitted by applicable law, short-term securities and other investments having a maturity of up to 60 days may, in the sole discretion of the Trustee,

be valued at cost with accrued interest, discount earned or premium amortized included or reflected, as the case may be, in interest receivable.

For any or all valuations of securities or other assets of the Funds, the Trustee and any pricing agents or services selected by the Trustee, including Affiliates of the Trustee, may (without limitation) in its or their sole discretion consider, utilize and rely upon any regularly published reports of sales, bid, asked, and closing prices, and over the counter quotations or prices and may utilize so-called matrix, model, or similar pricing or valuation methodologies in determining the fair value of any securities or other assets of the Funds. The decision of the Trustee regarding whether a method of valuation fairly represents fair market value (or fair value, as the case may be), and the selection of a pricing agent or service and the good faith determination of the Trustee or any pricing agent or service, shall be conclusive and binding upon all persons.

5.02 Suspension of Valuations. Notwithstanding anything to the contrary elsewhere in this Declaration of Trust or the Fund Declaration with respect to any Fund, the Trustee, in its sole discretion, may suspend the valuation of the securities or other assets and/or the Units of any Fund as provided in Section 3.03(b) of this Declaration of Trust.

5.03 Accounting Rules and Fiscal Year. The Trustee, in its discretion, may keep the Trust's or any Fund's accounts either on an accrual system (which complies with generally accepted accounting principles unless otherwise determined by the Trustee) or to the extent permitted by law, on a cash system and may change from one of such systems to the other as of the close of any fiscal year. The fiscal year of each Fund initially shall be the calendar year, unless otherwise specified in the Fund Declaration or otherwise determined by the Trustee.

5.04 Expenses and Taxes. The Trustee may charge to a Fund or to a particular Class of a Fund, as the case may be, (i) the cost of money borrowed, (ii) costs, commissions, dealer-concessions, financial index license, data and any related charges and fees, income taxes, withholding taxes, transfer and other taxes and expenses associated with the holding, purchase and/or sale of, and receipt of income from, securities and other assets, (iii) the reasonable expenses of an audit of the Fund and fees and other charges related to Fund accounting services provided by third parties, (iv) reasonable attorneys' fees and litigation expenses, (v) the Trustee's compensation as provided in Section 6.04, and (vi) any other expense, claim, liability, or charge, including, but not limited to, fees, expenses, charges, and other liabilities due to the Trustee or any Affiliate of the Trustee (which may include fees or other compensation payable to the Trust or such Affiliate and the reimbursement of expenses, without credit, rebate, offset, disgorgement, or deduction against the compensation payable to the Trustee), but only to the extent permitted by applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof. The Trustee may also charge to a particular Class of a Fund any expense, claim, liability, or charge to be specifically allocated to such Class and may also charge to a particular Participant or Participants any withholding, excise or other taxes or governmental assessments that in the Trustee's judgment are specially allocable or attributable to such Participant. The Trustee may liquidate from time to time sufficient Units of such Participants to pay or otherwise discharge any such taxes or governmental assessments.

5.05 Records, Accounts and Audits. The Trustee shall keep such records as it deems necessary or advisable in its sole discretion to account properly for the operation and administration of a Fund. At least once during each period of 12 months, the Trustee shall cause a suitable audit to be made of each Fund by auditors responsible only to the board of directors of SSBT. The reasonable compensation and expenses of the auditors for their services with respect to a Fund shall be charged to such Fund.

5.06 Financial Reports. The Trustee shall prepare a written financial report, based on the audit referred to in Section 5.05, within 90 days after the close of each fiscal year of a Fund; provided that such 90-day period may be extended to a date specified by the Trustee if the Trustee determines in its discretion that additional time is required to prepare such financial report.

(a) A copy of the report shall be furnished, or notice given that a copy thereof is available and will be furnished without charge on request, to the Investing Fiduciary of each Participant (or, if such Investing Fiduciary is SSBT, to the Qualified Investor Signatory) at such time. In addition, a copy of the report shall be furnished on request to any other person, in the discretion of the Trustee, and the Trustee may make a reasonable charge therefor.

(b) If no written objections to specific items in the financial report are filed by a Participant with the Trustee within 60 days after the report is sent by the Trustee, the report shall be deemed to have been approved with the same effect as though judicially approved by a court of competent jurisdiction in a proceeding in which all persons interested were made parties and were properly represented before such court, and, to the fullest extent permitted by applicable law, the Trustee shall be released and discharged from liability and accountability with respect to the propriety of its acts and transactions disclosed in the report. Any such written objection shall apply only to the proportionate share of the Participant on whose behalf the objection is filed and shall not affect the proportionate share of any other Participant. The Trustee shall, in any event, have the right to a settlement of its accounts in a judicial proceeding if it so elects.

(c) Except as otherwise required by this Declaration of Trust or applicable law which cannot be waived, the Trustee shall have no obligation to render an accounting to any Participant or beneficiary thereof.

5.07 Judicial Accounting. In any case where applicable law provides for the judicial accounting of the Trustee's account with respect to a Fund, or for any other action to be brought against the Trustee with respect to a Fund or the Trustee's actions as Trustee, only the Trustee and any Participant of the Fund of record may require such a judicial settlement of the Trustee's account or bring such other action. In any such action or proceeding it shall be necessary to join as parties only the Trustee and such persons, and any judgment or decree which may be entered therein shall be conclusive and binding on all persons.

ARTICLE 6- CONCERNING THE TRUSTEE

6.01 Merger, Consolidation of and Successor to Trustee. Any corporation, limited liability company, partnership, business trust, association, or other entity (i) into which SSBT may be merged or with which it may be consolidated, (ii) resulting from any merger, consolidation, or reorganization to which SSBT may be a party, or (iii) to which all or any part of SSBT's fiduciary business which includes the Funds may be transferred shall become successor Trustee, and shall have all the rights, powers, and obligations of the Trustee under this Declaration of Trust, without the necessity of executing any instrument or performing any further act or obtaining the approval or consent of Participants. SSBT may also appoint any bank, trust company, corporation, limited liability company, partnership, business trust, association, or other entity with the power to act as Trustee under applicable law, which may or may not be an Affiliate of the Trustee, to act as successor Trustee for any or all Funds, in which case SSBT shall cease to act as Trustee for such Funds, and any such entity shall become the sole Trustee for any such Funds and shall have all the rights, powers, and obligations of the Trustee under this Declaration of Trust, without the necessity of executing any instrument or performing any further act or obtaining the approval or consent of any Participant. In any such event, all references to SSBT herein shall be deemed to be references to such successor entity. The Trustee shall, if practicable under the circumstances, provide the Investing Fiduciary of each Participant (or if such Investing Fiduciary is SSBT, to the Qualified Investor Signatory) subject to any of the foregoing actions not less than 30 days' written notice prior to the effectuation of any such action.

6.02 Discretion of Trustee. The discretion of the Trustee, when exercised in good faith and with reasonable care under the circumstances then prevailing, shall be final and conclusive and binding upon each Participant and all persons interested therein. The Trustee shall act with the degree of care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

6.03 Limitation on Liability and Indemnification. The Trustee shall not be liable for any loss, liability, expense, claim, or damages incurred by any Fund arising out of, or relating to, any action or omission of the Trustee, including without limitation, by reason of the purchase, retention, sale, or exchange of any securities or other investments by a Fund, except to the extent, and then only to the extent, such loss, liability, expense, claim, or damages shall have been determined, by a court of competent jurisdiction in a non-appealable judgment, to have been caused by the Trustee's breach of Section 6.02 hereof or breach of fiduciary duty under ERISA, willful misconduct, or lack of good faith, and, in any event, the Trustee shall not be liable for any loss, liability, expense, claim, or damages arising out of, or relating to, any mistake made by the Trustee in good faith in the administration or operation of any Fund if, promptly after discovering the mistake, the Trustee takes whatever action the Trustee, in its sole discretion, may deem to be practicable under the circumstances to remedy the mistake. To the fullest extent permitted by applicable law, SSBT (and its Affiliates, and the directors, officers, and employees of SSBT and its Affiliates and their respective heirs, estates, successors, and assigns) shall be held harmless and indemnified out of the securities, cash and other assets of the Trust for any losses, liabilities, expenses, claims, and damages it (or they) may incur (including without limitation the reasonable legal and other fees and expenses of defending any claim brought with respect to any action so taken or omitted) by reason of any action taken or omitted to be taken by it (or them) hereunder except to the extent any such loss, liability, expense, claim, or damage

shall have been determined, by a court of competent jurisdiction in a non-appealable judgment, to have been caused by its (or their) breach of Section 6.02 hereof or breach of fiduciary duty under ERISA, willful misconduct, or lack of good faith. A claim shall include, without limitation, all lawsuits, legal proceedings, governmental investigations, proceedings, and other actions at law or in equity. Expenses, including counsel fees, so incurred by any such person or entity (but excluding amounts paid in satisfaction of judgments, in compromise, or as fines or penalties), shall be paid from time to time by the Trust in advance of the final disposition of any such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such person or entity to repay amounts so paid to the Trust, with interest thereon, if it is ultimately determined, by a court of competent jurisdiction in a non-appealable judgment, that indemnification of such expenses is not authorized under this Article.

The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which any person or entity may be entitled.

6.04 Trustee Compensation. The Trustee may charge and pay from a Fund and/or each Class of a Fund, as the case may be, reasonable compensation, fees and expenses for its services in managing and administering the Fund and/or such Class, which may include, without limitation, any compensation, fees and other charges and expenses payable to a sub-advisor, custodian service provider, or other agent that are borne by the Trustee. In addition to the foregoing, each Fund shall also pay or bear its allocable share of any compensation, fees, charges and expenses (including compensation, fees, charges and expenses payable to the Trustee or any Affiliate) charged to any pooled investment fund, common trust fund, collective investment trust or fund, registered or unregistered investment company, or other investment vehicle in which the Fund may have invested, including without limitation, any Affiliate (collectively, the "Other Investment Funds") without any reimbursement or repayment by the Other Investment Funds or by any trustee, investment adviser, investment manager, custodian, or agent or service provider of the Other Investment Funds of any such compensation, fees, charges or expenses, to the extent permitted by applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof.

6.05 Trustee's Authority. No person dealing with the Trustee shall be under any obligation to inquire regarding the authority of the Trustee, the validity or propriety of any transaction engaged in by the Trustee, or the application of any payment made to the Trustee.

6.06 Reliance on Experts and Others. The Trustee shall, in the performance of its duties, be fully protected by relying in good faith upon the books of account or other records of the Fund, or upon reports made to the Trustee by (a) any of the officers or employees of SSBT or any of its Affiliates, (b) the custodians, depositories, or pricing or valuation agents of the Fund, or (c) any investment manager, investment advisers, custodians, auditors, accountants, tax return preparers, attorneys, appraisers, or other agents, experts and service providers, or consultants to the Fund or the Trustee, any or all of which may be the Trustee or any Affiliate. The Trustee and the officers, employees, and agents of the Trustee may take advice of counsel (which may be SSBT's own internal counsel) with respect to the meaning and operation of this Declaration of Trust or any Fund Declaration or Class Description applicable to a Fund, or with respect to the interpretation and application of law to each Fund and Class thereof, and shall be fully protected and under no liability for any act or omission in reliance upon such advice. The exercise by the

Trustee of its powers and discretions hereunder and the construction in good faith by the Trustee of the meaning or effect of any provisions of this Declaration of Trust and any Fund Declaration, Strategy Disclosure Document, Class Description or any document governing a Participant shall be binding upon everyone interested.

6.07 Reliance on Communications. The Trustee shall be fully protected in acting upon any writing, instrument, certificate, document, facsimile or electronic mail, reproduction, image, or transmission believed by it to be genuine and to be signed, presented or transmitted by the proper person or persons (including, without limitation, the Participants. The Trustee shall have no duty to make an investigation or inquiry as to any statement contained in any such writing or transmission, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained. Notwithstanding anything to the contrary contained herein and without limiting the foregoing, any such writing, instrument, certificate, or document may be proved by original copy or reproduced copy thereof, including without limitation a photocopy, a facsimile transmission, an electronic image, or any other electronic reproduction, and the Trustee may rely on the same as if it had received the original signed writing, instrument, certificate, or document. The Trustee may, in its sole discretion, give the same effect to a telephonic instruction, voice recording, or any instruction received through electronic commerce or other electronic means as it gives to a written instruction, and the Trustee's action in doing so shall be protected to the same extent as if such telephonic or electronic instructions were, in fact, a written instruction. Without limiting the foregoing, such instruction may be proved by audio-recorded tape, electronic reproduction, or other means acceptable to the Trustee, as the case may be. If the Trustee receives any instruction, or other information that is, as determined by the Trustee in its sole discretion, incomplete or not clear, the Trustee may request instructions or other information from the person or entity providing such instructions or information, including from brokers, stock exchanges, or other market participants. Pending receipt of any such instructions or other information, the Trustee shall not be liable to anyone for any loss resulting from delay, action, or inaction on the part of the Trustee.

6.08 Action by Trustee. The Trustee may exercise its rights and powers and perform its duties hereunder through any of its officers and employees. However, the Trustee solely shall be responsible for the performance of all rights and responsibilities conferred on it as Trustee hereunder, and no such officer or employee individually shall be deemed to have any fiduciary authority or responsibility with respect to any Fund, except to the extent specifically provided under ERISA.

ARTICLE 7- AMENDMENT, MERGER AND TERMINATION

7.01 Amendment. The Trustee may amend this Declaration of Trust, the Fund Declaration and any Strategy Disclosure Document of a Fund, or the Class Description with respect to an existing Class of a Fund at any time. Any such amendment shall take effect as of the date specified by the Trustee, which shall be no earlier than 30 days after the Trustee gives notice of such amendment in accordance with Section 7.03; provided, however, that if the Trustee determines in its discretion that such amendment will not have a material adverse effect on affected Participants or provides amended, modified, or supplemental information with respect to the investment policies of a Fund, the effective date specified by the Trustee may be any date on, before, or after such notice. No approval or consent shall be required from any

affected Participant to effect any amendment. Any amendment adopted by the Trustee shall be binding upon each Participant and all persons interested therein.

7.02 Merger and Termination. As of any Valuation Date, the Trustee may cause any Fund to be merged with or into any other collective investment trust or series thereof or similar pooled fund (including, without limitation, any other Fund or other collective investment trust or series thereof or similar pooled fund maintained by the Trustee or any of its Affiliates) (each other collective investment trust or series thereof or similar pooled fund (other than a Fund) is referred to as, an "Other Fund"). For the purpose of this Section 7.02, a Fund or Other Fund that does not survive the merger and is terminated shall be referred to as the Merging Fund, and a Fund or Other Fund that survives the merger shall be referred to as the Surviving Fund. Any such merger shall be effected by the Merging Fund contributing its assets in-kind to the Surviving Fund in exchange for Units or beneficial interests in the Surviving Fund, as the case may be, followed by the termination of the Merging Fund and a distribution in-kind of Units or the beneficial interests in the Surviving Fund (or any class thereof), as the case may be, held by the Merging Fund to the participating trusts in the Merging Fund. If a Fund is the Surviving Fund, the participants in the Merging Fund that are Qualified Trusts shall, as of the date of such merger, receive Units in the Surviving Fund (or any Class thereof designated by the Trustee) as determined by the Trustee in its discretion in exchange for the Units or beneficial interests of such Merging Fund (or any class thereof), as the case may be, held by such participants immediately prior to such merger. If a Fund is the Merging Fund, the Participants in such Fund shall, as of the date of such merger, receive Units or beneficial interests in the Surviving Fund (or any class thereof), as the case may be, in exchange for the Units of such Fund (or any Class thereof) held by such Participants immediately prior to such merger. In connection with any merger pursuant to this Section, Units in a Fund (or any Class thereof) or beneficial interests in an Other Fund (or any class thereof) shall be valued on such reasonable basis as may be determined by the Trustee of the Fund or the trustee of the Other Fund, as the case may be, including for this purpose on the basis of the net asset value of the respective Units (or any Class thereof) of the Fund and net asset value of the respective beneficial interests of the Other Fund (or any class thereof), on the date of the merger. The Trustee shall provide the Participants subject to any such merger written notice of any such merger, which notice shall be provided at least 30 days prior to the merger; provided, however that if the Trustee determines that such merger will not have a material adverse effect on affected Participants, the effective date of such merger may be any date on, before, or after such notice. The Trustee or any successor Trustee shall not be required to obtain the approval or consent of any Participants in connection with any such merger.

Subject to the terms of the Fund Declaration applicable to a Fund, the Trustee may, on any Valuation Date, without advance notice to any person, terminate a Fund (or any Class thereof), and thereupon the value of each Unit in such Fund (or in such Class) shall be determined and there shall be distributed to each Participant in cash or in kind or partly in cash and partly in kind a sum arrived at by multiplying the number of Units in the account of each Participant by the value of each Unit at the close of business on such Valuation Date all as provided in Article 5.

7.03 Notices. The Trustee shall give written notice of any amendment or merger (to the extent required by Section 7.01 or Section 7.02, as applicable), or of the termination of a

Fund (or any Class thereof), to each affected Participant of record. Any such notice or other notice or communication required or permitted hereunder shall be deemed to have been given at the time the Trustee (a) delivers the notice personally, (b) mails the notice first class, postage prepaid, registered or certified, (c) delivers the notice by overnight courier, (d) transmits the notice by telecopier or facsimile transmission, (e) transmits the notice electronically, including without limitation by means of electronic mail or other electronic means, in each case (a) through (e) to the current address, facsimile number, internet address, website, or other electronic address of the appropriate recipient as shown on the Trustee's records, or (f) posts the notice on any website maintained and/or made available by the Trustee to Participants (such as "Client Corner" or such other application or website maintained by or on behalf of State Street from time to time) and transmits a notice describing the topic of the website posting to the current address, facsimile number, internet address, website, or other electronic address of the appropriate recipient as shown on the Trustee's records. Notices or communications required or permitted hereunder may be provided as part of any financial reports provided by the Trustee hereunder. The Trustee shall not be required to provide notice of any amendment or termination of a Fund to any Participant if such Participant is not participating in such Fund.

ARTICLE 8- LIQUIDATING ACCOUNTS AND DEDICATED ACCOUNTS

8.01 Establishment.

(a) The Trustee may in its sole discretion, from time to time, transfer to a Liquidating Account any illiquid, impaired, or defaulted investment of a Fund, any investment of a Fund that the Trustee determines is not readily capable of being correctly, accurately, and/or appropriately valued, or any securities loans and the related cash collateral and the rights and obligations pertaining thereto that cannot be readily terminated or closed out or that can be terminated or closed out only at an anticipated or actual loss. The primary purpose of each Liquidating Account shall be to facilitate the liquidation, pricing, and/or termination or close-out of the assets and any related transactions and agreements contained therein or held thereunder for the benefit of the Participants holding an undivided beneficial interest therein. The period during which the Trustee may continue to hold any such assets shall rest in its sole discretion.

(b) The Trustee may, to the extent permitted by applicable law, also in its sole discretion, from time to time, establish one or more Dedicated Accounts related to a Fund to receive and hold cash, securities, or other assets (the "Dedicated Assets") received from, and other investments made for the benefit of, one or more specific Participants, to convert the Dedicated Assets into securities or other assets which the Trustee considers suitable for such Fund, or in connection with the distribution or withdrawal of cash, securities, or other investments held for the benefit of the Participants holding a beneficial interest in such Dedicated Account, the conversion of such Dedicated Assets into cash, securities or other assets for distribution to the Participants holding a beneficial interest in such Dedicated Account, or for such other purposes as the Trustee shall deem appropriate.

(c) Each Liquidating Account or Dedicated Account shall be maintained and administered solely for the ratable benefit of the Participants whose cash, securities, or

other assets have been transferred thereto or deposited therein and each Participant whose cash, securities, or other assets have been transferred thereto or deposited therein shall have a beneficial interest therein equal to the portion of such account represented by the value of the assets so transferred or deposited.

8.02 Additional Powers and Duties of Trustee. The Trustee shall have, in addition to all of the powers granted to it by law and by the terms of this Declaration of Trust, each and every discretionary power of management of the cash, securities and other assets contained in a Liquidating Account or a Dedicated Account (and of all income on or proceeds of such assets) which the Trustee shall deem necessary or appropriate to accomplish the purposes of such Liquidating Account or Dedicated Account. At the time of the establishment of a Liquidating Account or a Dedicated Account, and upon each deposit of additional money to any such Dedicated Account, the Trustee shall prepare a schedule showing the interest of each Participant therein. When the cash, securities and other assets of such Liquidating Account or Dedicated Account shall have been completely distributed, such schedule shall be thereafter held as part of the permanent records of the Fund to which the Liquidating Account or Dedicated Account relates. The Trustee shall include in any report of audit for a Fund a report for each related Liquidating Account and Dedicated Account established hereunder. For purposes hereof, the value of assets transferred to or held in a Liquidating Account or Dedicated Account (and the beneficial interest of any Participant therein) may be based upon value as provided in Section 5.01, or amortized cost, or book value, as determined by the Trustee in its sole discretion.

8.03 Limitation on Contributions to Liquidating Account. No further contributions shall be made to any Liquidating Account after its establishment, except that the Trustee shall have the power and authority, if in the Trustee's reasonable opinion such action is advisable for the protection of any asset held therein, to borrow from others (to be secured by the assets held in such Liquidating Account), including the Trustee or its Affiliates, to the extent permitted by applicable law, including ERISA and any applicable exemptions from the prohibited transaction provisions thereof, and to make and renew such note or notes therefor as the Trustee may determine.

8.04 Distributions. The Trustee may make distributions from a Dedicated Account or Liquidating Account in cash or in kind or partly in cash and partly in kind or in any other manner consistent with applicable law, and, except as otherwise provided in the Fund Declaration with respect to the Fund or Class to which such Dedicated Account or Liquidating Account relates, the time and manner of making all such distributions shall rest in the sole discretion of the Trustee. Income, gains, and losses attributable to a Dedicated Account or Liquidating Account shall be allocated among the Participants which hold a beneficial interest in such Dedicated Account or Liquidating Account, in proportion to such respective beneficial interests. Notwithstanding anything to the contrary elsewhere herein, with respect to a Dedicated Account established to pay the Participants for the withdrawal of Units from the Fund pursuant to Section 3.03 hereof, the Trustee shall have satisfied its obligation to the Participants to pay the amount due upon withdrawal as long as (i) the Trustee has transferred to the Dedicated Account, as soon as reasonably practicable after the applicable Valuation Date which has established the value of the Units of the Fund so withdrawn, securities and other assets with a fair market value or a fair value (as the case may be), as of the applicable Valuation Date before consideration of

applicable transaction expenses (as described in Section 8.06) equal to the value of the Units so withdrawn, and (ii) the Trustee pays out to the Participants the net proceeds realized upon the sale, disposition, or liquidation of the securities and assets in such Dedicated Account as provided in this Section, after applying allocable expenses and satisfying any obligations, within a reasonable time after the sale, disposition or liquidation of such securities and other assets by such Dedicated Account.

8.05 Effect of Establishing Liquidating Accounts and Dedicated Accounts. After an asset of a Fund has been set apart in a Liquidating Account or when assets of one or more Participants are held in a Dedicated Account, such assets shall be subject to the provisions of this Article, but such assets shall also be subject to all other provisions of this Declaration of Trust insofar as the same shall be applicable thereto and not inconsistent with the provisions of this Article. Without limiting the general application of the foregoing, the limitation on liability and indemnification provisions of Section 6.03 shall apply to each Liquidating Account and Dedicated Account to the same extent as such provisions apply to a Fund. For purposes of determining the value of the Units of a Fund and the income, gains, or losses of a Fund that are allocated among Participants pursuant to the other provisions of this Declaration of Trust, the value, income, gains, or losses of any assets held in any Liquidating Account or Dedicated Account shall be excluded. As of any subsequent Valuation Date selected by the Trustee in its sole discretion, any assets held in a Dedicated Account may be valued in accordance with Section 5.01 and transferred by the Trustee to the appropriate Fund, in which event the Participants which hold a beneficial interest in such Dedicated Account shall be allocated in proportion to their respective beneficial interests such number of Units of such Fund as would be issued if the assets so transferred from the Dedicated Account were treated as a deposit to the Fund pursuant to Section 3.01. The Participants with a beneficial interest in any Liquidating Account or Dedicated Account shall bear all market, credit, and other investment risks with respect to the assets held in any such Liquidating Account or Dedicated Account.

8.06 Fees and Expenses. Each Liquidating Account and Dedicated Account shall be charged with the expenses and charges attributable to the administration and management of such account and with regard to the purchase, sale or other disposition of securities and other assets held in any such Dedicated Account or Liquidating Account (including, but not limited to, brokerage fees, settlement charges, stamp taxes, duty, stock listing and related expenses, attorneys' fees and auditing fees). Such Liquidating Accounts and Dedicated Accounts shall remain as part of the assets of the applicable Fund or Class or Classes, as the case may be, for purposes of determining the fee payable to the Trustee in accordance with such fee schedule as may apply from time to time, and with regard to any other fees and expenses otherwise attributable to the applicable Fund or Class or Classes, as the case may be.

ARTICLE 9- GENERAL PROVISIONS

9.01 No Diversion; Assignment Prohibited.

(a) In accordance with Revenue Ruling 2011-1, no part of the corpus or income of any Fund which equitably belongs to a Participant shall be used for, or diverted to, any purposes other than for the exclusive benefit of its participants and their beneficiaries.

(b) No Participant may assign, transfer, or sell Units or any interest therein.

(c) No part of the Fund which equitably belongs to a Participant shall be subject to any legal process, levy of execution, or attachment or garnishment proceedings for payment of any claim against any such Participant or any beneficiary thereof.

9.02 Governing Law. The powers and duties of the Trustee, administration of the Fund and all questions of interpretation of this Declaration of Trust shall be governed by ERISA, as amended, and to the extent permitted by such law, by the laws of the Commonwealth of Massachusetts. The Trust established by this Declaration of Trust is organized in the United States and will be maintained at all times as a domestic trust in the United States.

9.03 ERISA.

(a) To the extent that assets of a Fund constitute ERISA plan assets, the Trustee hereby acknowledges its status as a fiduciary under ERISA with respect to each Participant subject to Title I of ERISA, and the provisions of this Section 9.03 shall apply.

(b) The Trustee shall not cause the Trust to enter into any transaction that would constitute a non-exempt "prohibited transaction" under Section 406 of ERISA, and in connection with its management of the Trust and the Funds shall, as necessary or applicable with respect to a given transaction, rely upon relevant statutory or administrative prohibited transaction exemptions, including, without limitation, ERISA Prohibited Transaction Class Exemptions 91-38, 77-4, 84-14, 86-128, 2002-12 or any other applicable exemption.

(c) Any securities lending activities conducted by the Trustee in accordance with Section 4.01(b) shall comply with ERISA Prohibited Transaction Class Exemption 2006-16, 2002-30, or any other applicable exemption.

(d) To the extent that SSBT or any Affiliate lends money to any Fund in accordance with Section 4.03, such loan will be on an interest-free basis and will be otherwise consistent with the requirements of Prohibited Transaction Class Exemption 80-26. Notwithstanding the foregoing, the Trustee may charge for advances made to provide overdraft protection, but only to the extent permitted by ERISA.

(e) The Trustee shall provide the Investing Fiduciary with information that is in its possession that is reasonably designed to satisfy the reporting and disclosure requirements of ERISA and the regulations thereunder, including without limitation the disclosures required to satisfy Section 408(b)(2) of ERISA.

9.04 Inspection. A copy of this Declaration of Trust shall be kept on file at the principal office of the Trustee, available for inspection during normal business hours. A copy of this Declaration of Trust shall be sent upon request to any Participant, and, at the discretion of the Trustee, shall be furnished to any other person upon request for a reasonable charge.

9.05 Titles. The titles and headings in this Declaration of Trust are for convenience and reference only, and shall not limit or affect in any manner any provision contained therein.

9.06 Invalid Provisions. If any provision contained in this Declaration of Trust is illegal, null, or void, unenforceable, or against public policy, the remaining provisions hereof shall not be affected.

9.07 Status of Instrument. This instrument contains the provisions of this Declaration of Trust as of the date specified below.

IN WITNESS WHEREOF, STATE STREET BANK AND TRUST COMPANY hereby ratifies, approves and confirms this Declaration of Trust entitled Fifth Amended and Restated Declaration of Trust of State Street Bank and Trust Company Investment Funds for Tax Exempt Retirement Plans Declaration of Trust as of the 30th day of September, 2011.

STATE STREET BANK AND TRUST COMPANY

By: _____
Name: Ellen M. Needham
Title: Senior Vice President

Date: September 30, 2011

Attest:
By: _____
Name: Stephanie W. Berdik
Title: Vice President

The foregoing Declaration of Trust was approved by a resolution of a duly authorized committee of the Board of Directors of STATE STREET BANK AND TRUST COMPANY adopted at a meeting therefore held.

APPENDIX A

STATE STREET BANK AND TRUST COMPANY
INVESTMENT FUNDS FOR TAX EXEMPT RETIREMENT PLANS

SPECIAL PROVISIONS RELATING SOLELY TO SHORT-TERM INVESTMENT FUNDS

A.1 Establishment of STIFs. This Appendix establishes special rules governing the establishment and operation of Funds which are short-term investment funds (each a "STIF"). The Fund Declaration that establishes a STIF shall state that the Fund established thereunder is a STIF, in which case such Fund shall be subject to the following provisions and, to the extent not inconsistent with this Appendix, the generally applicable provisions of the Declaration of Trust.

A.2 Investment of STIF Assets. Unless otherwise specified in a Fund Declaration for a STIF, each STIF shall maintain a dollar-weighted average portfolio maturity of 90 days or less, shall hold the Fund's assets until maturity under usual circumstances, and shall be invested and reinvested primarily in the following investments, irrespective of whether such securities or such assets are of the character authorized by any state law from time to time for trust investments, and without regard to the proportion any such assets or interest may bear to such STIF: bonds, debentures, notes (including structured notes), mortgages, commercial paper, money market instruments, and all other evidences of indebtedness or ownership, trust and participation certificates, certificates of deposit, demand or time deposits (including any such deposits bearing a reasonable rate of interest in the banking department of the Trustee or any Affiliate), bankers' acceptances, variable and indexed interest notes and investment contracts, swap contracts, repurchase agreements and reverse repurchase agreements, variable rate notes, beneficial interests in any trusts (including structured trusts), equipment trust certificates, foreign currencies, contracts for the immediate or future delivery of currency, financial instruments, securities, or other assets or property, options on futures contracts, spot and forward contracts, puts, calls, straddles, spreads, or any combination thereof. Such investments may be made directly or indirectly by the STIF's investment in interests or shares of investment funds having in the Trustee's judgment investment characteristics generally similar to those of the STIF, including, without limitation, limited partnerships, limited liability companies, or other companies, trusts, or other entities, whether registered or exempt or excepted from registration under the Investment Company Act, or common trust funds or collective investment trusts which are exempt from tax under applicable Internal Revenue Service rulings and regulations (including, without limitation, any collective investment trusts maintained by SSBT or any of its Affiliates).

A.3 Valuation of STIF Assets. With regard to a STIF, "Valuation Date" shall mean each Business Day, except as otherwise provided in the applicable Fund Declaration or as determined by the Trustee pursuant to the provisions of the Declaration of Trust. The securities and other assets of each STIF shall be valued in accordance with the amortized cost method; provided that this rule shall not apply if the Trustee determines that the special circumstances

described in Section A.6 hereof are present and require or permit, as the case may be, application of the rules set forth therein.

A.4 Valuation of STIF Units. The Units of each STIF shall be valued and the income of each STIF shall be apportioned in the following manner. The value of each Unit of a STIF shall be one dollar ($1.00) (or such other constant amount as the Trustee may specify). As of the close of business on each Valuation Date, all net income and net realized gains of a STIF, as determined by the Trustee in its reasonable discretion, in accordance with rules intended to account for charges and expenses payable by such STIF and, to the extent practicable, to preserve the Unit value of such STIF at one dollar ($1.00) (or such other constant amount as the Trustee may specify from time to time) shall be allocated among the Participants in such STIF in proportion to the number of Units of each Participant in such STIF and shall be reinvested on behalf of each such Participant in new Units of such STIF. The Trustee may determine in its sole discretion from time to time, that preserving the Unit value of a STIF at a constant amount or at one dollar ($1.00) is unfair, impractical, or inappropriate and may allow such value to fluctuate.

A.5 Deposits in and Withdrawals from a STIF. The Trustee may designate from time to time the Valuation Dates as of which deposits in, and withdrawals from, a STIF may be made. The Trustee may from time to time establish rules for deposits which provide that a Participant shall not participate in the net income of a STIF with regard to the amount being deposited by such Participant unless and until such deposit satisfies such requirements as the Trustee may specify with regard to the time and manner of such deposit. The Trustee may, in its sole discretion, accept deposits in a STIF in a form other than money, provided that such deposits shall be in securities and other assets that are permissible investments for such STIF and that such securities and other assets shall be valued as provided in Section A.4 or Section A.6 hereof, as applicable. In any case in which the Trustee, in its sole discretion, makes a distribution from a STIF (partly or wholly) in kind, the securities and other assets so distributed shall be valued as provided in Section A.4 or A.6 hereof, as applicable.

A.6 Special Circumstances. Notwithstanding the preceding provisions of this Appendix or any other provision of the Declaration of Trust or any applicable Fund Declaration, the following shall apply in the case of the special circumstances described in this Section. The Trustee may determine in its sole discretion that application of some or all of the other provisions of this Appendix and the Declaration of Trust (including, without limitation, where applicable, the rules of Section A.3 and/or A.4) or any applicable Fund Declaration may cause a material dilution or other unfair result to Participants proposing to acquire Units in a Fund, or an adverse impact on a Fund, and in such event the Trustee reserves the right to adjust the valuation of Units or assets of such Fund, or to take such other action that it deems appropriate to eliminate or reduce such dilution or other unfair result, to the extent reasonably practicable, including, without limitation, reducing or eliminating the amount of income credited to or payable with respect to each Unit of such Fund, or applying net realized losses to offset net realized gains as of the Valuation Date such losses are realized or on subsequent Valuation Dates, or suspending deposits or withdrawals in whole or in part. If the Trustee determines that such action is appropriate to reduce or eliminate the potential for material dilution or other unfair result or an adverse impact on a Fund, one or more Participants proposing to acquire interests in a Fund, then the Trustee may adjust the valuation of the Units of one or more Participants that are being

withdrawn as of a Valuation Date, and/or the Units in such Fund that are being credited as a result of a deposit as of a Valuation Date, even though the value of Units of one or more other Participants in the same Fund which are being withdrawn as of such Valuation Date and/or Units in the same Fund which are being credited as a result of a deposit as of such Valuation Date is not so adjusted or is adjusted on a different basis. In determining the fair value of securities and other assets of a Fund in the case of special circumstances described in this Section, the valuation rules described in Section 5.01 of this Declaration of Trust shall apply.

A.7 Termination of STIF. In valuing the Units of a STIF in connection with the termination of such STIF pursuant to Section 7.02 of this Declaration of Trust, the rules of Section A.4 or A.6 hereof shall apply, as applicable.

A.8 Liquidating Accounts and Dedicated Accounts. If any security or other asset of a STIF is transferred to a Liquidating Account or a Dedicated Account under Article 8, or if cash or other assets pending investment in a STIF are deposited in a Dedicated Account under Article 8 of this Declaration of Trust, the securities and other assets of such Liquidating Account or Dedicated Account may, in the Trustee's sole discretion, be valued based on the rules of Section A.3 or Section A.6 hereof.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, ET AL. Plaintiff, v. STATE STREET BANK AND TRUST COMPANY AND STATE STREET GLOBAL MARKETS LLC Defendants.	)	C.A. No. 11-cv-12049-MLW

AFFIDAVIT OF LISA B. DUNCAN
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Lisa B. Duncan states:

Background and Qualifications

1. I am a Vice President in the Institutional Investor Services ("IIS") Division of State Street Bank and Trust Company ("State Street"), which provides custodial banking services to institutional investors.

2. I am the relationship manager for the Citigroup 401(k) Plan (the "Citi Plan"). My responsibilities include providing custody, accounting, daily valuation and client service to the Citi Plan.

3. I submit this affidavit in support of Defendants' Motion to Dismiss the Complaint in the matter captioned above. I state in this affidavit the source of any information that is not based on personal knowledge.

State Street's Relationship to the Citi Plan

4. State Street provides custody services to institutional investors. These services are provided by divisions of State Street that are separate from the State Street divisions responsible for providing investment management services to collective funds and for executing foreign exchange transactions with custody clients of State Street.

5. During the alleged class period of January 1, 2001 through the present (the alleged "Class Period"), State Street provided custody services to the Citi Plan, which is alleged to be an ERISA defined contribution plan or 401(k) plan. Complaint ¶ 11.

6. Prior to December 8, 2008, State Street's responsibilities as custodian were set forth in a Custodian Contract Between Citigroup, Inc., Citibank, N.A. and State Street Bank and Trust Company dated January 1, 1999, pursuant to which the Citi Plan's sponsor and named fiduciaries appointed State Street to act solely as custodian of assets. A true and accurate copy of that custody contract is attached hereto as Exhibit A.

7. Since December 8, 2008, State Street's responsibilities as custodian have been set forth in a Defined Contribution Plan Trust Agreement Between Citigroup Inc. and State Street Bank and Trust Company, pursuant to which the Citi Plan's sponsor and named fiduciaries appointed State Street to act as custodian of assets and a directed trustee. A true and accurate copy of that agreement is attached hereto as Exhibit B.

8. During the Class Period, the named fiduciaries of the Citi Plan from time to time pursuant to written direction selected collective funds advised by State Street's separate State Street Global Advisors division ("SSgA") as Citi Plan investment options. They also selected as investment options various investment vehicles managed by third parties that are not affiliated with State Street. Citi Plan participants could choose such funds or investment vehicles as investments for their individual accounts.

9. During the Class Period, Plaintiff alleges Michael T. Cohn alleges that he selected two such collective funds for allocation of Citi Plan assets in his account (the "Citi Selected Funds"). Complaint ¶ 11.

[redacted]

[redacted]

I declare under penalty of perjury that the forgoing is true and correct to the best of my personal knowledge, information, and belief.

CUSTODIAN CONTRACT

Between

CITIGROUP INC.,

CITIBANK, N.A.

and

STATE STREET BANK AND TRUST COMPANY

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CUSTODIAN CONTRACT

This Contract between CITIGROUP INC. organized and existing under the laws of Delaware, having its principal place of business at New York, New York, USA, hereinafter called the "Company", CITIBANK, N.A. organized and existing under the laws of New York, having its principal place of business at New York, New York, USA, hereinafter called the "Trustee", and STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company, having its principal place of business at Boston, Massachusetts, USA, hereinafter called the "Custodian".

WITNESSETH:

That in consideration of the mutual covenants and agreements contained herein the Company, the Trustee and the Custodian agree as follows:

1. EMPLOYMENT OF CUSTODIAN AND PROPERTY TO BE HELD BY IT.

The Company hereby directs the Trustee to employ the Custodian as the custodian of certain assets of the Company, hereinafter called the "Account". All property delivered to the Custodian, its agents or its subcustodians shall be held and dealt with as hereinafter provided. The Custodian shall not be responsible for any property held or received by the Trustee and not delivered to the Custodian, its agents or its subcustodians.

2. <u>DUTIES OF THE CUSTODIAN WITH RESPECT TO PROPERTY OF THE COMPANY HELD BY THE CUSTODIAN</u>.

2.1 <u>Holding Securities</u>. The Custodian shall hold, or direct its agents or its subcustodians to hold, for the Account, all noncash property including all securities, other than securities which are held for the Account by the Custodian, its agents or subcustodians in the Federal Reserve book-entry system, in a clearing agency which acts as a securities depository or in another book-entry system for the central handling of securities collectively referred to herein as "Securities System".

2.2 <u>Delivery of Securities</u>. The Custodian shall release and deliver, or direct its agents or its subcustodians to release and deliver, securities of the Account held by the Custodian, its agents or its subcustodians or in a Securities System account of the Custodian, its agents or its subcustodians only upon receipt of Proper Instructions (as defined in Section 2.10 herein), which may be standing instructions when deemed appropriate by the parties in the following cases:

(a) Upon sale of such securities for the Account, unless otherwise directed by Proper Instructions; (i) in accordance with the customary or established practices and procedures in the jurisdiction or market where the transactions occur, including, without limitation, delivery to the purchaser thereof or to a dealer therefor (or an agent of such purchaser or dealer) against expectation of receiving later payment; or (ii) in the case of a sale effected through a Securities System, in accordance with the rules governing the operation of the Securities System;

(b) Upon the receipt of payment in connection with any repurchase agreement related to such securities;

(c) To the depository agent in connection with tender or other similar offers for securities of the Account;

(d) To the issuer thereof or its agent when such securities are called, redeemed, retired or otherwise become payable; provided that, unless otherwise directed by Proper Instructions, the cash or other consideration is to be delivered to the Custodian, its agents or its subcustodians;

(e) To the issuer thereof, or its agent, for transfer into the name of the Custodian or of any nominee of the Custodian or into the name or nominee name of any of its agents or subcustodians or for exchange for a different number of bonds, certificates or other evidence representing the same aggregate face amount or number of units;

(f) To brokers, clearing banks or other clearing agents for examination in accordance with "street delivery" custom;

(g) For exchange or conversion pursuant to any plan of merger, consolidation, recapitalization, reorganization or readjustment of the securities of the issuer of such securities, or pursuant to provisions for conversion contained in such securities, or pursuant to any deposit agreement; provided that, unless otherwise directed by Proper Instructions, the new securities and cash, if any, are to be delivered to the Custodian, its agents or its subcustodians;

(h) In the case of warrants, rights or similar securities, the surrender thereof in the exercise of such warrants, rights or similar securities or the surrender of interim receipts or temporary securities for definitive securities; provided that, unless otherwise directed by Proper Instructions, the new securities and cash, if any, are to be delivered to the Custodian, its agents or its subcustodians;

(i) For delivery as security in connection with any borrowings by the Trustee requiring a pledge of assets by the Trustee from the Account;

(j) In connection with trading in options and futures contracts, including delivery as original margin and variation margin;

(k) In connection with the loan of securities; and

(l) For any other purpose, but only upon receipt of Proper Instructions specifying the securities to be delivered and naming the person or persons to whom delivery of such securities shall be made.

2.3 Registration of Securities. Securities held by the Custodian, its agents or its subcustodians (other than bearer securities or securities held in a Securities System) shall be registered in the name of the Custodian or in the name of any nominee of the Custodian or in the name of any of its agents or its subcustodians or of their nominees. The Custodian, its agents and its subcustodians shall not be obligated to accept securities on behalf of the Account under the terms of this Contract unless such securities are in "street name" or other good delivery form.

2.4 Bank Accounts. The Custodian, its agents or its subcustodians may open and maintain a bank account or accounts in the name of the Company, Trustee, Custodian, subcustodian, their respective nominees or otherwise, in such banks or trust companies as they may in their discretion deem advisable (including a bank of the Custodian), subject only to draft or order by the Custodian, its agents or its subcustodians acting pursuant to the terms of this Contract, and shall hold in such

account or accounts, subject to the provisions hereof, cash received by or from or for the account of the Trustee. Such funds shall be deposited by the Custodian, its agents or its subcustodians in their capacity as Custodian, agent or subcustodian and, except as otherwise provided in this Contract, shall be withdrawable by the Custodian, its agents or its subcustodians only in that capacity.

2.5 Income and Settlement Crediting. Subject to Sections 2.5(a-c) below the Custodian shall credit or debit the appropriate cash account of the Trustee in connection with the purchase, sale, maturity, redemption, income, dividends or other disposition of securities and other assets held for the time being on behalf of the Company and Trustee in said accounts on an actual settlement basis. The collection of income due the Account on any securities loaned by the Account other than through the Custodian's Securities Lending Program shall be the responsibility of the Trustee and such income shall be credited upon actual receipt by the Custodian.

(a) The Custodian may make available provisional credit of settlement, maturity, redemption proceeds, income and dividends on a contractual settlement basis in markets deemed appropriate for such a practice by the Custodian. Income shall be credited contractually in markets identified on Schedule A, which may be amended from time to time. The Custodian reserves the right to reverse any such crediting at any time before actual receipt of the item associated with the credit when the Custodian determines that actual receipt will not be received in due course for such an item.

In such instances, the Custodian may charge the appropriate cash account of the Trustee for the expense of providing funds associated with such advance.

(b) In markets where the Custodian makes available the provisions of Section 2.5(a), the consideration payable in connection with a purchase transaction shall be debited from the appropriate cash account of the Trustee upon the contractual settlement date for the relevant purchase transaction. The Custodian shall promptly recredit such amount at the time that the Trustee notifies the Custodian by Proper Instruction that such transaction has been canceled.

(c) All credits made under Section 2.5(a) are made subject to actual collection. The Custodian shall not be liable to the Company or Trustee for any amount that is not actually collected in accordance with the terms of this Contract. The provisions of Section 2.5(a) are intended to facilitate settlement in ordinary course. The Custodian may terminate or suspend any part of the provision of the contractual settlement under Section 2.5(a) immediately upon notice to Company and Trustee, particularly in the event of force majeure affecting settlement, disorder in markets or with respect to particular investments or other changed external business circumstances. Any provisional credits provided under Section 2.5(a) shall be considered an advance of cash for purposes of Section 5 of this Contract to the extent that they cannot be reversed in accordance with the terms of Section 2.5(a).

2.6 Payment of Account Moneys. Only upon receipt of Proper Instructions and written agreement as to security procedures for payment orders, which may be standing instructions, or as may be otherwise authorized within this Contract, the Custodian shall pay out, or direct its agents or its subcustodians to pay out, moneys of the Account in the following cases:

(a) Upon the purchase of securities for the Account, unless otherwise directed by Proper Instructions; (i) in accordance with the customary or established practices and procedures

in the jurisdiction or market where the transactions occur, including, without limitation, delivering money to the seller thereof or to a dealer therefor (or an agent for such seller or dealer) against expectation of receiving later delivery of such securities; or (ii) in the case of a purchase effected through a Securities System, in accordance with the rules governing the operation of such Securities System;

(b) In connection with the conversion, exchange or surrender of securities of the Account as set forth in Section 2.2 hereof;

(c) For the payment of any expense or liability including but not limited to the following payments: interest, taxes, management, accounting, transfer agent and legal fees, and operating expenses;

(d) For the purchase or sale of foreign exchange or foreign exchange contracts for the Account, including transactions executed with or through the Custodian, its agents or its subcustodians.

(e) In connection with trading in options and futures contracts, including delivery as original margin and variation margin.

(f) In connection with the borrowing of securities.

(g) For any other purpose, but only upon receipt of Proper Instructions specifying the amount of such payment and naming the person or persons to whom such payment is to be made.

2.7 Appointment of Agents and Subcustodians. The Custodian may at its discretion appoint and remove agents or subcustodians to carry out such of the provisions of this Contract as the Custodian may from time to time direct; provided, however, that such appointment shall not relieve the Custodian of its responsibilities or liabilities under this Contract.

2.8 Proxies. The Custodian will, with respect to the securities held hereunder, cause to be promptly executed by the registered holder of such securities proxies received by the Custodian from its agents or its subcustodians or from issuers of the securities being held for the Account, without indication of the manner in which such proxies are to be voted, and, upon the receipt of Proper Instructions, shall promptly deliver such proxies, proxy soliciting materials and other notices relating to such securities.

2.9 Communications Relating to Account Securities. The Custodian shall transmit promptly to the Company, Trustee or Investment Manager (as defined in Section 8 herein) written information (including, without limitation, pendency of calls and maturities of securities and expirations of rights in connection therewith) received by the Custodian from its agents or its subcustodians or from issuers of the securities being held for the Account. With respect to tender or exchange offers, the Custodian shall transmit promptly to the Company, Trustee or Investment Manager written information received by the Custodian from its agents or its subcustodians or from issuers of the securities whose tender or exchange is sought or from the party (or his agents) making the tender or exchange offer. The Custodian shall not be liable for any untimely exercise of any

tender, exchange or other right or power in connection with securities or other property of the Account at any time held by it unless (i) it or its agents or subcustodians are in actual or effective possession of such securities or property and (ii) it receives Proper Instructions with regard to the exercise of any such right or power, and both (i) and (ii) occur at least three business days prior to Custodian's deadline date to exercise such right or power.

2.10 Proper Instructions. The term "Proper Instructions" shall mean instructions received by the Custodian from the Company, the Trustee, the Investment Manager, or any person duly authorized by any of them. Such instructions may be in writing signed by an authorized person or may be in a tested communication effected between electro-mechanical or electronic devices or by such other means as may be agreed to from time to time by the Custodian and the party giving such instructions (including, without limitation, oral instructions). The Company or Trustee shall cause their duly authorized officer, or the duly authorized officer of any Investment Manager, to certify to the Custodian in writing the names and specimen signatures of persons authorized to give Proper Instructions. The Custodian shall be entitled to rely upon the identity and authority of such persons

until it receives written notice from the Company, the Trustee or the Investment Manager to the contrary.

2.11 Actions Permitted without Express Authority. The Custodian may, at its discretion, without express authority from the Company, the Trustee or the Investment Manager:

(a) make payments to itself or others for minor expenses of handling securities or other similar items relating to its duties under this Contract, provided that all such payments shall be accounted for to the Company;

(b) surrender securities in temporary form for securities in definitive form;

(c) endorse for collection checks, drafts and other negotiable instruments; and

(d) in general attend to all nondiscretionary details in connection with the sale, exchange, substitution, purchase, transfer and other dealings with the securities and property of the Account.

2.12 Evidence of Authority. The Custodian shall be protected in acting upon any instruction, notice, request, consent, certificate or other instrument or paper reasonably believed by it to be genuine and to have been properly executed or otherwise given by or on behalf of the Company, the Trustee or an Investment Manager. The Custodian may receive and accept a certificate from the Company, the Trustee or an Investment Manager as conclusive evidence (i) of the authority of any person to act in accordance with such certificate or (ii) of any determination or of any action by the Company, the Trustee or the

Investment Manager as described in such certificate, and such certificate may be considered in full force and effect until receipt by the Custodian of written notice to the contrary.

3. REPORTING. The Custodian shall render to the Company or Trustee, as noted in instructions given to the Custodian, a monthly report of all monies received or paid on behalf of the Account and an itemized statement of the securities for which it is accountable under this Contract as of the end of each month, as well as a list of all securities transactions that remain unsettled at that time. Custodian has no duty to verify reports it incorporates regarding securities or cash held outside its custody submitted by third parties selected by the Company or the Trustee, including but not limited to brokers, other banks or trust companies

4. COMPENSATION OF CUSTODIAN. The Custodian shall be entitled to compensation for its services and expenses as Custodian set forth in a written Fee Schedule between the parties hereto until a different compensation shall be agreed upon in writing between the Company, the Trustee and the Custodian.

5. RESPONSIBILITY OF CUSTODIAN. The Custodian shall not be responsible for the title, validity or genuineness, including good deliverable form, of any property or evidence of title thereto received by it or delivered by it pursuant to this

Contract and shall be held harmless in acting upon any notice, request, consent, certificate or instrument reasonably believed by it to be genuine and to be signed or otherwise given by the proper party or parties. The Custodian shall be held to the exercise of reasonable care in carrying out the provisions of this Contract, but shall be kept indemnified by and shall be without liability to the Company or Trustee for any action taken or omitted by it in good faith and without negligence. The Custodian shall be without liability to the Company or Trustee for any loss resulting from or caused by: (i) events or circumstances beyond its reasonable control including, but not limited to nationalization, expropriation, currency restrictions, act of war or terrorism, riot, revolution, acts of God or other similar events or acts; (ii) errors by the Company or Trustee, or any Investment Manager in their instructions to the Custodian or (iii) acts or omissions by a Securities System. It shall be entitled to rely on and may act upon advice of counsel (who may be counsel for the Company) on all matters, and shall be without liability for any action reasonably taken or omitted pursuant to such advice.

If the Custodian advances cash or securities for any purpose, including the purchase or sale of foreign exchange or of contracts for foreign exchange, or in the event that the

Custodian shall incur or be assessed taxes, interest, charges, expenses, assessments, or other liabilities in connection with the performance of this Contract, except such as may arise from its own negligent action, or negligent omission, any property at any time held for the Company or Trustee in the Account shall be security therefor and, should the Company or Trustee fail to repay the Custodian promptly, the Custodian shall be entitled to utilize available cash and to dispose of the assets of the Company or Trustee held in the Account to the extent necessary to make itself whole.

Notwithstanding the foregoing, the Custodian shall indemnify and hold harmless the Company and the Trustee for any and all losses and liabilities which may arise as a result of this Contract due to the Custodian's negligence, wrongful acts or failure to act in a commercially reasonable manner upon receipt of a notice from the Company or the Trustee.

6. SECURITY CODES. If the Custodian has issued to the Company, the Trustee or to any Investment Manager appointed by the Company, security codes or passwords in order that the Custodian may verify that certain transmissions of information, including Proper Instructions, have been originated by the Company, the Trustee or the Investment Manager, as the case may be, the Custodian shall be kept indemnified by and be without liability

to the Company or Trustee for any action taken or omitted by it in reliance upon receipt by the Custodian of transmissions of information with the proper security code or password, including instructions purporting to be Proper Instructions, which the Custodian reasonably believes to be from the Company, Trustee or Investment Manager.

7. TAX LAW. The Custodian shall have no responsibility or liability for any obligations now or hereafter imposed on the Company, the Trustee, the Account or the Custodian as custodian of the Account by the tax law of the United States of America or any state or political subdivision thereof. It shall be the responsibility of the Company or Trustee to notify the Custodian of the obligations imposed on the Company, the Trustee, the Account or the Custodian as custodian of the Account by the tax law of jurisdictions other than those mentioned in the above sentence, including responsibility for withholding and other taxes, assessments or other governmental charges, certifications and governmental reporting. The sole responsibility of the Custodian with regard to such tax law shall be to use reasonable efforts to assist the Company and Trustee with respect to any claim for exemption or refund under the tax law of jurisdictions for which the Company has provided such information.

8. INVESTMENT MANAGER.

8.1 Appointment and Termination of Appointment. The Company at any time may appoint one or more Investment Managers to manage the investment of all or any portion of the Account. In such event, the Company shall notify the Custodian in writing of the appointment of such Investment Manager, and of the portion of the assets over which the Investment Manager may exercise its authority. The Company similarly shall notify the Custodian of the termination of the appointment of any Investment Manager.

8.2 Authority. The Custodian, in performing its duties under this Contract, shall be entitled to rely upon Proper Instructions from an Investment Manager, with such limitations as the Company and the Custodian by written agreement provide. In the absence of such limitations, the Custodian shall accept Proper Instructions from the Investment Manager to the same extent as the Custodian would be entitled to accept such Proper Instructions from the Company or Trustee if no Investment Manager had been appointed.

9. EFFECTIVE PERIOD, TERMINATION AND AMENDMENT. This Contract shall become effective as of the date hereinafter set forth, shall continue in full force and effect until terminated as hereinafter provided, may be amended at any time by mutual written agreement of the parties hereto, and may be terminated by

either party by an instrument in writing delivered or mailed, postage prepaid to the other party, such termination to take effect not sooner than ninety days after the date of such delivery or mailing, unless a different period is agreed to in writing by the parties.

The provisions of Sections 5, 6 and 7 of this Contract shall survive termination of this Contract for any reason. Upon termination of this Contract, the Company or Trustee shall pay to the Custodian upon demand such compensation as may be due in connection with such termination and shall likewise reimburse the Custodian for its costs, expenses and disbursements.

10. ACTION ON TERMINATION. If a successor custodian shall be appointed by the Company or Trustee (at the direction of the Company), the Custodian shall, within a reasonable time after termination, deliver to such successor custodian at the office of the Custodian, its agents or its subcustodians or as otherwise agreed, duly endorsed and in the form for transfer, all securities, funds and other property then held by it hereunder and shall transfer to an account of the successor custodian all of the Account's securities held in a Securities System.

If no such successor custodian shall be appointed, the Custodian shall, in like manner, upon receipt of Proper Instructions from the Company or Trustee, deliver at the office

of the Custodian, its agents or its subcustodians or as otherwise agreed and transfer such securities, funds and other property in accordance with such Proper Instructions.

In the event that no written order designating a successor custodian and no Proper Instructions as aforesaid shall have been delivered to the Custodian on or before the date when such termination shall become effective, the Custodian shall have the right to deliver to a bank or trust company of its own selection, having an aggregate capital, surplus, and undivided profits, as shown by its last published report of not less than $100,000,000, all securities, funds, and other property held by the Custodian. Thereafter, such bank or trust company shall be the successor of the Custodian under this Contract.

In the event that securities, funds and other property remain in the possession of the Custodian, its agents or its subcustodians after the date of termination hereof owing to failure of the Company or Trustee to appoint a successor custodian or to give the Proper Instructions referred to above, the Custodian shall be entitled to fair compensation for its services during such period as the Custodian retains possession of such securities, funds and other property and the provisions of this Contract relating to the duties and obligations of the Custodian shall remain in full force and effect.

11. REPRESENTATIONS AND WARRANTIES. The Company and Trustee represent and warrant to the Custodian that they have the power under their Articles of Incorporation and By-Laws (or equivalent) to enter into and perform their obligations under this Contract, and have duly executed this Contract so as to constitute valid and binding obligations of the Company or Trustee, as the case may be;

12. NOTICES. Notices and other writings shall be delivered or mailed postage prepaid:

To the Trustee:

Citibank, N.A.
399 Park Avenue
New York, NY 10043
Attn: james Hiseler

To the Company:

CITIGROUP INC.
Corporate Benefits
1 Court Square
15th Floor, Zone A
Long Island City, NY 11120
Attn: Timothy Peach

To the Custodian:

State Street Bank and Trust Company,
Westwood Division
P.O. Box 351
Specialized Trust Services
Boston, Massachusetts 02101-0351
ATTN: Kevin Smith, Fund Manager

or to such other address as the Company, Trustee or the Custodian may hereafter specify in writing.

Telephone and facsimile notices shall be sufficient if communicated to the party entitled to receive such notice at the following numbers:

If to Trustee:

Telephone (212) 657-2884 Facsimile (212) 657-3310

If to Company:

Telephone (718) 248-8983 Facsimile (718) 248-5090

If to Custodian:

Telephone (781) 302-6024 Facsimile (781) 302-8130

13. MASSACHUSETTS LAW TO APPLY. This Contract shall be construed and the provisions thereof interpreted under and in accordance with laws of the Commonwealth of Massachusetts. The Company hereby submits to the jurisdiction of the State and Federal courts located in Commonwealth of Massachusetts including any appellate courts thereof.

14. PRIOR CONTRACTS. This Contract supersedes and terminates, as of the date hereof, all prior contracts between the Company, the Trustee and the Custodian relating to the custody of the assets in the Account.

IN WITNESS WHEREOF, each of the parties has caused this instrument to be executed in its name and behalf by its duly authorized representative as of the 1st day of January, 1999.

ATTEST:

CITIGROUP INC.

BY: _____

TITLE: CORPORATE SECRETARY

ATTEST:

CITIBANK, N.A., as Trustee

BY: _____

TITLE: VICE PRESIDENT

ATTEST:

STATE STREET BANK AND TRUST COMPANY

BY: _____

Vice President

Citicus1
12/29/1998

REVIEWED
LEGAL DIVISION
By _____
Date _____

IMAGING SERVICES

Imaging folder: IIS NewClient/Scanned

NAME (Client Name) ___CitiGroup Inc_____

REFERENCE:
EFFECTIVE DATE OF DOCUMENT (mm/dd/yy) 12/1/08

(Entity/Description) __401(k) Plan Trust_____

SUBJECT Document type:

- ☐ ASSIGNMENT
- ☐ FTOP
- ☐ REMOTE ACCESS
- ☐ RESOLUTION
- ☐ FEE
- ☐ APPT INV MGR
- ☐ INCUMBENCY CERT
- ☐ SWEEP LTR
- ☐ TAX DET LTR
- ☐ W9
- ☐ CLASS ACTION LETTER
- ☐ PLAN DOCUMENT
- ☐ FORM 8821
- ☐ OFFERING MEMO
- ☐ CASH MGT SERVICE AUTH
- ☑ TRUST AGREEMENT
- ☐ CUSTODIAN AGREEMENT
- ☐ AUTHORIZED SIGNATURES
- ☐ AMENDMENT
- ☐ OPINION OF COUNSEL
- ☐ W8
- ☐ ADHOC LETTER
- ☐ ID AFFIRM LETTER
- ☐ RAA – 3rd Party Access 3rd party_____Fund _____
- ☐ OTHER: _____

NOTES:

IIS: Forward document & form to IIS Compliance, Vin Baldi, LCC/6. IIS Compliance: forward to Peter McKinney of Imaging Services. Imaging Services: forward to Samantha Beck, CPH/4.
Limited Access

DEFINED CONTRIBUTION PLAN
TRUST AGREEMENT

Between

CITIGROUP INC.

and

STATE STREET BANK AND TRUST COMPANY

STRDC3.DOC

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DEFINED CONTRIBUTION PLAN
TRUST AGREEMENT

Agreement (hereinafter referred to as the "Trust Agreement") made as of December 1, 2008, by and between CITIGROUP INC., a corporation organized under the laws of Delaware (hereinafter referred to as the "Company") and STATE STREET BANK AND TRUST COMPANY, a trust company organized under the laws of the Commonwealth of Massachusetts (hereinafter referred to as the "Trustee").

WITNESSETH:

WHEREAS, the Company maintains a certain tax-qualified plan known as the Citigroup 401(k) Plan (hereinafter referred to as the "Plan") for the exclusive benefit of certain of its employees and the employees of certain of its affiliates and subsidiaries;

WHEREAS, the Company has by Trust Agreement dated January 1, 2006 with Citibank, N.A., established a trust to serve as the funding vehicle for the Plan;

WHEREAS, the Company and Citibank, N.A., have by a custody agreement dated January 1, 1999, appointed State Street Bank and Trust Company Custodian of the assets of the Trust Agreement dated January 1, 2006 between Company and Citibank, N.A.;

WHEREAS, the Company has appointed State Street Bank and

Trust Company as successor trustee to Citibank, N.A. for all assets except the Qualifying Employer Securities (as defined below), effective December 8, 2008;

WHEREAS, the authority to conduct the general operation and administration of the Plan is vested in the person, committee or entity appointed under the Plan to serve as Plan Administrator of the Plan, who shall have the authorities and shall be subject to the duties with respect to the trust specified in the Plan and in this Trust Agreement;

WHEREAS, the Plan Administrator, as of the date of this Trust Agreement is the Plans Administration Committee of the Company;

WHEREAS, the authority with respect to the management, disposition and investment of the Plan is vested in the person, committee or entity appointed, in accordance with the Plan, to make and effect investment decisions under the Plan, who shall have the authorities and shall be subject to the duties with respect to the trust specified in the Plan and in this Trust Agreement;

WHEREAS, as of the date of this Trust Agreement the 401(k) Plan Investment Committee of the Company (the "Investment Committee") is appointed to make and effect investment decisions under the Plan;

WHEREAS, all qualifying employer securities within the

meaning of ERISA Section 407(d)(5) ("Qualifying Employer Securities") that will be, are or were contributed to the Plan, including those currently held as custodian under the custody agreement dated January 1, 1999, are held or retained by the Trustee solely as custodian ("Custodian"), exclusively under the terms of Section 15 herein with respect to such Qualifying Employer Securities, subject to the obligations of any agreement between the Company and a Bank or Trust Company assigning trustee duties to such entity with respect to such Qualifying Employer Securities ("Company Stock Trustee");

WHEREAS, in order to induce Trustee to enter into this agreement, prior to or concurrently with entering into this Agreement, the Company has entered into an agreement with Reliance Trust Company to serve as Company Stock Trustee, pursuant to Section 1.5 herein;

WHEREAS, the Company has appointed ING to provide recordkeeping and other administrative services other than those the Plan Administrator continues to perform for the Plan in such capacity, and any other person or entity hereafter engaged by the Company to provide such services, being hereinafter referred to as the "Recordkeeper";

WHEREAS, the Company and the Trustee desire to amend and restate the said Trust Agreement;

WHEREAS, except as to the Qualifying Employer Securities,

the Company and State Street Bank and Trust Company desire to terminate the custody agreement dated January 1, 1999, appointed State Street Bank and Trust Company Custodian of the assets of the trust agreement between Company and Citibank, N.A.; and

WHEREAS, as to the Qualifying Employer Securities, the Company and State Street Bank and Trust Company desire to amend and restate the terms of the custody agreement dated January 1, 1999, appointed State Street Bank and Trust Company Custodian of the assets of the trust agreement between Company and Citibank, N.A., herein as section 15.

NOW, THEREFORE, the Company and the Trustee do hereby amend and restate the said Trust Agreement and continue the trust as the funding vehicle for the Plan, upon the terms and conditions hereinafter set forth:

1. TRUST FUND

1.1 Trust Name. This Trust shall be known as the Citgroup 401(k) Plan Trust.

1.2 Receipt of Assets. The Trustee shall receive and accept for the purposes hereof all sums of money and other property paid to it by or at the direction of the Company (as defined herein), and shall hold, invest, reinvest, manage, administer and distribute such monies and other property and the increments, proceeds, earnings and income thereof pursuant to the terms of this Trust Agreement and for the exclusive benefit of

participants in the Plan and their beneficiaries. The Trustee need not inquire into the source of any money or property transferred to it nor into the authority or right of the transferor of such money or property to transfer such money or property to the Trustee. All Plan assets held by the Trustee in the trust pursuant to the provisions of this Trust Agreement at the time of reference are referred to herein as the "Trust Fund".

To the extent that any portion of the Trust Fund constitutes Qualifying Employer Securities that will be, are or were contributed to the Plan, such assets are held separately by State Street Bank and Trust Company solely as Custodian of such assets, pursuant to the separate Custodial Agreement in effect between the parties and dated as of January 1, 1999 which shall remain in full force and effect solely with respect to such Qualifying Employer Securities, and Trustee shall have no responsibility as trustee with respect to such Qualifying Employer Securities.

1.3 Plan. References in this Trust Agreement to the "Plan" shall, mean the tax-qualified employee benefit plan of the Company that has adopted the trust as the funding vehicle for such plan.

The Company shall be responsible for verifying that while any assets of the Plan are held in the Trust Fund, the Plan (i) is "qualified" with the meaning of Section 401(a) of the Code and, as a defined contribution plan either (x) the Plan provides

that each participant is a "named fiduciary" (as described in Section 402(a)(2) of the provisions of the Employee Retirement Income Security Act of 1974, as amended (referred to herein as "ERISA") who is duly authorized under the Plan to provide investment direction to the Recordkeeper, acting as agent for such participant, for conveyance to the Trustee or (y) the Plan is duly qualified as an "ERISA Section 404(c) Plan" described in 29 C.F.R. 2550.404c under which each participant is authorized to provide investment direction to the Recordkeeper, acting as agent for such Participant, for conveyance to the Trustee; (ii) is permitted by existing or future ruling of the United States Treasury Department to pool its funds in a group trust; (iii) permits its assets to be commingled for investment purposes with the assets of other such plans by investing such assets in this Trust Fund whether or not its assets will in fact be held in a separate investment fund; and (iv) the Plan does not prohibit the Company from appointing the Recordkeeper to perform daily recordkeeping services as described herein, and provides that Plan Administrator is the fiduciary responsible for carrying out participant investment directions.

1.4 Appointment of Recordkeeper. In order to effect the carrying out of participant investment directions pursuant to the Plan provisions, the Company has appointed Recordkeeper to perform certain services including but not limited to maintaining

participant accounts for all contributions, loans and loan repayments, rollovers, and other deposits made for the purpose of determining how such deposits are to be allocated to the Investment Funds of the Plan, for determining requirements for disbursements from or transfers among Investment Funds in accordance with the terms of the Plan, for maintaining participant records for the purpose of voting or tendering shares in an Investment Fund as described in Section 4.1 herein, for distributing information about the Investment Funds provided for under the Plan, and for distributing participant statements at periodic intervals. Company may appoint a successor Recordkeeper at any time, and shall provide Trustee notice in writing of such appointment as soon as practicable.

To the extent that all or part of the assets of the Trust Fund are to be invested according to the instructions of Plan participants, in accordance with the Plan and ERISA Section 404(c), the Trustee shall invest those assets in accordance with such instructions consistent with the investment choices and investment direction procedures authorized or prescribed by the Plan Administrator, or the Investment Committee (including directions on behalf of the participants by the Investment Committee or the delegated administrator of participant accounts), as conveyed by the Recordkeeper. Subject applicable law and regulation, the Trustee shall be under no duty or

obligation to review any investment to be acquired, held or disposed of pursuant to such directions, or to review any non-trustee related fees associated therewith, nor to make any recommendations with respect to the disposition or continued retention of any such investment, or to evaluate the performance of such investment, and the Trustee shall be fully protected in acting in accordance with such directions or for failing to act in the absence of such directions. In any case where participant direction is in effect, the Investment Committee shall exercise on behalf of the participants, in a matter consistent with the Plan and procedures prescribed by the Investment committee for the exercise or pass through of participant information and rights, the same rights and responsibilities that would have been accorded an Investment manager acting in accordance with this Trust Agreement.

1.5 Appointment of Company Stock Trustee. Company may appoint a Company Stock Trustee to hold title to Qualifying Employer Securities that are held by the Plan. The Trustee may rely on such appointment until 1) notified in writing by the Company that the Company has appointed a successor Company Stock Trustee, and 2) if Trustee requires in its reasonable discretion, written notice from the successor of its acceptance of such appointment. The Company may appoint a successor at any time, however, Trustee may consider such appointment to be a

termination of Section 15 of this Agreement, and, upon 30 days written notice to Company, Trustee may, notwithstanding any other provision of this Agreement, invoke its rights and responsibilities under Section 13 of this Agreement as to the Company Stock Fund or Qualifying Employer Securities. Nothing herein is intended to limit the services or duties Company may assign to such Company Stock Trustee.

1.6 No Trustee Duty Regarding Contributions. The Trustee shall not be under any duty to require payment of any contributions to the Trust Fund or determine that a contribution is in compliance with a participant investment direction, or to see that any payment made to it is computed in accordance with the provisions of the Plan, or otherwise be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities under the Plan. The named fiduciary responsible for ensuring timely payment of contributions to the Trust Fund is Plan Administrator.

1.7 Withholding. The Plan Administrator or the Recordkeeper shall withhold any tax which by any present or future law is required to be withheld from any payment under the Plan.

2. DISBURSEMENTS FROM THE TRUST FUND.

The Trustee shall from time to time on the directions of the Plan Administrator or Recordkeeper make payments out of the Trust

Fund to such persons, including the Plan Administrator or Recordkeeper, in such manner, in such amounts and for such purposes as may be specified in the directions of the Recordkeeper or Plan Administrator.

The Recordkeeper or Plan Administrator shall be responsible for insuring that any payment directed under this Article conforms to the provisions of the Plan, this Trust Agreement, and the provisions of the Employee Retirement Income Security Act of 1974, as amended (hereinafter referred to as "ERISA"). Each direction of the Recordkeeper or Plan Administrator shall be in writing and shall be deemed to include a certification that any payment or other distribution directed thereby is one which the Recordkeeper or Plan Administrator is authorized to direct, and the Trustee may conclusively rely on such deemed certification without further investigation, unless such direction is contrary to the Trustee's duties under ERISA or this Agreement. Payments by the Trustee may be made by its check (or other reasonable method) to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Trustee by the Recordkeeper or if no such address has been so furnished, to the payee in care of the Recordkeeper. The Trustee shall not incur any liability or other damage on account of any payments or other distributions made by it in accordance with the written directions of the Recordkeeper

or Plan Administrator, unless such direction is contrary to the Trustee's duties under ERISA or this Agreement.

If, in the performance of this Agreement hereunder, the Trustee holds uninvested cash received from the Recordkeeper or Plan Administrator any "float" earned thereon shall constitute a part of the Trustee's overall compensation for performance of the Services. The Client has negotiated with the Trustee and has agreed to allow the Trustee to retain such float income with the knowledge that the Client had the choice to either (i) retain such income for the benefit of the participants of the Plan and incur a higher trustee fee or (ii) allow the Trustee to retain such float income and realize a lower trustee fee.

3. COMPANY SELECTED INVESTMENT FUNDS.

3.1 In General. The Investment Committee from time to time and in accordance with provisions of the Plan, may direct the Trustee to establish one or more separate investment accounts within the Trust Fund, each separate account being hereinafter referred to as an "Investment Fund" which may be invested in (i) shares of investment companies registered under the Investment Company Act of 1940, (ii) collective funds maintained by a bank or trust company (including collective funds maintained by Trustee), (iii) Participant directed brokerage accounts, (iv) pools of insurance contracts, (v) funds managed by a registered investment manager, bank or insurance company, (vi) accounts

managed by fiduciaries or named fiduciaries for the Plan; and (vii) other investment options available from time to time under the Plan (specifically the Investment Funds described on Attachment "A" to this Trust Agreement, as amended from time to time in writing by the Investment Committee and the Trustee). The Trustee shall have no liability for any loss of any kind which may result by reason of the manner of division of the Trust Fund into Investment Funds, or for the investment management of these accounts, except as provided for in Section 3.5 respecting a Trustee managed investment account, if any. The Trustee shall transfer to each such Investment Fund such portion of the assets of the Trust Fund as the Company or the Recordkeeper directs. The Trustee shall not incur any liability on account of following any direction of the Company or the Recordkeeper (unless such direction is contrary to the Trustee's duties under ERISA or this Agreement) and the Trustee shall be under no duty to review the investment guidelines, objectives and restrictions so established. To the extent that directions from the Company or Recordkeeper to the Trustee represent investment instructions of the Plan's participants, the Trustee shall have no responsibility for such investment elections and shall incur no liability on account of the direct and necessary results of investing the assets of the Trust Fund in accordance with such participant investment instructions.

All interest, dividends and other income received with respect to, and any proceeds received from the sale or other disposition of, securities or other property held in an Investment Fund shall be credited to and reinvested in such Investment Fund. All expenses of the Trust Fund which are allocable to a particular Investment Fund shall be so allocated and charged. Subject to the provisions of the Plan, the Investment Committee may direct the Trustee to eliminate an Investment Fund or Funds, and the Trustee shall thereupon dispose of the assets of such Investment Fund and reinvest the proceeds thereof in accordance with the directions of the Plan Administrator.

3.2 Participant-Directed Brokerage Accounts. The Trustee shall, if so directed by the Company segregate all or a portion of the Trust Fund held by it into one or more separate investment accounts to be known as Participant Directed Brokerage Accounts. Whenever a Participant is directing the investment and reinvestment of a Participant Directed Brokerage Account, the Participant shall have the powers and duties which an Investment Manager would have under this Trust Agreement if an Investment Manager were then serving and the Trustee shall be protected to the same extent as it would be protected under this Trust Agreement as to directions or the absence of directions of an Investment Manager. Participants shall be entitled to give

orders directly to the broker for the purchases and sale of securities as defined in Section 6 of this Agreement. The broker shall provide confirmation of each order to the Plan Administrator or Recordkeeper which shall maintain records in such form as to satisfy reporting requirements of the Plan.

3.3 RESERVED.

3.4 Company Managed Investment Accounts. The Trustee shall, if so directed in writing by the Company, segregate all or a portion of the Trust Fund held by it into one or more separate investment accounts to be known as Company Managed Investment Accounts. The Company, by written notice to the Trustee, may at any time relinquish its powers under this Section 3.4 and direct that a Company Managed Investment Account shall no longer be maintained. Whenever the Plan Administrator or named fiduciary is directing the investment and reinvestment of an Investment Account or a Company Managed Investment Account, the Plan Administrator or named fiduciary shall have the powers and duties which an Investment Manager would have under this Trust Agreement if an Investment Manager were then serving and the Trustee shall be protected to the same extent as it would be protected under this Trust Agreement as to directions or the absence of directions of an Investment Manager.

3.5 Trustee Managed Investment Accounts. The Trustee shall have no duty or responsibility to direct the investment and

reinvestment of the Trust Fund, any Investment Fund or any Investment Account unless expressly agreed to in writing between the Trustee and the Company. In the event that the Trustee enters into such an agreement, it shall have the powers and duties of an Investment Manager under this Trust Agreement with regard to such Investment Account.

3.6 Investment Manager Accounts.

The Investment Committee, from time to time and in accordance with the provisions of the Plan, may appoint one or more independent Investment Managers, pursuant to a written investment management agreement describing the powers and duties of the Investment Manager, to direct the investment and reinvestment of all or a portion of the Trust Fund or an Investment Fund (hereinafter referred to as an "Investment Account").

The Investment Committee, in its capacity as named fiduciary shall be responsible for ascertaining that while each Investment Manager is acting in that capacity hereunder, the following requirements are satisfied:

(a) The Investment Manager is either (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of Section 203A(a) of such Act, is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration

under the laws of such State, also filed a copy of such form with the Secretary of the Securities and Exchange Commission, (iii) a bank as defined in that Act or (iv) an insurance company qualified to perform the services described in (b) below under the laws of more than one state.

(b) The Investment Manager has the power to manage, acquire or dispose of any assets of the Plan for which it is responsible hereunder;

(c) The Investment Manager has acknowledged in writing to the Investment Committee and the Trustee that he or it is a fiduciary with respect to the Plan within the meaning of Section 3(21)(A) of ERISA.

(d) The Plan provide for the appointment of the Investment Manager in accordance with Section 402(c)(3) of ERISA, and the Investment Manager is appointed as so provided.

(e) Any Investment Manager with authority to invest in assets (other than those described in 29 CFR 2550.404b-1(a)(1)) which will be held outside the jurisdiction of the district courts of the United States is an entity described in ERISA regulations at 29 C.F.R. 2550.404b-1(a)(2)(i).

The Investment Committee shall furnish the Trustee with written notice of the appointment of each Investment Manager hereunder, and of the termination of any such appointment. Such notice shall specify the assets which shall constitute the Investment Account of such Investment Manager. The Trustee shall be fully protected in relying upon the effectiveness of such appointment and the Investment Manager's continuing satisfaction of the requirements set forth above until it receives written notice from the Investment Committee to the contrary.

The Trustee shall conclusively presume that each Investment Manager, under its investment management agreement, is entitled

to act, in directing the investment and reinvestment of the Investment Account for which it is responsible, in its sole and independent discretion, and in accord with the terms of ERISA and the Plan, and without limitation, except for any limitations which from time to time the Investment Committee and the Trustee agree (in writing) shall modify the scope of such authority.

The Trustee shall have no liability (i) for the acts or omissions of any Investment Manager (except to the extent the Trustee itself is serving as Investment Manager); (ii) for following directions, including investment directions of an Investment Manager (other than the Trustee) or the Company or named fiduciary, which are given in accordance with this Trust Agreement, unless such direction is contrary to the Trustee's duties under ERISA or this Agreement; (iii) for failing to act in the absence of Investment Manager direction, unless such direction is contrary to the Trustee's duties under ERISA or this Agreement; or (iv) for any loss of any kind which may result by reason of the manner of division of the Trust Fund or Investment Fund into Investment Accounts.

At the request of the Trustee, the Company, the Investment committee or the duly appointed Investment Manager shall certify, the value of any securities or other property held in any Investment Account managed by such Investment Manager, and such certification shall be regarded as a direction with regard to

such valuation. The Trustee shall be entitled to conclusively rely upon such valuation for all purposes under this Trust Agreement.

An Investment Manager shall certify, at the request of the Trustee, the value of any securities or other property held in any Investment Account managed by such Investment Manager, and such certification shall be regarded as a direction with regard to such valuation. The Trustee shall be entitled to conclusively rely upon such valuation for all purposes under this Trust Agreement.]

Except as otherwise provided in this Trust Agreement, the Investment Manager of an Investment Account shall have the power and authority, to be exercised in its sole discretion at any time and from time to time, to issue orders for the purchase or sale of securities directly to a broker. Written notification of the issuance of each such order shall be given promptly to the Trustee by the Investment Manager and the confirmation of each such order shall be confirmed to the Trustee by the broker. The broker shall promptly provide confirmation of each such order to the Recordkeeper, which shall maintain all participant level accounts. The Recordkeeper shall provide to the Trustee all information reasonably required by the Trustee to fulfill its accounting and reporting obligations with respect to assets held in the Participant Directed Brokerage Accounts. Unless otherwise

directed by the Investment Manager, such notification shall be authority for the Trustee to pay for securities purchased or to deliver securities sold as the case may be. Upon the direction of the Investment Manager, the Trustee will execute and deliver appropriate trading authorizations, but no such authorization shall be deemed to increase the liability or responsibility of the Trustee under this Trust Agreement.

4. POWERS OF THE TRUSTEE.

4.1 Investment Powers of the Trustee. The Trustee shall have and exercise the following powers and authority (i) over Investment Accounts where it has express investment management discretion as provided in Section 3.5, (ii) upon direction of the Investment Manager of an Investment Account, (iii) upon direction of a Participant with respect to a Participant Directed Brokerage Account, or (iv) upon direction of the Plan Administrator: (x) for a Company Managed Account; or (y) for lending to participants in the Plan:

(a) To purchase, receive, or subscribe for any securities or other property and to retain in trust such securities or other property.

(b) To sell for cash or on credit, to grant options, convert, redeem, exchange for other securities or other property, to enter into standby agreements for future investment, either with or without a standby fee, or otherwise to dispose of any securities or other property at any time held by it.

(c) To settle, compromise or submit to arbitration any claims, debts, or damages, due or owing to or from the trust, to commence or defend suits or legal proceedings and to represent the trust in all suits or legal proceedings in any

court of law or before any other body or tribunal.

(d) To trade in financial options and futures, including index options and options on futures and to execute in connection therewith such account agreements and other agreements including contracts for the exchange of interest rates, or investment performance, currencies or other notional principal contracts in such form and upon such terms as the Investment Manager or the Investment Committee shall direct.

(e) To exercise all voting rights, tender or exchange rights, any conversion privileges, subscription rights and other rights and powers available in connection with any securities or other property at anytime held by it; to oppose or to consent to the reorganization, consolidation, merger, or readjustment of the finances of any corporation, company or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association any of the securities which may at any time be held by it and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions, which may be deemed necessary or advisable by the Investment Manager or Investment Committee in connection therewith, and to hold and retain any securities or other property which it may so acquire; and to deposit any property with any protective, reorganization or similar committee, and to pay and agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to property so deposited.

(f) To lend to participants in the Plan such amounts and upon such terms and conditions as the Plan Administrator or Recordkeeper may direct. Any such direction shall be deemed to include a certification by the Plan Administrator or Recordkeeper that such lending is in accordance with the provisions of ERISA and the Plan.

(g) To borrow money in such amounts and upon such terms and conditions as shall be deemed advisable or proper by the Investment Committee or Investment Manager to carry out the purposes of the trust and to pledge any securities or other property for the repayment of any such loan.

(h) To invest all or a portion of the Trust Fund in contracts issued by insurance companies, including contracts under which the insurance company holds Plan assets in a separate account or commingled separate account managed by the

insurance company. The Trustee shall be entitled to rely upon any written directions of the Investment Committee or the Investment Manager under this Section 4.1, and the Trustee shall not be responsible for the terms of any insurance contract that it is directed to purchase and hold or for the selection of the issuer thereof or for performing any functions under such contract (other than the execution of any documents incidental thereto on the instructions of the Investment Committee or the Investment Manager).

(i) To manage, administer, operate, lease for any number of years, develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to, or otherwise deal with any real property or interest therein at any time held by it, and to hold any such real property in its own name or in the name of a nominee, with or without the addition of words indicating that such property is held in a fiduciary capacity, all upon such terms and conditions as may be deemed advisable by the Investment Manager or Investment Committee.

(j) To renew, extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable by the Investment Manager or Investment Committee, and to agree to a reduction in the rate of interest on any mortgage or of any guarantee pertaining thereto in any manner and to any extent that may be deemed advisable by the Investment Manager or Investment Committee for the protection of the Trust Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable by the Investment Manager or Investment Committee; to exercise and enforce any and all rights of foreclosure, to bid on property on foreclosure, to take a deed in lieu of foreclosure with or without paying consideration therefor, and in connection therewith to release the obligation on the bond secured by such mortgage, and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any such mortgage or guarantee.

(k) To hold part or all of the Trust Fund uninvested.

(l) To employ suitable agents and counsel and to pay their reasonable and proper expenses and compensation, provided, however, that such the party instructing payment has

properly considered its fiduciary responsibilities as to such payment or received approval from the Company for such payments.

(m) To purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with State Street Bank and Trust Company, its agents or subcustodians.

(n) To form corporations and to create trusts to hold title to any securities or other property, all upon such terms and conditions as may be deemed advisable by the Investment Manager or Investment Committee.

(o) To register any securities held by it hereunder in its own name, in the name of its nominee, in the name of its agent, or in the name of its agent's nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity, and to hold any securities in bearer form and to deposit any securities or other property in a depository or clearing corporation.

(p) To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases, or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers.

(q) To invest at any bank including State Street Bank and Trust Company (i) in any type of interest bearing investments (including, but not limited to savings accounts, money market accounts, certificates of deposit and repurchase agreements) and (ii) in noninterest bearing accounts (including but not limited to checking accounts).

(r) To invest in collective investment funds maintained by State Street Bank and Trust Company or by other banks for the investment of the assets of employee benefit plans qualified under Section 401(a) of the Code, whereupon the instruments establishing such funds, as amended, shall be deemed a part of this Trust Agreement and incorporated by reference herein.

(s) To invest in open-end and closed-end investment companies, regardless of the purposes for which such fund or funds were created, including those managed, serviced or advised by the Trustee, an affiliate of the Trustee, and any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose.

The Trustee shall transmit promptly to the Investment Committee or the Investment Manager, as the case may be, all notices of conversion, redemption, tender, exchange, subscription, class action, claim in insolvency proceedings or other rights or powers relating to any of the securities in the Trust Fund, which notices are received by the Trustee from its agents or custodians, from issuers of the securities in question and from the party (or its agents) extending such rights. The Trustee shall have no obligation to determine the existence of any conversion, redemption, tender, exchange, subscription, class action, claim in insolvency proceedings or other right or power relating to any of the securities in the Trust Fund of which notice was given prior to the purchase of such securities by the Trust Fund, and shall have no obligation to exercise any such right or power unless the Trustee is informed of the existence of the right or power.

The Trustee shall not be liable for any untimely exercise or assertion of such rights or powers described in the paragraph immediately above in connection with securities or other property of the Trust Fund at any time held by it unless (i) it or its agents or custodians are in actual possession of such securities or property and (ii) it receives directions to exercise any such rights or powers from the Investment Committee or the Investment Manager, as the case may be, and both (i) and (ii) occur at least

three business days prior to the date on which such rights or powers are to be exercised.

If the Trustee is directed by the Investment Committee or an Investment Manager to purchase securities issued by any foreign government or agency thereof, or by any corporation or other entity domiciled outside of the United States, it shall be the responsibility of the Investment Committee or Investment Manager, as the case may be, to advise the Trustee in writing with respect to any laws or regulations of any foreign countries or any United States territory or possession which shall apply in any manner whatsoever to such securities, including, without limitation, receipt by the Trustee of dividends, interest or other distributions on such securities.

All shares of a registered investment company ("Investment Company Shares") shall be registered in the name of the Trustee or its nominee. Subject to any requirement of applicable law, the Trustee will transmit to Recordkeeper or the Investment Committee, as the case may be, copies of any notices of shareholders' meetings, proxies and proxy-soliciting materials, prospectuses and the annual or other reports to shareholders, with respect to Investment Company Shares held in the Trust. The Trustee shall act in accordance with appropriate directions received from Recordkeeper or the Investment Committee, as the case may be, with respect to matters to be voted upon by the

shareholders of the Investment Company. Such directions must be in writing on a form approved by the Trustee, signed by the addressee and delivered to the Trustee within the time prescribed by it. The Trustee will not vote Investment Company Shares as to which it receives no written directions. For the purposes of this Section, Investment Company means a registered investment company provided that its prospectus offers its shares under the Plan.

4.2 Administrative Powers of the Trustee. Notwithstanding the appointment of an Investment Manager, the Trustee shall have the following powers and authority, to be exercised in its sole discretion, with respect to the Trust Fund:

(a) To employ suitable agents, custodians and counsel and to pay their reasonable expenses and reasonable compensation, provided, however, that Trustee shall not employ, subcontract to, or delegate any responsibility hereunder to Company or any affiliate thereof, and provided, further, that such compensation shall not be paid from plan assets without the consent of the Investment Committee.

(b) To appoint ancillary or subordinate trustees or custodians to hold any portion of the assets, title to the assets or other indications of ownership to the assets of the trust, provided, however, that such arrangements shall be consistent with ERISA and the regulations thereunder, and to pay the reasonable expenses of and reasonable compensation to such custodian or ancillary or subordinate trustee.

(c) To register any securities held by it hereunder in its own name, in the name of its nominee, in the name of its agent, or in the name of its agent's nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity, and to hold any securities in bearer form and to deposit any securities or other property in a depository or clearing corporation.

(d) To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers.

(e) Generally to do all ministerial acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable in carrying out its duties under this Trust Agreement.

Notwithstanding anything in the Plan or this Trust Agreement to the contrary, the Trustee shall not be required by the Company, the Investment Committee, Recordkeeper or any Investment Manager to engage in any action, nor make any investment which constitutes a prohibited transaction or is otherwise contrary to the provisions of ERISA or which is otherwise contrary to law or to the terms of the Plan or this Trust Agreement, and Trustee shall not knowingly engage in any such investment.

The Trustee may consult with legal counsel (who may be counsel for the Company or Investment Committee) concerning any question which may arise with reference to this Trust Agreement and its powers and duties hereunder. Provided such counsel is reasonably acceptable to the Company or Investment Committee (in the case of subjects delegated to the Investment Committee), the written opinion of such counsel shall be full and complete protection of the Trustee in respect to any action taken or suffered by the Trustee hereunder in good faith reliance on said opinion.

5. INDEMNIFICATION AND STANDARD OF CARE.

5.1 Indemnification. To the extent permitted by applicable law, the Company shall indemnify and save harmless the Trustee and any Nominee used for transactions of the Trust Fund for and from any loss or expense (including reasonable attorneys' fees) arising (a) out of an authorized action hereunder taken the Trustee or any matter as to which this Trust Agreement provides that the Trustee is directed, protected, not liable, or not responsible, (b) out of a Plan not qualifying as an ERISA 404(c) plan or the inability of a Plan participant or beneficiary to exercise independent control over his account within the meaning of 29 C.F.R. section 2550.404c-1, or (c) by reason of any breach of any statutory or other duty owed to the Plan by the Company, the Investment Committee, the Recordkeeper or any Investment Manager or any delegate of any of them (and for the purposes of this sentence the Trustee shall not be considered to be such a delegate), whether or not the Trustee may also be considered liable for that other person's breach under the provisions of Section 405(a) of ERISA; provided, however, that the Trustee shall not be entitled to indemnification to the extent that such loss, expense, cost or fee arises out of or in connection with the negligence, fraud, willful misconduct, bad faith, malfeasance, material breach of this Agreement (including the standard of care), or violation of applicable law of the Trustee or its agent.

For the forgoing indemnity to apply, Trustee shall 1) promptly notify the Company in writing of any legal or regulatory action against the Trustee, 2) cooperate in the defense of such claim, 3) reasonably accept counsel provided by the Company, 4) share counsel with another defendant in such action (provided,however, there is no conflict between defendants), and 5) not settle, compromise or capitulate to such action without the consent of the Company (such consent shall not be reasonably withheld).

5.2 Standard of Care. The Trustee shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of any enterprise of like character and with like aims.

6. SECURITIES OR OTHER PROPERTY.

The words "securities or other property", used in this Trust Agreement, shall be deemed to refer to any property, real or personal, or part interest therein, wherever situated, including, without limitation, governmental, corporate or personal obligations, trust and participation certificates, partnership interests, annuity or investment contracts issued by an insurance company, leaseholds, fee titles, mortgages and other interests in realty, preferred and common stocks, certificates of deposit,

financial options and futures or any other form of option, evidences of indebtedness or ownership in foreign corporations or other enterprises or indebtedness of foreign governments, and any other evidences of indebtedness or ownership, including securities or other property of the Company, even though the same may not be legal investment for trustees under any law other than ERISA.

7. SECURITY CODES.

If the Trustee has issued to the Company, or to any duly appointed Investment Manager, security codes or passwords in order that the Trustee may verify that certain transmissions of information, including directions or instructions, have been originated by the Company or the Investment Manager, as the case may be, the Trustee shall be kept indemnified by and be without liability to the Company for any action taken or omitted by it in reliance upon receipt by the Trustee of transmissions of information with the proper security code or password, including communications purporting to be directions or instructions, which the Trustee reasonably believes to be from the Company or Investment Manager.

8. TAXES AND TRUSTEE COMPENSATION.

The Trustee shall pay out of the Trust Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws

against the Trust Fund. Until advised to the contrary by the Company, Investment Committee or Plan Administrator, the Trustee shall assume that the Trust is exempt from Federal, State and local income taxes, and shall act in accordance with that assumption. The Plan Administrator shall timely file all Federal, State and local tax and information returns relating to the Plan and Trust.

Trustee shall timely provide any pertinent information it receives or maintains to Company (or its delegee) necessary to satisfy tax reporting obligations and requirements of the Trust Fund. Trustee shall also provide timely periodic reports of taxes incurred, levied or assessed against the Trust Fund.

The Trustee shall be paid such reasonable compensation as provided in Schedule A, attached hereto and made a part hereof. Such compensation exhibit may from time to time be amended by the Company and the Trustee in writing.

Such compensation and all reasonable and proper expenses of administration of the Trust, including counsel fees, shall be withdrawn by the Trustee out of the Trust Fund unless paid by the Company (or objected to in writing) within 30 days of invoice, but such compensation and expenses shall be paid by the Company if the same cannot by operation of law be withdrawn from the Trust Fund.

All payments from the Trust Fund under this Article 9 may be

made without approval or direction.

9. ACCOUNTS OF THE TRUSTEE.

The Trustee shall maintain or cause to be maintained suitable records, data and information relating to its functions hereunder.

The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other actions hereunder, and such other records as the Company shall from time to time direct, as reasonably agreed to by the Trustee, and shall certify to the accuracy and completeness of such records. The Trustee's books and records relating thereto shall be open to inspection and audit at all reasonable times by the Company or its duly authorized representatives and each Investment Manager. The Trustee shall be entitled to reasonable compensation and reimbursement of its reasonable expenses incurred in connection with such audits or inspections.

Within sixty days after the close of each fiscal year of the trust and at more frequent intervals if reasonably requested by the Plan Administrator, and within sixty days after the removal or resignation of the Trustee as provided hereunder, termination of the Plan, or termination of this Agreement, the Trustee shall render to the Company a written statement and account showing in reasonable summary the investments, receipts, disbursements, and other transactions engaged in during the preceding fiscal year or

period, and setting forth the assets and liabilities of the trust. Trustee shall use its reasonable efforts to provide such statement within thirty days after the removal or resignation of the Trustee as provided hereunder, termination of the Plan, or termination of this Agreement.

Without otherwise limiting the provisions of this Agreement, the Trustee shall furnish the Company and the Plan Administrator such financial statements, and other information, as the Company or the Plan Administrator may reasonably request from time to time with respect to the assets held under the Trust Fund, and the Trustee shall timely provide the Company and the Plan Administrator with all information in its possession or reasonably available to it relating to the services provided by the Trustee under this Trust.

Accounts maintained by the Investment Committee, Plan Administrator or Recordkeeper, such as participant directed brokerage accounts, may be incorporated into Trustee reports. Unless the Company shall have filed with the Trustee written exceptions or objections to any such statement and account within ninety days after receipt thereof and except as otherwise required or provided by applicable law, the Company shall be deemed to have approved such statement and account, and in such case or upon written approval by the Investment Committee of any such statement and account, the Trustee shall be released and

discharged with respect to all matters and things embraced in such statement and account as though it had been settled by a decree of a court of competent jurisdiction in an action or proceeding in which the Company, all other necessary parties and all persons having any beneficial interest in the Trust Fund were parties. Notwithstanding the foregoing, the actual or deemed approval of an account by the Company or the Investment Committee shall not discharge the Trustee as to any matter set forth in such account that is attributable to the Trustee's negligence, willful misconduct, or fraud in carrying out the responsibilities specifically allocated to it under the terms of this Agreement with respect to which the Company or the Investment Committee, files a specific written objection with the Trustee within the ninety day period.

The Trustee shall determine the fair market value of assets of the Trust Fund based upon valuations provided by Investment Managers, information and financial publications of general circulation, statistical and valuation services, records of security exchanges, appraisals by qualified persons, transactions and bona fide offers in assets of the type in question and other information customarily used in the valuation of property.

The Company or its delegate, each Investment Manager, and the Trustee shall file such descriptions and reports and make such other publications, disclosures, registrations and other

filings as are required of them respectively by ERISA.

Nothing contained in this Trust Agreement or in the Plan shall deprive the Company or the Trustee of the right to have a judicial settlement of its account. In any proceeding for a judicial settlement of the Trustee's accounts or for instructions in connection with the trust, the only necessary party thereto in addition to the Trustee shall be the Plan Administrator and any party required by law, and no participant or other person having or claiming any interest in the Trust Fund shall be entitled to any notice or service of process (except as required by law). Any judgment, decision or award entered in any such proceeding or action shall be conclusive upon all interested persons.

10. RELIANCE ON COMMUNICATIONS.

The Trustee may rely upon a certification of the Plan Administrator, Investment Committee or its delegates, or the Recordkeeper with respect to any instruction, direction or approval of such person or the Recordkeeper and may rely upon a written certification of the Company as to the membership of the Plan Administrator, Investment Committee or such replacement thereto as they then exist, and may continue to rely upon such certification until a subsequent certification is filed with the Trustee.

The Trustee shall be fully protected in acting upon any instrument, certificate, or paper of the Company, the Plan

Administrator, the Investment Committee or the Recordkeeper, believed by it to be genuine and to be signed or presented by any authorized person, and the Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized by the Company, the Plan Administrator, the Investment Committee or the Recordkeeper, if applicable, as the case may be.

The Trustee shall be further protected in relying upon a certification from any Investment Manager appointed by the Investment Committee as to the person or persons authorized to give instructions or directions on behalf of such Investment Manager and may continue to rely upon such certification until a subsequent certification is filed with Trustee.

11. RESIGNATION AND REMOVAL OF TRUSTEE.

Any Trustee acting hereunder may resign at any time by giving ninety days' prior written notice to the Company, which notice may be waived in writing by the Company in its sole discretion. The Company may remove the Trustee at any time upon thirty days' prior written notice to the Trustee, which notice may be waived in writing by the Trustee. In case of the resignation or removal of the Trustee, the Company shall appoint a successor trustee. If a new trust agreement is not used, any successor trustee shall have the same powers and duties as those conferred upon the Trustee named in this Trust Agreement. The

removal of a Trustee and the appointment of a new Trustee shall be by a written instrument delivered to the Trustee. Upon the appointment of a successor trustee, the resigning or removed Trustee shall transfer or deliver the Trust Fund to such successor trustee.

12. AMENDMENT.

This Trust Agreement may be amended by written agreement between the Trustee and the Company at any time or from time to time, and the provisions of any such amendment may be applicable to the Trust Fund as constituted at the time of the amendment as well as to the part of the Trust Fund subsequently acquired.

13. TERMINATION.

This Trust Agreement and the trust created hereby may be terminated at any time by the Company, and upon such termination or upon the dissolution or liquidation of the Company, in the event that a successor to the Company by operation of law or by the acquisition of its business interests shall not elect to continue the Plan and the trust, the Trust Fund shall be paid out by the Trustee when directed by the Investment Committee. Notwithstanding the foregoing, the Trustee shall not be required to pay out any assets of the Trust Fund upon termination of the Trust until the Trustee has received written certification from the Investment Committee that the termination is in compliance with all provisions of law with respect to such termination. The

Trustee shall rely conclusively on such written certification, and shall be under no obligation to investigate or otherwise determine its propriety, unless it knows it violates ERISA.

14. MISCELLANEOUS.

14.1 Governing Law. To the extent not governed by ERISA, as heretofore or hereafter amended, the provisions of this Trust Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. The Company hereby submits to the jurisdiction of the State and Federal Courts located in the Commonwealth of Massachusetts including any appellate courts thereof.

14.2 No Reversion to Company. Except as provided herein, no portion of the principal or the income of the Trust Fund shall revert to or be recoverable by the Company or ever be used for or diverted to any purpose other than for the exclusive benefit of participants in the Plan and persons claiming under or through them pursuant to the Plan, provided, however, that:

(a) all contributions are conditioned upon the deductibility of the contributions under Section 404(a) of the Code, and, to the extent determined to be nondeductible, the Trustee shall, upon written request of the affected Company, return such amount as may be permitted by law to such Company, as appropriate, within one year after the determination of nondeductibility or within such other period as is permitted by applicable law; and

(b) if a contribution or any portion thereof is made by the Company by a mistake of fact, the Trustee shall, upon written request of the Company, return such amounts as may be permitted by law to the Company, as appropriate, within one year after the date of payment to the Trustee or within

such other period as is permitted by applicable law; and

(c) if a contribution is conditioned upon the initial qualification of the Plan and Trust under Section 401 and 501 of the Code, respectively, and if the Plan receives an adverse determination with respect to its initial qualification, the contribution of the Company or an Employer to the Trust shall be returned by the Trustee to the Company or such Employer, as appropriate, within one year after such determination, but only if the application for the determination is made by the time prescribed by law for filing the Company's or such Employer's federal income tax return for the taxable year in which such Plan was adopted, or such later date as the Secretary of the Treasury may prescribe; and

(d) in the event that a Plan whose assets are held in the Trust Fund is terminated, assets of such Plan may be returned to the Company if all Plan liabilities to participants and beneficiaries of such Plan have been satisfied; and

(e) assets may be returned to the Employer to the extent that the law permits such transfer.

The Trustee shall be under no obligation to return any part of the Trust Fund as provided in this Section 14.2 until the Trustee has received a written certification from the Plan Administrator that such return is in compliance with this Section 14.2, the Plan and the requirements of applicable law. The Trustee shall rely conclusively on such written certification and shall be under no obligation to investigate or otherwise determine its propriety, unless it knows that such certification violates ERISA.

14.3 Non-Alienation of Benefits. No benefit to which a participant or his beneficiary is or may become entitled under a Plan shall at any time be subject in any manner to alienation or

encumbrance, nor be resorted to, appropriated or seized in any proceeding at law, in equity or otherwise. No participant or other person entitled to receive a benefit under a Plan shall, except as specifically provided in such Plan, have power in any manner to transfer, assign, alienate or in any way encumber such benefit under such Plan, or any part thereof, and any attempt to do so shall be void.

14.4 Duration of Trust. Unless sooner terminated, the trust created under this Trust Agreement shall continue for the maximum period of time which the laws of the Commonwealth of Massachusetts shall permit.

14.5 No Guarantees. Neither the Company, nor the Trustee guarantees the Trust Fund from loss or depreciation, nor the payment of any amount which may become due to any person under the Plan or this Trust Agreement.

14.6 Duty to Furnish Information. Both the Company and the Trustee shall furnish to the other any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties imposed under the Plan or this Trust Agreement or otherwise imposed by law.

14.7 Parties Bound. This Trust Agreement shall be binding upon the parties hereto, all participants in the Plan and persons claiming under or through them pursuant to the Plan, and, as the case may be, the heirs, executors, administrators, successors,

and assigns of each of them. The provisions of Articles 5, 7 and 8 shall survive termination of the Trust created under this Trust Agreement or resignation or removal of the Trustee for any reason.

In the event of the merger or consolidation of the Company or other circumstances whereby a successor person, firm or company shall continue to carry on all or a substantial part of its business, and such successor shall elect to carry on the provisions of the Plan applicable to such business, as therein provided, such successor shall be substituted hereunder for the Company upon the filing in writing of its election so to do with the Trustee. The Trustee may, but need not, rely on the certification of an officer of the Company, and a certified copy of a resolution of the Board of Directors of such successor, reciting the facts, circumstances and consummation of such succession and the election of such successor to continue the said Plan as conclusive evidence thereof, without requiring any additional evidence.

14.8 Necessary Parties to Disputes. Necessary parties to any accounting, litigation or other proceedings shall include only the Trustee and the Company and the settlement or judgment in any such case in which the Company and the Trustee are duly served or cited shall be binding upon all participants in the Plan and their beneficiaries and estates, and upon all persons

claiming by, through or under them.

14.9 Unclaimed Benefit Payments. If any check or share certificate in payment of a benefit hereunder which has been mailed by regular US mail to the last address of the payee furnished the Trustee by the Company or Recordkeeper is returned unclaimed, the Trustee shall notify the Company or Recordkeeper and shall discontinue further payments to such payee until it receives the further instruction of the Company or Recordkeeper.

14.10 Severability. If any provisions of this Trust Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Trust Agreement shall continue to be fully effective.

14.11 References. Unless the context clearly indicates to the contrary, a reference to a statute, regulation, document or provision shall be construed as referring to any subsequently enacted, adopted or executed counterpart.

14.12 Headings. Headings and subheadings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of its provisions.

14.13 No Liability for Acts of Predecessor and Successor Trustees. The Trustee shall have no liability for the acts or omissions of any predecessors or successors in office.

14.14 Counterparts. This Trust Agreement may be executed in one or more counterparts, each of which shall constitute an

original.

14.15 Appointments. The Company is solely responsible for appointment of the Plans Administration Committee and the Investment Committee. The company may also replace either committee with other persons, entities or committees by written notice to the Trustee, who may rely on such notice until it is revoked in writing. If the respective committee does not exist and no successor appointment has been made by Company, Company shall act in place of the Plans Administration Committee under this Agreement, and the Named Fiduciary (but not the Plan's participants) shall act in place of the Investment Committee, and if no Named Fiduciary exists, the Company shall so serve.

14.16 Representations. Each of the parties represents and warrants to the other party that it has full authority to enter into this Trust Agreement upon the terms and conditions hereof and that the individual executing this Trust Agreement on its behalf has the requisite authority to bind such party to this Trust Agreement. Each of the parties represents and warrants that this Trust Agreement constitutes a legal, valid and binding obligation, enforceable against the other parties in accordance with its terms, except as enforcement may be limited by ERISA, bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally.

Further, as to the Company Stock Fund, the Company represents to the Trustee

The documents establishing the Company Stock Fund and any related plans and trusts permit investment in the collective investment Company Stock Funds referred to in Section 15.3.7(d) of this Contract and incorporate the terms of such collective Company Stock Funds by reference.

The Company Stock Fund is part of a Trust that is tax exempt under section 501 of the Code.

The Company Stock Fund is part of a defined contribution Plan that is "qualified" with the meaning of Section 401(a) of the Code.

Either (i) the Plan provides that each participant is a "named fiduciary" as described in Section 402(a)(2) of the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") who is duly authorized under the Plan to provide investment direction to the Company, acting as agent for such participant, for conveyance to the Company Stock Trustee or (ii) the Plan is duly qualified as an "ERISA Section 404(c) Plan" described in 29 C.F.R. 2550.404c under which each participant is authorized to provide investment direction to the Company, acting as agent for such Participant, for conveyance to the Company Stock Trustee.

The Plan does not prohibit the Company from entering into an Agreement with the Company Stock Trustee

The Plan does not prohibit the Company from appointing the Recordkeeper to perform daily recordkeeping services as described herein.

15. CUSTODY OF COMPANY STOCK

15.1 EMPLOYMENT OF CUSTODIAN AND PROPERTY TO BE HELD BY IT.

The Company employs the Custodian as the custodian of certain assets, comprising of Qualifying Employer Securities, which are subject to an Agreement dated December 8, 2008 between

the Company and the Company Stock Trustee whereby the Company Stock Trustee acts as a "directed trustee" with respect the portion of the Plan comprised of the Citigroup Common Stock Fund. Such assets shall hereinafter be called the "Company Stock Fund." All property of the Company Stock Fund delivered to the Custodian, its agents or its subcustodians shall be held and dealt with as provided in this Section 15. The Custodian shall not be responsible for any property of the Company Stock Fund not delivered to the Custodian, its agents or its subcustodians.

15.2 APPOINTMENT OF RECORDKEEPER

The Company has appointed ING as "Recordkeeper" to perform certain services including but not limited to maintaining participant accounts for all contributions, loans and loan repayments, rollovers, and other deposits made for the purpose of determining how such deposits are to be allocated to the investment options of the Plan, for determining requirements for disbursements from or transfers among investment options in accordance with the terms of the Plan, for maintaining participant records for the purpose of voting or tendering shares in an investment option as described in Section 15.3 herein, for distributing information about the investment options provided for under the Plan, and for distributing participant statements at periodic intervals.

15.3 DUTIES OF THE CUSTODIAN WITH RESPECT TO PROPERTY

HELD BY THE CUSTODIAN

15.3.1 Holding Securities and Cash. The Custodian shall hold, or direct its agents or its subcustodians to hold, for the account of the Company Stock Fund cash and all securities and other noncash property other than securities which are held by the Custodian, its agents or subcustodians in the Federal Reserve book-entry system, in a clearing agency which acts as a securities depository or in another book-entry system for the central handling of securities collectively referred to herein as "Securities System."

15.3.2 Delivery of Securities. The Custodian shall release and deliver, or direct its agents or its subcustodians to release, securities of the Company Stock Fund held by the Custodian, its agents or its subcustodians or in a Securities System account of the Custodian, its agents or its subcustodians only upon receipt of Proper Instructions (as defined in Section 15.3.11 herein), which may be standing instructions, in the following cases:

(a) Upon sale of such securities for the Company Stock Fund, unless otherwise directed by Proper Instructions; (i) in accordance with the customary or established practices and procedures in the jurisdiction or market where the transactions occur, including, without limitation, delivery to the purchaser thereof or to a dealer therefor (or an agent of such purchaser or dealer) against expectation of receiving later payment; or (ii) in the case of a sale effected through a Securities System, in accordance with the rules governing the operations of the Securities System;

(b) Upon the receipt of payment in connection with any

repurchase agreement related to such securities;

(c) To the depository agent in connection with tender or other similar offers for securities;

(d) To the issuer thereof or its agent when such securities are called, redeemed, retired or otherwise become payable; provided that, unless otherwise directed by Proper Instructions, the cash or other consideration is to be delivered to the Custodian, its agents or its subcustodians;

(e) To the issuer thereof, or its agent, for transfer into the name of the Custodian or of any nominee of the Custodian or into the name of any of its agents or subcustodians or their nominees or for exchange for a different number of bonds, certificates or other evidence representing the same aggregate face amount or number of units;

(f) To brokers, clearing banks or other clearing agents for examination in accordance with "street delivery" custom in connection with a sale authorized by the Investment Manager (as defined in Section 15.9 herein);

(g) For exchange or conversion to any plan of merger, consolidation, recapitalization, reorganization or readjustment of the securities of the issuer of such securities, or pursuant to provisions for conversion contained in such securities, or pursuant to any deposit agreement; provided that, unless otherwise directed by Proper Instructions, the new securities and cash, if any, are to be delivered to the Custodian, its agents or its subcustodians;

(h) In the case of warrants, rights or similar securities, the surrender thereof in the exercise of such warrants, rights or similar securities or the surrender of interim receipts or temporary securities; provided that, unless otherwise directed by Proper Instructions, the new securities and cash, if any, are to be delivered to the Custodian, its agents or its subcustodians;

(i) For delivery as security in connection with any borrowings by Company Stock Trustee and requiring a pledge of assets by the Company Stock Fund;

(j) In connection with trading in options and futures contracts, including delivery as original margin and variation margin;

(k) In connection with securities lending by the Company Stock Fund; and

(l) For any other purpose, but only upon receipt of Proper Instructions specifying the securities to be delivered and naming the person or persons to whom delivery of such securities shall be made.

15.3.3 Registration of Securities. Securities held by the Custodian, its agents or its subcustodians (other than bearer securities or securities held in a Securities System) shall be registered in the name of the Custodian or in the name of any nominee of the Custodian or in the name of any of its agents or its subcustodians or of their nominees. The Custodian, its agents and its subcustodians shall not be obligated to accept securities on behalf of the Company Stock Fund under the terms of this Contract unless such securities are in "street name" or other good delivery form.

15.3.4 Bank Accounts. The Custodian, its agents or its subcustodians may open and maintain a bank account or accounts in the name of the Custodian, subcustodian, their respective nominees otherwise, in such banks or trust companies as they may in their discretion deem advisable (including a bank of the Custodian), subject only to draft or order by the Custodian, its agents or its subcustodians acting pursuant to the terms of this Contract, and shall hold in such account or accounts, subject to the provisions hereof, cash received by or from or for the account of the Company Stock Fund. Such Company Stock Funds

shall be deposited by the Custodian, its agents or its subcustodians in their capacity as Custodian, agent or subcustodian and, except as otherwise provided under this Contract, shall be withdrawable by the Custodian, its agents or its subcustodians only in that capacity.

15.3.5 Income Crediting. With respect to the securities or other assets held hereunder, the Custodian shall credit income to the Company Stock Fund as such income is received or in accordance with Custodian's then current payable date income schedule. Any credit to the Company Stock Fund in advance of receipt may be reversed when Custodian determines that payment will not occur in due course and the Company Stock Fund may be charged at Custodian's applicable rate for time credited. Income on securities loaned other than from Custodian's securities lending program shall be credited as received.

15.3.6 Settlement Crediting (Purchases and Sales).

(a) The Custodian shall, in accordance with the terms set out in this Section 15.3.6, debit or credit the appropriate cash account of the Company Stock Fund in connection with (i) the purchase of securities and (ii) proceeds of the sale of securities on a contractual settlement basis.

(b) The services described above (the "Contractual Settlement Services") shall be provided for such instruments and in such markets as the Custodian may advise from time to time. The Custodian may terminate or suspend any part of the provision of the Contractual Settlement Services under this Contract at its sole discretion immediately upon notice to the Company, including, without limitation, in the event of force majeure events affecting settlement, any disorder in markets, or other changed external business circumstances affecting the markets.

(c) The consideration payable in connection with a purchase transaction shall be debited from the appropriate cash account of the Company Stock Fund as of the time and date that monies would ordinarily be required to settle such transaction in the applicable market. The Custodian shall promptly recredit such amount at the time that the Investment Manager notifies the Custodian by Proper Instruction that such transaction has been canceled.

(d) With respect to the settlement of a sale of securities, a provisional credit of an amount equal to the net sale price for the transaction (the "Settlement Amount") shall be made to the Company Stock Fund as if the Settlement Amount had been received as of the close of business on the date that monies would ordinarily be available in good Company Stock Funds in the applicable market. Such provisional credit will be made conditional upon the Custodian having received Proper Instructions with respect to, or reasonable notice of, the transaction, as applicable; and the Custodian or its agents having possession of the asset(s) (which shall exclude assets subject to any third party lending arrangement) associated with the transaction in good deliverable form and not being aware of any facts which would lead them to believe that the transaction will not settle in the time period ordinarily applicable to such transactions in the applicable market.

(e) Simultaneously with the making of such provisional credit, the Company agrees that the Custodian shall have, and hereby grants to the Custodian, a security interest in any property at any time held in the Company Stock Fund to the full extent of the credited amount, and the Company hereby pledges, assigns and grants to the Custodian a continuing security interest and a lien on any and all such property under the Custodian's possession, in accordance with the terms of Section 15.6 of this Contract. In the event that the Company Stock Fund fails to promptly repay any provisional credit, the Custodian shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of The Commonwealth of Massachusetts.

(f) The Custodian shall have the right to reverse any provisional credit or debit given in connection with the Contractual Settlement Services at any time when the

Custodian believes, in its reasonable judgment, that such transaction will not settle in accordance with its terms or amounts due pursuant thereto will not be collectable or where the Custodian has not been provided Proper Instructions with respect thereto, as applicable, and the Company Stock Fund shall be responsible for any costs or liabilities resulting from such reversal. Upon such reversal, a sum equal to the credited or debited amount shall become immediately payable by the Company Stock Fund to the Custodian and may be debited from any cash account held in the Company Stock Fund.

(g) In the event that the Custodian is unable to debit the Company Stock Fund, and the Company Stock Fund fails to pay any amount due to the Custodian at the time such amount becomes payable in accordance with this Contract, (i) the Custodian may charge the Company Stock Fund for costs and expenses associated with providing the provisional credit, including without limitation the cost of Company Stock Funds associated therewith, (ii) the amount of any accrued dividends, interest and other distributions with respect to assets associated with such transaction may be set off against the credited amount, (iii) the provisional credit and any such costs and expenses shall be considered an advance of cash for purposes of the Contract and (iv) the

Custodian shall have the right to setoff against any property and the discretion to sell, exchange, convey, transfer or otherwise dispose of any property at any time held for the Company Stock Fund to the full extent necessary for the Custodian to make itself whole.

15.3.7 Payment of Company Stock Fund Moneys. Only upon receipt of Proper Instructions and written agreement as to security procedures for payment orders, which may be standing instructions, or as may be otherwise authorized within this Contract, the Custodian shall pay out, or direct its agents or its subcustodians to pay out, moneys of the Company Stock Fund in the following cases:

(a) Upon the purchase of securities for the Company Stock Fund, unless directed by Proper Instructions; (i) in accordance with the customary or established practices and procedures in the jurisdiction or market where the transactions occur, including, without limitation, delivering money to the seller thereof or to a dealer therefor (or an agent for such seller or dealer) against expectation of receiving later delivery of such securities; or (ii) in the case of a purchase effected through a Securities System, in accordance with the rules governing the operation of such Securities System;

(b) In connection with conversion, exchange or surrender of securities of the Company Stock Fund as set forth in Section 15.3.2 hereof;

(c) For the payment of any expense or liability including but not limited to the following payments: interest, taxes, management, accounting, transfer agent fees, legal fees and operating expenses;

(d) To the Trustee, including State Street Bank and Trust Company, of any collective investment Company Stock Fund maintained for the investment of the assets of employee benefit plans qualified under Section 401(a) and exempt from tax under Section 501(a) of the Internal Revenue Code;

(e) For the purchase or sale of foreign exchange or foreign exchange contracts for the account of the Company Stock Fund, including transactions executed with or through the Custodian, its agents or its subcustodians;

(f) In connection with trading in options and futures contracts, including delivery as original margin and variation margin;

(g) In connection with securities borrowing by the Company Stock Fund; and

(h) For any other purpose, but only upon receipt of Proper Instructions specifying the amount of such payment and naming the person or persons to whom such payment to be made.

15.3.8 Appointment of Agents and Subcustodians. The Custodian may at its discretion appoint and remove agents or subcustodians ("Custodial Agent") to carry out such of the provisions of this Contract as the Custodian may from time to time direct; provided, however, that such appointment shall not relieve the Custodian of its responsibilities or liabilities under this Contract.

15.3.9 Proxies. The Custodian will, with respect to the securities held hereunder, cause to be promptly executed by the registered hold of such securities proxies received by the Custodian from its agents or its subcustodians or from issuers of the securities being held for the Company Stock Fund, without indication of the manner in which such proxies are to be voted,

and, upon receipt of Proper Instructions, shall promptly deliver such proxies, proxy soliciting materials and other notices relating to such securities.

15.3.10 Communications Relating to Company Stock Fund Securities. The Custodian shall transmit promptly to the Recordkeeper, Investment Committee or Investment Manager written information (including, without limitation, pendency of calls and maturities of securities and expirations of rights in connection therewith) received by the Custodian from its agents or its subcustodians or from issuers of the securities being held for the Company Stock Fund. With respect to tender or exchange offers, the Custodian shall transmit promptly to the Recordkeeper, Investment Committee, Company Stock Trustee or Investment Manager written information received by the Custodian from its agents or its subcustodians or from issuers of the securities whose tender or exchange is sought and from the party (or his agents) making the tender or exchange offer. The Custodian shall not be liable for any untimely exercise of any tender, exchange or other right or power in connection with securities or other property, of the Company Stock Fund at any time held by it unless (i) it or its agents or subcustodians are in actual or effective possession of such securities or property and (ii) it receives Proper Instructions with regard to the exercise of any such right or power and both (i) and (ii) occur

at least three (3) business days prior to Custodian's deadline date to exercise such right or power.

15.3.11 Proper Instructions. The term "Proper Instructions" shall mean instructions received by the Custodian from the Recordkeeper, Company Stock Trustee, the Investment Manager, the Investment Committee, or any person duly authorized by any of them. Such instructions may be in writing signed by the authorized person or may be in a tested communication or in a communication utilizing access codes effected between electro-mechanical or electronic devices or may be by such other means as may be agreed to from time to time by the Custodian and the party giving such instructions (including, without limitation, oral instructions). The Company Stock Trustee shall cause its duly authorized officer, or the duly authorized officer of any Investment Manager, to certify to the Custodian in writing the names and specimen signatures of persons authorized to give Proper Instructions. The Custodian shall be entitled to rely upon the identity and authority of such persons until it receives notice from the Company Stock Trustee or the Investment Manager to the contrary.

15.3.12 Actions Permitted without Express Authority. The Custodian may, at its discretion, without express authority from the Recordkeeper, Company Stock Trustee or the Investment Manager:

(a) make payments to itself or others for minor expenses of handling securities or other similar items relating to its duties under this Contract, provided that all such payments shall be accounted for to the Company Stock Trustee;

(b) surrender securities in temporary form for securities in definitive form;

(c) endorse for collection checks, drafts, and other negotiable instruments; and

(d) in general attend to all nondiscretionary details in connection with the sale, exchange, substitution, purchase, transfer and other dealings with the securities and property of the Company Stock Fund.

15.3.13 Evidence of Authority. The Custodian shall be protected in acting upon any instructions, notice, request, consent, certificate, instrument or paper reasonably believed by it to be genuine and to have been properly executed or otherwise given by or on behalf of the Company Stock Trustee or an Investment Manager. The Custodian may receive and accept a certificate from the Company Stock Trustee or an Investment Manager as conclusive evidence (i) of the authority of any person to act in accordance with such certificate or (ii) of any determination or of any action by the Company Stock Trustee or the Investment Manager as described in such certificate, and such certificate may be considered as in full force and effect until receipt by the Custodian of written notice to the contrary.

15.4 REPORTING. The Custodian shall render to the Recordkeeper or Company Stock Trustee a monthly report of all monies received or paid on behalf of the Company Stock Fund and an itemized

statement of the securities for which it is accountable under this Contract as of the end of each month, as well as a list of all securities transactions that remain unsettled at that time. Custodian has no duty to verify reports it incorporates regarding securities or cash held outside its custody submitted by third parties, including but not limited to brokers, other banks or trust companies.

15.5 COMPENSATION OF CUSTODIAN. The Custodian shall be entitled to compensation for its services and expenses as Custodian set forth on the Fee Schedule XX attached hereto until a different compensation shall be in writing agreed upon between the Company and the Custodian.

If, in the performance of this Contract hereunder, the Custodian holds uninvested cash received from the Company Stock Trustee, Recordkeeper or Plan sponsor (or any related employer) any "float" earned thereon shall constitute a part of the Custodian's overall compensation for performance of the Services. The Company has negotiated with the Custodian and has agreed to allow the Custodian to retain such float income with the knowledge that the Company had the choice to either (i) retain such income for the benefit of the participants of the Plan and incur a higher custodian fee or (ii) allow the Custodian to retain such float income and realize a lower custodian fee.

15.6 RESPONSIBILITY OF CUSTODIAN. The Custodian shall not be

responsible for the title, validity or genuineness, including good deliverable form, of any property or evidence of title thereto received by it or delivered by it pursuant to this Contract and shall be held harmless in acting upon any notice, request, consent, certificate or instrument reasonably believed by it to be genuine and to be signed or otherwise given by the proper party or parties. The Custodian shall be held to the exercise of reasonable care in carrying out the provisions of this Contract, but the Custodian or its Nominee shall be kept indemnified by the Company for any action taken or omitted by it in good faith and without negligence. The Custodian shall be without liability to the Company Stock Fund, the Company or the Company Stock Trustee for any loss resulting from or caused by: (i) events or circumstances beyond its reasonable control including nationalization, expropriation, currency restrictions, act of war or terrorism, riot, revolution, acts of God or other similar events or acts; (ii) errors by the Company Stock Trustee, Recordkeeper, or any Investment Manager in its instructions to the Custodian or (iii) acts or omissions by a Securities System. It shall be entitled to rely on and may act upon advice of counsel (who may be counsel for the Company Stock Trustee or Company Stock Fund or the Company) on all matters, and shall be without liability for any action reasonably taken or omitted pursuant to such advice.

If the Custodian advances cash or securities for any purpose, including the purchase or sale of foreign exchange or of contracts for foreign exchange, or in the event that the Custodian shall incur or be assessed taxes, interest, charges, expenses, assessments or other liabilities including, without limitation, unpaid fees in connection with the performance of this Contract, except such as may arise from its own negligent act or negligent omission, any property at any time held for the account of the Company Stock Trustee or in the Company Stock Fund shall be security therefor and, should the Company fail to repay the Custodian promptly, the Custodian shall be entitled to utilize available cash and to dispose of the Company Stock Fund assets to the extent necessary to effect its right of setoff and make itself whole.

Notwithstanding any express provision to the contrary herein, Custodian shall not be liable for any indirect, consequential, incidental, special or exemplary damages, even if State Street has been apprised of the likelihood of such damages occurring.

15.7 SECURITY CODES. If the Custodian has issued to the Company Stock Trustee, or to any Investment Manager, security codes or passwords in order that the Custodian may verify that certain transmissions of information, including Proper Instructions, have been originated by the Company Stock Trustee or the Investment

Manager, as the case may be, the Custodian shall be kept indemnified by and be without liability to the Company Stock Fund and the Company and be without liability to the Company Stock Trustee for any action taken or omitted by it in reliance upon receipt by the Custodian of transmissions of information with the proper security code or password, including instructions purporting to be Proper Instructions, which the Custodian reasonably believes to be from the Company Stock Trustee or Investment Manager.

15.8 TAX LAW. The Custodian shall have no responsibility or liability for any obligations now or hereafter imposed on the Company Stock Trustee, the Company Stock Fund or the Custodian as custodian of the Company Stock Fund by the tax law of the United States of America or any state or political subdivision thereof. It shall be the responsibility of the Investment Committee to notify the Custodian of the obligations imposed on the Company Stock Trustee, the Company Stock Fund or the Custodian as custodian of the Company Stock Fund by the tax law of jurisdictions other than those mentioned in the above sentence, including responsibility for withholding and other taxes, assessments or other governmental charges, certifications and governmental reporting. The Plan Administrator or the Recordkeeper, and not the Custodian, shall withhold any tax which by any present or future law is required to be withheld from any

payment under the Plan.

15.9 INVESTMENT MANAGER.

15.9.1 Appointment and Termination of Appointment. The Company at any time may appoint one or more Investment Managers to manage the investment of all or any portion of the Company Stock Fund. In such event, the Company shall notify the Custodian in writing of the appointment of such Investment Manager, and of the portion of the Company Stock Fund over which the Investment Manager may exercise its authority. The Company similarly shall notify the Custodian of the termination of the appointment of any Investment Manager.

15.9.2 Authority. The Custodian, in performing its duties under this Contract, shall be entitled to rely upon Proper Instructions from the Investment Manager, Company Stock Trustee, the Investment Committee or Recordkeeper. In the absence of written limitations agreed to by the Custodian and Company, the Custodian shall accept Proper Instructions from the Recordkeeper or Investment Manager to the same extent as the Custodian would be entitled to accept such Proper Instructions from the Company Stock Trustee if no Investment Manager has been appointed.

15.10 EFFECTIVE PERIOD, TERMINATION AND AMENDMENT. The terms of this Section 15 shall become effective as of the date hereinafter set forth, shall continue in full force and effect until terminated as hereinafter provided, may be amended at any

time by mutual written agreement of the parties hereto and may be terminated by either the Company or the Custodian by an instrument in writing delivered or mailed, postage prepaid to the other party, such termination to take effect not sooner than ninety days after the date of such delivery or mailing unless a different period is agreed to in writing by the parties. The provisions of Sections 15.5, 15.6 15.7 and 15.8 of this Contract shall survive termination of this Contract for any reason.

Upon termination of the Custody provisions of this Contract, the Company shall pay to the Custodian upon demand such compensation as may be due as of the date of such termination and shall likewise reimburse the Custodian for its costs, expenses and disbursements.

15.11 ACTION ON TERMINATION. If a successor custodian shall be appointed by the Company, the Custodian shall, within a reasonable time after termination, deliver to such successor custodian at the office of the Custodian, its agents or its subcustodians or as otherwise agreed, duly endorsed and in the form for transfer, all securities, Company Stock Funds and other property then held by it hereunder and shall transfer to any account of the successor custodian all of the Company Stock Fund's securities held in a Securities System.

If no such successor custodian shall be appointed, the Custodian shall, in like manner, upon receipt of Proper

Instructions from the Company, deliver at the office of the Custodian, its agents or its subcustodians or as otherwise agreed and transfer such securities, Company Stock Funds and other property in accordance with such Proper Instructions.

In the event that no written order designating a successor custodian and no Proper Instructions as aforesaid shall have been delivered to the Custodian on or before the date when such termination shall become effective, the Custodian shall have the right to deliver to a bank or trust company of its own selection, having an aggregate capital, surplus, and undivided profits, as shown by its last published report of not less than $100,000,000 all securities, Company Stock Funds, and other property held by the Custodian. Thereafter, such bank or trust company shall be the successor of the Custodian under this Contract.

In the event that securities, Company Stock Funds and other property remain in the possession of the Custodian, its agents or its subcustodians after the date of termination hereof owing to failure of the Company to appoint a successor custodian or to give the Proper Instructions referred to above, the Custodian shall be entitled to fair compensation for its services during such period as the Custodian retains possession of such securities, Company Stock Funds and other property and the provisions of this Contract relating to the duties and obligations of the Custodian shall remain in full force and

effect.

15.15 PRIOR CONTRACT. This Contract supersedes and terminates, as of the date hereof, all prior contracts between all parties relating to the custody of the Company Stock Fund's assets.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers as of the day and year first above written.

ATTEST:

Geraldine Moloney

Assistant Secretary

GERALDINE MOLONEY
Notary Public, State of New York
No. 01MO6177236
Qualified in NY County
Expires 11/13/2011

CITIGROUP INC.

BY: _____

TITLE: VICE CHAIRMAN CITIGROUP, INC.

ATTEST:

_____

STATE STREET BANK AND TRUST COMPANY

BY: _____

Vice President

Belynda J. Crick
Notary Public
My Commission Expires
September 25, 2009

NOTICE OF APPOINTMENT

OF
INVESTMENT MANAGERS

Citigroup Inc., (the "Company"), certifies to STATE STREET BANK AND TRUST COMPANY (the "Trustee"), through the duly authorized person whose signature appears below, that the firms whose names are set forth below have been appointed as Investment Managers for the Company with respect to the Trust Agreement between the Company and the Trustee dated as of December 8, 2008, with authority over the portions of its assets indicated opposite their names. The Company further certifies that the Trustee may rely upon this certificate until such time as it receives another certificate bearing a later date.

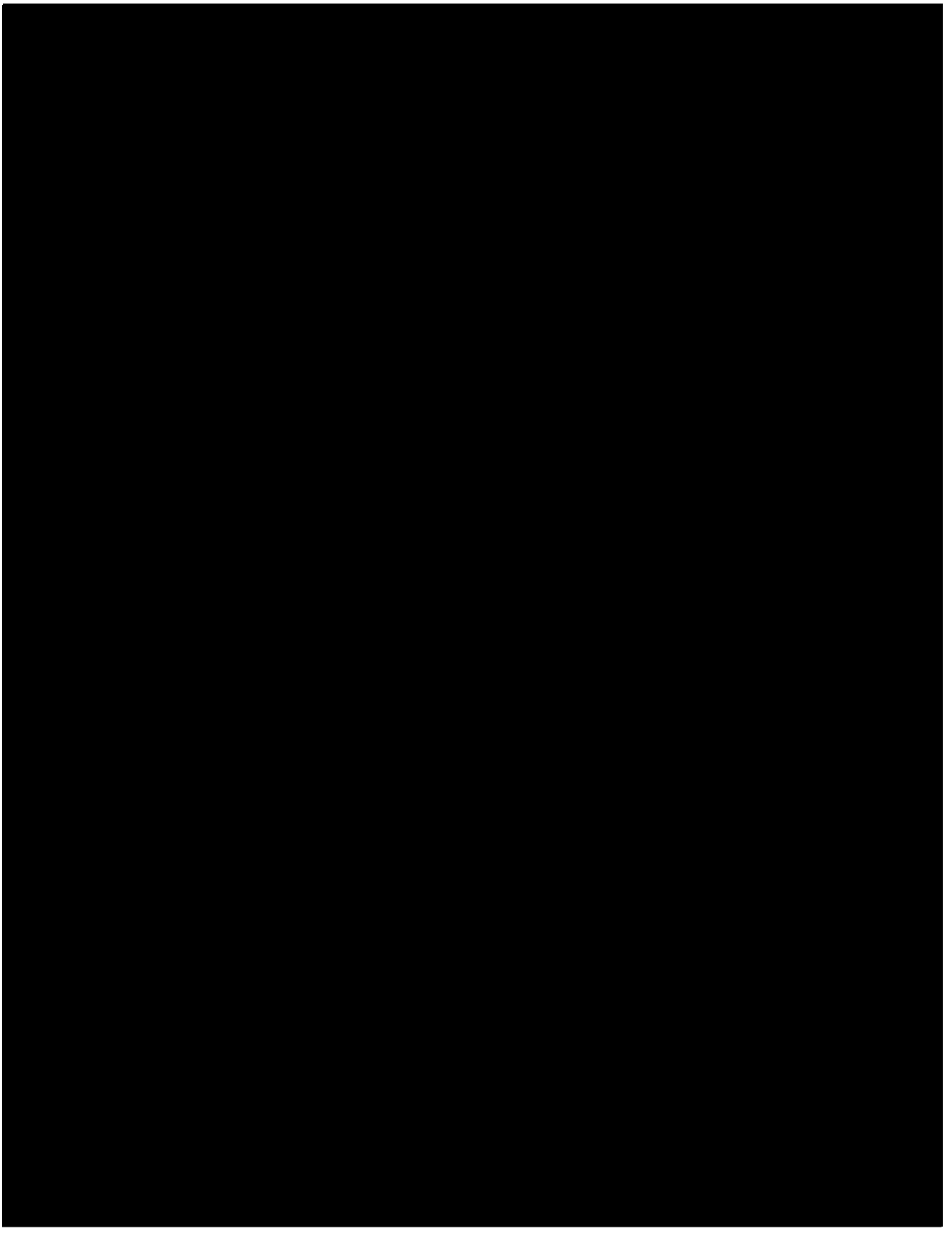
INVESTMENT MANAGER	PORTION OF ASSETS
_____	_____
_____	
_____	_____
_____	_____
_____	_____

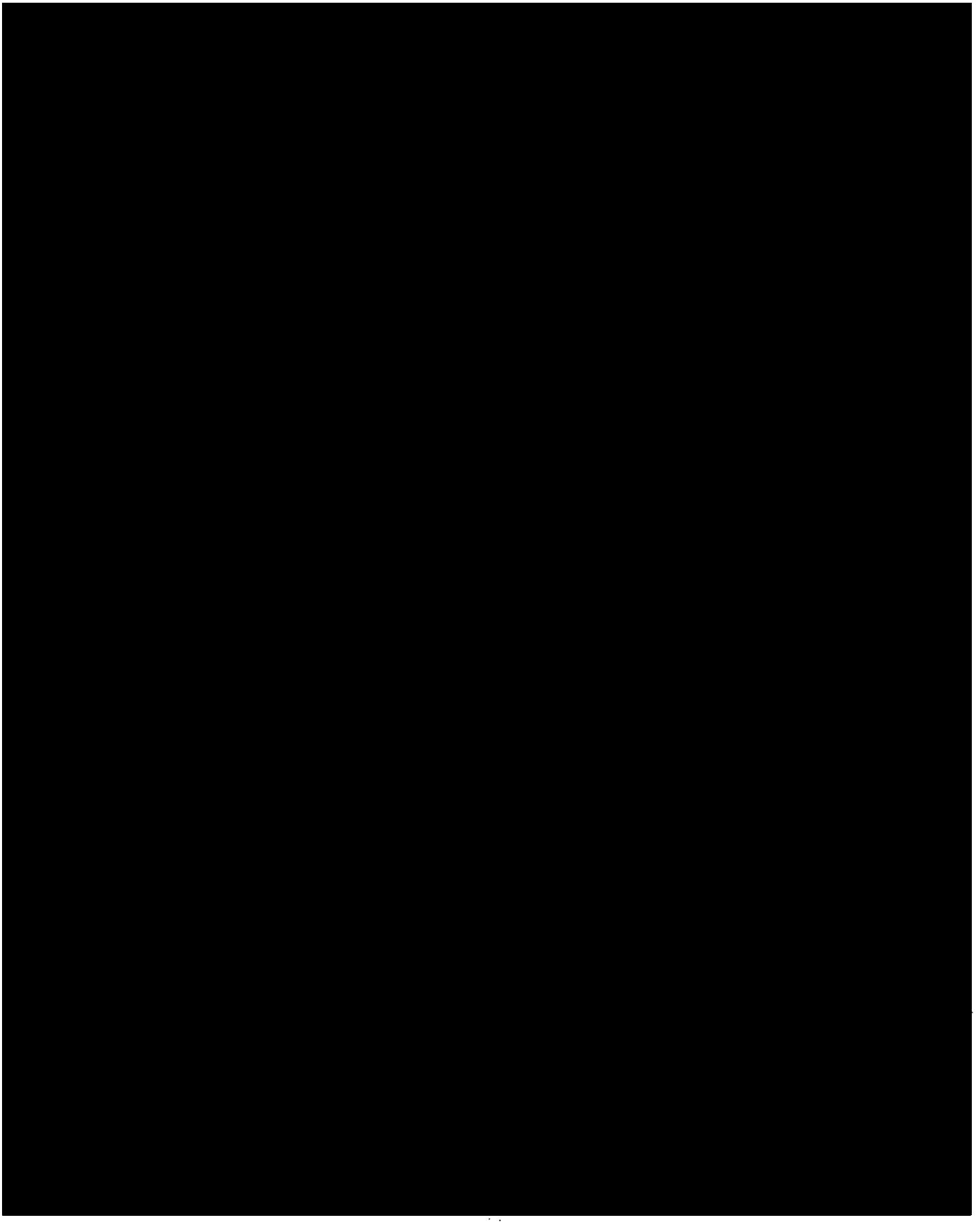
CITIGROUP INC.

BY: _____

TITLE: _____

DATE: _____





UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, ET AL. Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY AND STATE STREET GLOBAL MARKETS, LLC Defendants.	C.A. No. 11-cv-12049-MLW

AFFIDAVIT OF CATHERINE HAYES-DUFFEY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Catherine M. Hayes-Duffey states:

Background and Qualifications

1. I am Catherine M. Hayes-Duffey at Defendant State Street Bank and Trust Company and its subsidiaries ("State Street").

2. I am a Senior Vice President and the Chief Operating Officer for State Street Global Markets Sales and Trading and Research.

3. I submit this affidavit in support of Defendants' Motion to Dismiss the Complaint in the matter captioned above. I state in this affidavit the source of any information that is not based on personal knowledge.

4. State Street through its State Street Global Markets division ("SSGM") is a principal dealer in foreign currency.

5. SSGM is a separate entity from named defendant State Street Global Markets LLC ("LLC"). State Street and LLC are both subsidiaries of State Street Corporation.

6. Certain State Street custody clients have chosen to execute foreign exchange transactions with SSGM. During the alleged class period beginning January 1, 2001 (the "Class Period"), SSGM was the only State Street entity that executed foreign exchange transactions with U.S. pension plan and U.S. collective fund custody clients of State Street. LLC did not execute such transactions.

7. SSGM offered a variety of foreign exchange execution methods falling into two categories. In some cases, asset owners or their investment managers negotiated a rate or spread for each transaction prior to execution of the trade (what the Plaintiff refers to as "direct" transaction). Complaint ¶ 18. In other cases, no specific agreement concerning rate or spread was made prior to the execution of the transaction (what the Plaintiff refers to as "indirect" transactions).

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

Catherine M. Hayes-Duffey
Senior Vice President

STATE STREET®

INVESTMENT MANAGER GUIDE

REVISED NOVEMBER 20, 2009

STATE STREET

Introduction

State Street is pleased to make available to you this revised edition of the *Investment Manager Guide* (*Guide*). With detailed information useful in our mutual efforts to provide the highest level of service to our clients, this *Guide* represents the collective expertise of numerous State Street personnel, with valuable input from investment managers, service providers and other market sources. As we have done on a regular basis, we have refreshed the information contained in this edition of the *Guide*. State Street is committed to sharing timely information and expertise relating to worldwide custody practices. Throughout the year, we monitor market changes and update this *Guide* as appropriate.

PURPOSE OF THE INVESTMENT MANAGER GUIDE

Purpose of this *Investment Manager Guide* and Other Important Sources of Information Regarding Our Services Available to Investment Managers and Asset Owners

The purpose of this *Guide* is to describe in detail certain services that State Street Bank and Trust Company and its affiliates provide to our clients or their external investment managers, and procedural requirements and other important information regarding those services. While this *Guide* is written primarily for use by internal or external investment managers of our clients, it also contains information that is relevant to a client's understanding of the scope and cost of our services. Consequently, we encourage both investment managers and asset owners to read this *Guide*. If asset owners have any questions regarding the information set forth in this *Guide*, we encourage you to contact your client service representative for more information.

State Street also publishes or otherwise makes available other information to our clients or their investment managers or other agents that may be important in understanding the scope and cost of the various services that we offer and certain risks or considerations that asset owners or their agents should understand in using such services. While the following is not a complete list of such publications, these documents or websites do contain information that may be relevant to you.

State Street provides our clients and their investment managers with relevant and timely information about our network of subcustodians and the markets in which they operate through several other publications. State Street publishes *The Guide to Custody in World Markets*, which provides an overview of the safekeeping and settlement practices and procedures of each market in which State Street offers subcustody services. The *Global Market Bulletin* reports on market news and changes within our network. The *Global Custody Network Review* profiles the subcustodians in our global custody network. This publication also contains information explaining how State Street selects and establishes relationships with subcustody service providers, as well as the rigorous processes and controls that State Street follows to monitor their financial condition and operational performance. The *Securities Depository Review* contains custody risk analyses of the securities depositories presently operating in network markets. These materials are also available and regularly updated in the *Global Market Information* area of State Street's information portal, my.statestreet.com.

State Street offers a broad array of services to clients with differing investment objectives, regulatory structures and servicing needs. As a financial institution, we similarly have financial considerations and regulatory requirements that are distinct from those applicable to our clients. In addition, with respect to some, but not all, of our clients, we act in a fiduciary role or are otherwise subject to heightened regulatory responsibility. Consequently, in many circumstances our interest may differ from our clients and the interests of clients receiving the same or similar services from us may differ from each other in how and the terms on which we provide such services. Our goal is to act at all times in accordance with our legal, regulatory or fiduciary obligations to our clients and to provide an appropriate level of disclosure as to the risks inherent in our products and services and appropriate transparency regarding our pricing. However, except as expressly agreed by contract or required by law, we do not assume a fiduciary role with respect to any client

or with regard to particular transactions. In many instances, we act as principal in transactions with clients and will have differing financial interests in that transaction than our clients. Similarly, we may take differing views of economic and market developments, have different financial objectives, liquidity needs and risk tolerances and have differing purposes and be subject to differing risks in offering services to our clients than are applicable to our own business operations.

Since our business entails servicing sophisticated, institutional clients, the manner and content of our communications to our clients and their agents are geared to such an audience. Our goal is to be as transparent as possible in all dealings with our clients, consistent with the prudent management of our business. If you need additional information about any of our services, you should contact your client service representative. We strongly encourage all of our clients, either directly or through their advisors, to understand the services that we offer, the potential conflicts of interests and the direct, and indirect costs of our services and products.

This edition of the *Guide* supersedes information contained in earlier versions and remains subject to further changes and updates from time to time without prior notice to any person and at our discretion. Timeframes provided in this *Guide* refer to local time unless otherwise noted. The information in the *Guide* has been carefully researched, but due to the nature of this *Guide* and the complexities of and constant change in the markets, we are not responsible for its completeness or accuracy. This *Guide* should not be construed or relied upon as a substitute for appropriate legal, investment or tax advice or research. You should seek from other sources specific advice and information relevant to your investment activities. Nothing contained in this *Guide* shall in any way alter, supplement or amend the terms and conditions contained in (and all of the information in this *Guide* is qualified by and remains subject to any specific provision in) any agreement to which State Street is a party or impose any legal obligation or duty upon State Street to any party. State Street does not accept responsibility for losses or claims incurred or made as a result of use of or reliance on any information in this *Guide*. This *Guide* contains proprietary information and registered trademarks, is copyrighted and is fully protected by relevant copyright and trademark laws worldwide. This *Guide* is intended for use solely by custody clients of State Street and their investment managers and for use solely in connection with their receipt of services from State Street. Duplication, alteration, and further distribution or disclosure of this *Guide* and any information contained herein to any person other than a client or agent of a client of State Street without State Street's express written approval is strictly prohibited. References in this *Guide* to costs, charges, interest or similar terms may include amounts actually paid to other parties and internal charges made by State Street in accordance with our policies and procedures as in effect from time to time. Language in this *Guide*, which could be construed as an undertaking by State Street (such as reasonable, commercially reasonable or similar language), means that although State Street may try to accomplish the desired action or result despite the circumstances and constraints, neither State Street nor any agents shall incur any liability or responsibility for not doing so.

STATE STREET — A TRADITION OF QUALITY

State Street's emphasis on the servicing of financial assets has led to its leadership in a number of businesses. We have been ranked as the largest US master trust/master custody bank, the largest global custodian of US pension assets and the largest mutual fund custodian in the United States. Our success is the result of our commitment to quality, technological innovation and professional, personalized service.

SERVICING INVESTMENT MANAGERS

At State Street, we are committed to providing quality products and services and have implemented an organizational structure to effectively manage the multiple business relationships we may have with an investment manager. The Asset Manager Services group (AMS) provides service to investment managers hired as external advisors by our mutual client(s). To provide local support in the time zone of their Investment Managers, AMS teams are located worldwide in North America, Europe, Asia and the Pacific Rim. It is their responsibility to manage the day-to-day relationship while specialists provide support in areas such as transaction processing, corporate actions, income collection, cash management and fund accounting.

WORKING EFFECTIVELY WITH STATE STREET

State Street's *Investment Manager Guide* provides you with information about how we can work together effectively to serve our mutual clients. It describes how we operate and deal with trade notification and settlement, cash management, foreign exchange, corporate actions, and unique investments.

We strongly encourage you to familiarize yourself with these guidelines so that you can provide us with the information and the instructions that will lead to fast, accurate transaction processing. We also encourage you to consider what other areas of your organization have a need to know and understand the information included in this *Guide*, including investment operations, portfolio management, legal, compliance and risk personnel. Please distribute this *Guide* within your organization as appropriate. Please let your client service officer know as soon as possible if you have any questions about this *Guide*.

State Street appreciates the valuable observations and suggestions we receive from investment managers and clients regarding our publications. As we continuously develop our publications, feedback on our services with respect to your information needs is always welcome. If you have any inquiries or comments, please contact your client service representative. We remain committed to keeping you informed with up-to-date and pertinent information that is most useful to your investment management activities.

Foreign Exchange

This section will review:

- State Street Foreign Exchange Transactions
- Third-Party Foreign Exchange
- Overdrafts
- Netting

STATE STREET FOREIGN EXCHANGE TRANSACTIONS

As a custodian, State Street facilitates the processing of foreign exchange transactions at the direction of its custody clients or their independent investment managers. The internal and third-party investment managers of our custody clients are referred to in this *Guide* collectively as the "investment managers." These foreign exchange transactions may be executed with either third-party dealers or with State Street Global Markets, a separate division within State Street in which our foreign exchange business is conducted.

The investment managers determine what foreign exchange transactions are appropriate, with which foreign exchange dealer to execute these transactions, and on what terms and in what manner those transactions will be executed. The role that the custody division at State Street plays within foreign exchange at State Street is simply to facilitate the processing of transactions at the direction of clients or their investment managers, whether the transactions are executed through State Street Global Markets or other third-party dealers.

If an investment manager decides to execute a foreign exchange transaction through State Street Global Markets, like all third-party foreign exchange dealers, State Street Global Markets acts as principal (i.e., not as an agent) when effecting foreign exchange transactions, taking principal positions and risks. As such, State Street Global Markets acts as the counterparty, not as a broker, with respect to these foreign exchange transactions. If requested by its clients, State Street Global Markets also may act as agent in executing foreign exchange transactions as part of its transition management or currency overlay services.

State Street Global Markets is separate from the division of State Street that provides custody services and all foreign exchange execution services provided by State Street Global Markets are separate and independent of any services provided to custody clients under their custody or similar contractual arrangements with State Street. The relationship of the investment manager with State Street Global Markets and the terms of the foreign exchange transactions entered into by such investment manager with State Street Global Markets will often be governed by a separate master agreement governing foreign exchange, typically in the form of an International Swaps and Derivatives Association Master Agreement.

The foreign exchange services offered by State Street Global Markets are conducted as part of the over-the-counter market. As a dealer in the foreign exchange market, State Street Global Markets enters into principal transactions with other banks as well as institutional investor clients. The rates that banks, acting as principal dealers in the foreign exchange market, quote to one another for currency pairs throughout the trading day are referred to as "inter-bank" rates. There is no single inter-bank rate at any given time, nor is there consolidated reporting of recently executed transactions as exists in the equity markets.

Inter-bank rates are quoted 24 hours a day, five days a week and change continuously throughout the trading period. No two market makers will necessarily quote the same rates or bid-offer spread at any given moment in time. The rates and the size of these bid-offer spreads may be based on a variety of factors at the time of pricing a client's foreign exchange transaction, including, but not limited to, the size of the requested foreign exchange transaction, the level of trading activity with the counterparty over time, and the volatility and perceived liquidity of the relevant currency pair in the market, which can be affected by the time of day and any known and/or anticipated economic or other data releases or news in the foreign exchange and other financial markets. Inter-bank rates are normally used as wholesale reference prices for foreign exchange transactions and mark-ups or mark-downs are customarily applied when banks price transactions with institutional investor clients.

This section will outline the trade instruction requirements for an investment manager that submits trade instructions for the execution and/or settlement of foreign exchange in the following circumstances:

- State Street Global Markets Foreign Exchange Services
- Sales Trading Foreign Exchange Services
- Custody Foreign Exchange Services
- StreetFx Foreign Exchange Services
- Transaction Pricing and Reporting
- Third-Party Foreign Exchange Services
- Overdrafts

STATE STREET GLOBAL MARKETS FOREIGN EXCHANGE EXECUTION SERVICES

State Street Global Markets offers three primary methods by which institutional investors may execute principal foreign exchange transactions with State Street Global Markets: Custody Fx, Street Fx™ and Sales Trading. The breadth of these services enables investment managers to select the method of execution they believe best suits the needs of their clients with respect to any particular foreign exchange transaction. Other than Custody Fx, State Street Global Markets also makes these services available to institutional investors whose assets are not in custody at State Street.

The range of services provided by State Street Global Markets is designed to address the needs of all types of institutional investment professionals (e.g., investment managers for mutual funds and pension funds, including currency overlay managers, asset owners, hedge funds, commodity trading advisors and sovereign wealth funds). As noted above, all foreign exchange execution services provided by State Street Global Markets are exclusive of any services provided to custody clients under their custody or similar contractual arrangements with State Street.

SALES TRADING FOREIGN EXCHANGE SERVICES

State Street Global Markets provides 24-hour market-making services in the foreign exchange markets from trading desks in Boston, Toronto, Montreal, London, Sydney, Singapore, Hong Kong, Seoul, Taipei and Tokyo.

As a principal dealer in the foreign exchange market, State Street Global Markets employs a dedicated team of market risk professionals that operate as market makers in the foreign exchange market, providing liquidity in a number of currency pairs. Throughout the trading day, these individual market risk professionals quote prices (i.e., a bid and ask price) for the relevant currency pairs in which they trade. These prices are based on a variety of factors at the time of pricing a counterparty's foreign exchange transaction, including, but not limited to, the size of the requested foreign exchange transaction, the level of trading activity with the counterparty over time, and the volatility and perceived liquidity of the relevant currency pair in the market, which can be affected by the time of day and any known and/or anticipated economic or other data releases or news in the foreign exchange and other financial markets. State Street Global Markets is taking principal risk when it purchases and sells currency in the foreign exchange market and the bid and offer spread around each foreign exchange transaction is compensation for taking that risk. The pricing of any transaction by State Street Global Markets is not determined by reference to its actual costs. State Street Global Markets does not separately charge a commission in connection with the execution of its principal foreign exchange transactions.

State Street Global Markets offers a full range of foreign exchange products, including spot transactions, forward transactions (deliverable and non-deliverable forwards), and currency options (standard and exotic). State Street Global Markets also facilitates electronic execution of foreign exchange transactions via its proprietary electronic platforms, FxConnect, VectorFx and StreetFx.

Investment managers are responsible for determining whether to execute foreign exchange transactions with State Street Global Markets based on their own criteria, which typically include price, speed to quote, credit worthiness, proprietary research, account coverage, electronic trading capabilities and trade order handling. The investment managers also are responsible for negotiating foreign exchange transactions directly with State Street Global Markets. The investment managers obtain bid and ask prices directly from the foreign exchange market risk professionals of State Street Global Markets. If you have discussions about bid and ask prices with your custody client service representative, those discussions do not constitute a quote for or an execution of a foreign exchange transaction with State Street Global Markets.

Investment managers can submit foreign exchange transaction requests to the foreign exchange traders of State Street Global Markets either by telephone or electronically through third party or proprietary trading platforms, such as FxConnect. State Street Global Markets also offers a number of trading platforms to institutional investors, including Currenex and FxConnect, for which State Street Global Markets may receive a "click" or use fee for foreign exchange transactions executed over those platforms.

The foreign exchange operations team for State Street Global Markets strives to ensure that each foreign exchange transaction is confirmed in a timely manner and communicates with its counterparties or their investment managers to resolve any discrepancies. Specifically, each trading desk will seek to confirm the terms of each foreign exchange transaction with the investment manager promptly on the date of execution, generally through either its proprietary Global Trade Settlement System (GTSS) or through other means, including by electronic trade matching, telex, facsimile, SWIFT or telephone. The foreign exchange operations team for State Street Global Markets also works to maintain the standard settlement instructions for its counterparties in an effort to ensure foreign exchange transactions settle correctly and efficiently.

CUSTODY FOREIGN EXCHANGE SERVICES

General

Our custody foreign exchange services are available only to institutional investors (and their investment managers) whose assets are in custody at State Street. Similar to its sales trading foreign exchange execution services, State Street Global Markets acts as a principal dealer in executing custody foreign exchange transactions requested by investment managers, taking principal positions and risks. Except as otherwise expressly provided by contract, all foreign exchange execution services provided by State Street Global Markets are separate and independent of any services provided to custody clients under their custody or similar contractual arrangements with State Street.

Security Purchase and Sale Activity

Investment managers may elect to use our custody foreign exchange service to facilitate the execution of foreign exchange transactions when they notify State Street, as custodian, that they have purchased or sold a foreign security. Specifically, custody clients and their investment managers can instruct State Street, as custodian, to execute their foreign exchange requests either though State Street Global Markets or, when the relevant currency is not traded by State Street Global Markets, through a local subcustodian. As of the date hereof, State Street Global Markets effects custody foreign exchange transaction requests in the following currencies, unless otherwise noted:

Currency	Currency Code
Australian dollar	AUD
Brazilian real	BRL*
Bulgarian lev	BGN
Canadian dollar	CAD
Croatian kuna	HRK
Czech koruna	CZK
Danish krone	DKK
Estonian kroon	EEK
Euro	EUR
Great British pound sterling	GBP
Hong Kong dollar	HKD
Hungarian forint	HUF
Indonesian rupiah	IDR*
Indian rupee	INR*
Israeli new shekel	ILS
Japanese yen	JPY
Kuwaiti dinar	KWD
Latvian lat	LVL
Lithuanian lita	LTL
Malaysian ringgit	MYR*
Mexican peso	MXN
New Zealand dollar	NZD
Norwegian krone	NOK
Peruvian new sol	PEN
Philippine peso	PHP*
Polish zloty	PLN
Singapore dollar	SGD
Slovakian koruna	SKK
South African rand	ZAR
Swedish krona	SEK
Swiss franc	CHF
Thai baht	THB*
Turkish lira	TRY
United States dollar	USD

*These currencies have trading restrictions related to local regulatory or other requirements and are only traded with clients that custody their assets at State Street. With the exception of the Philippine peso, these currencies are traded as part of the automated dividend and interest income repatriation service, but are priced and executed along with the security purchase and sale activity described above, because they are restricted currencies that trade only when the local market is open.

Instructing Foreign Exchanges

An investment manager may instruct State Street in one of the following ways to execute their foreign exchange transactions, either through State Street Global Markets or through the third-party local subcustodian, when they notify State Street, as custodian, that they have purchased or sold a foreign security:

- Standing instructions by fund and by currency pair to execute a foreign exchange transaction upon electronic notification to State Street Investor Services of a purchase or sale of a foreign security that requires a foreign exchange transaction in the designated currency to settle such security transaction or to repatriate the proceeds resulting from such security transaction to the designated base currency of the investment manager
- On a trade-by-trade basis by incorporation of an instruction to execute a foreign exchange transaction into a security trade advice (or other transaction advice that requires a foreign exchange transaction) that is delivered to State Street Investor Services either electronically or by another authenticated method described below

Security trade advices that are delivered electronically to State Street are authenticated and validated by State Street Global Trade Processing Group within State Street Investor Services. Once a trade advice is validated, the State Street Global Trade Processing Group determines if the currency is traded by State Street Global Markets. If the relevant currency is traded by State Street Global Markets, as indicated in the list above, the foreign exchange transaction request is sent to State Street Global Markets for automated execution. If the relevant currency is not traded by State Street Global Markets, the foreign exchange transaction request is sent to the subcustodian in the local market for execution.

Foreign exchange transaction requests that are able to be executed by State Street Global Markets are accumulated throughout the trading day and, as described further below, priced on a net basis periodically by currency pair for each investment manager, although this practice may vary in certain emerging markets due to foreign exchange controls, tax or other regulatory considerations. State Street Global Markets generally prices these foreign exchange transaction requests on a net basis only at the individual investment manager level and not at the custody client level or across any subset of investment managers or sub-advisors.

Pricing

The pricing of foreign exchange transactions under this service is established on a regional basis. Specifically, in the United States, the requested foreign exchange transactions are priced once at the end of the trading day to allow all investment manager foreign exchange trade requests across funds for that day to be received by State Street. However, foreign exchange transactions requiring same day settlement may be priced earlier in accordance with payment deadlines in the relevant jurisdictions. In Europe and Asia, such requests are typically priced multiple times throughout the day, reflecting either the investment manager preferences in that region or other requirements relating to settlement of the currency.

The price of a foreign exchange transaction executed by State Street Global Markets under this service is based on an inter-bank market rate. Specifically, the pricing with respect to each currency pair is determined in a three-step process. First, indicative inter-bank bid and ask market rates for the currency pair are obtained at the time the prices for these transactions are set, generally from a third-party source. However, in circumstances in which State Street Global Markets believes that such indicative market rates do not reflect current market conditions, State Street Global Markets may select the inter-bank bid and ask rates quoted by its trading desk. The time of day this inter-bank rate is determined varies by geographic region, as discussed above.

Second, a mark-up (if the trade requests submitted by an investment manager on behalf of its clients, in the aggregate, represent a net purchase of a currency pair) or mark-down (if the trade requests submitted by an investment manager on behalf of its clients, in the aggregate, represent a net sale of a currency pair), as applicable, is applied to this indicative inter-bank market rate. The amount of the mark-up or mark-down may be adjusted by State Street Global Markets from time-to-time.

Effective December 1, 2009, the current mark-ups and mark-downs used by State Street Global Markets for these foreign exchange transaction requests will be posted each business day on my.statestreet.com and notice of any changes in these amounts will be provided at least two business days in advance. These notices will be provided on my.statestreet.com and also sent by email alert to my.statestreet.com users.

Third, the resulting transaction price is compared to the day's high and low prices up to the time the trade is priced as reported by a third-party source (the "High-Low Range"), and if the transactional price is outside the High-Low Range, the transaction price is modified to be the high or low price, as the case may be, quoted by such third-party pricing service at such time.

When an investment manager's clients are, in the aggregate, net purchasers of a specific currency pair on a particular day, the price is set by adding, as described above, a mark-up to the indicative ask rate in the relevant currency pair. If an investment manager's clients are, in the aggregate, net sellers of a specific currency pair on a particular day, the price is set by subtracting a mark-down from the indicative market bid rate in the relevant currency pair. In either case, the price ultimately applied to any custody foreign exchange transaction will be within the High-Low Range for the currency pair. This execution price is then applied to all purchase and sale requests priced at that time and region submitted by the investment manager on behalf of its clients using the custody foreign exchange services, other than in connection with *Automated Dividend and Interest Income Repatriation Activity* discussed below. The result is that all underlying clients of that investment manager receive the same execution price for transactions executed at the same time through this service, irrespective of whether their individual foreign exchange transactions are purchases or sales in that currency pair. If a custody client has hired more than one investment manager to manage its assets, that custody client may receive different execution prices in the same currency pair on a given day depending on whether the investment managers that elected to submit the transactions through this service were net buyers or sellers at the time of execution. Unless specified in the fee schedule of the relevant custody agreement, State Street does not impose any separate transaction charges on the underlying custody client if their investment manager elects to execute its foreign exchange transactions with State Street Global Markets.

With this custody foreign exchange service, custody clients receive consistent pricing and straight-through processing that substantially reduces settlement risk. The pricing of these trades on a net basis, together with the execution of all trades within the High-Low Range for the currency pair, tends to decrease the impact of the mark-up or mark-down. While this pricing methodology is fair to all clients, it is particularly advantageous for any client with individual foreign exchange transactions that are in the opposite direction of the net position of an investment manager's clients. For example, if all of the foreign exchange requests of an investment manager's clients result in that investment manager being a net purchaser of a particular currency pair, then any of that investment manager's clients that are sellers of that currency pair are able to sell at the indicative ask rate plus the mark-up added for this service.

State Street, as custodian, will only initiate foreign exchange requests on your behalf when complete and authenticated instructions are received by State Street according to the requirements noted in this *Guide*. A foreign exchange transaction request, amendment or cancellation that is sent using this service may not be executed in as timely a manner, or at the same execution rate, as if the investment manager were to deal directly with the sales trading desk of a foreign exchange dealer, including State Street Global Markets or, if applicable, the local subcustodian.

Therefore, if the timing of the execution of a foreign exchange transaction request is important, an investment manager should directly contact the sales trading desk of State Street Global Markets. Similarly, a foreign exchange request using this service is unlikely, in most circumstances, to be completed at the same or as favorable an execution rate as it would be if the investment manager were to deal directly with the sales trading desk of State Street Global Markets, reflecting a number of factors, including the convenience offered by custody foreign exchange services and the relatively smaller size of trades executed through these services. If any client or investment manager prefers different pricing from what State Street Global Markets provides in connection with these custody foreign exchange services, they can elect not to be enrolled in State Street's automated dividend and interest income repatriation service and to execute their foreign exchange transactions directly with State Street Global Markets through the sales trading desk or through StreetFx™.

Automated Dividend and Interest Income Repatriation Activity

In addition, investment managers of custody clients at State Street can also elect to participate in the automated dividend and interest income repatriation service offered by State Street. These services constitute part of the overall custody foreign exchanges services offered by State Street. The types of income events covered by this service include cash dividends, interest income, interest on mortgage-backed securities, interest (credit or debit) on transaction accounts, and tax reclaims. Under this service, State Street aggregates all income of a custody client across all State Street custody locations on a set interval (e.g.,

on a daily, weekly or monthly basis) in accordance with standing instructions provided by an investment manager who, in turn, directs the execution of one net trade per currency, per portfolio at the end of such period.

If the relevant currency is traded by State Street Global Markets, as indicated in the list above, the investment manager instructs State Street to send the foreign exchange transaction request to State Street Global Markets for automated execution. If the relevant currency is not traded by State Street Global Markets, the investment manager instructs State Street to send the foreign exchange transaction to the subcustodian in the local market for execution.

The price of a foreign exchange transaction executed by State Street Global Markets under this service is based on an inter-bank market rate. Specifically, the pricing with respect to each currency pair is determined in a two-step process. First, at the opening of the trading day in Australia, State Street determines a mid-rate for each currency pair based on indicative market bid and ask rates, which are generally obtained from third-party sources. However, in circumstances in which State Street Global Markets believes that such mid-rate does not reflect current market conditions, State Street Global Markets may select a mid-rate quoted by its trading desk.

Second, a mark-down and a mark-up, as applicable, is applied to this mid-rate, effectively establishing both a bid and ask rate for such currency pair. These rates are fixed for 24 hours, meaning this pricing is used for all dividend and interest income repatriation foreign exchange transactions executed with State Street Global Markets during this period. If the foreign exchange transaction requests of a portfolio at the end of the relevant interval set by an investment manager, in the aggregate, represent a net purchase of a currency pair, that portfolio will receive a transaction price for that net transaction equal to the mid-rate for that day plus the mark-up. If the foreign exchange transaction requests of a portfolio at the end of the relevant interval set by an investment manager, in the aggregate, represent a net sale of a currency pair, that portfolio will receive a transaction price for that net transaction equal to the mid-rate for that day minus the mark-down. The amount of the mark-up or mark-down for these services may be adjusted by State Street Global Markets from time-to-time.

Effective December 1, 2009, the current mark-ups and mark-downs used by State Street Global Markets for these foreign exchange transaction requests will be posted each business day on my.statestreet.com and notice of any changes in these amounts will be provided at least two business days in advance. These notices will be provided on my.statestreet.com and sent via email alert to my.statestreet.com users. Due to the manner in which these foreign exchange transactions are priced and executed, the transaction prices applied to such transactions are not limited to prices within the daily high-low range for the relevant currency pair at the time of execution.

The mark-up and mark-down on automated dividend and interest income repatriation services geneally tends to be somewhat higher than mark-ups and mark-downs on transactions to facilitate settlement of purchase and sale transactions. This higher amount reflects a number of factors, including the smaller size of these transactions and the greater risk to State Street Global Markets to effect transactions throughout a 24-hour period at a price determined and set at the outset of the trading day.

Accordingly, a foreign exchange transactions request related to automated dividend and interest income repatriation is unlikely to be completed at the same or as favorable an execution rate as it would be if the investment manager were to deal directly with the sales trading desk of State Street Global Markets, reflecting a number of factors including the convenience offered by these automated dividend and interest income repatriation services and the relatively smaller size of trades executed through these services. If any client or investment manager prefers different pricing from what State Street Global Markets provides in connection with its automated dividend and interest income repatriation services, they can elect to execute their foreign exchange transactions directly with State Street Global Markets through the sales trading desk or through Street FX™.

Transaction Pricing and Reporting

Custody clients and their investment managers can view pricing information for foreign exchange transactions to facilitate settlement of purchase and sale activity and automated dividend and interest income repatriation transactions executed with State Street Global Markets at my.statestreet.com. Specifically, with respect to settlement of purchase and sale activity, the following information, by currency pair, will be available for review on a next-business day basis:

- **Indicative Rate Reference.** This explains whether the source for the indicative market rates was a third-party pricing source, the market risk traders of State Street Global Markets or, for some emerging markets, subcustodian quotes or other independent dealer quotes.
- **Indicative Rate Local Time.** This will be the local time at which the relevant indicative market spot bid and ask rates are obtained.
- **Indicative Spot Rate.** This will include both the actual bid and offer indicative market spot rates to which the mark-up or mark-down is applied, as discussed above.
- **Execution Rates.** These are the actual spot execution rates for each foreign exchange transaction executed with State Street Global Markets related to purchases and sales of foreign securities. The spot rates for foreign exchange transactions that do not settle on the spot settlement date may be adjusted to reflect forward points.
- **High-Low Range.** This represents the daily high-low range up to the time the foreign exchange transactions are priced (i.e., the Indicative Rate Local Time).
- **Actual Mark-up or Mark-Down.** This is the actual mark-up or mark-down, in basis points, applied to the Indicative Spot Rate and reflects the impact of the high low range for the day on the mark-up or mark-down, if any.

With respect to automated dividend and interest income repatriation foreign exchange transactions, the following information, by currency pair, will be available for review on a next business day basis:

- **Indicative Rate Reference.** This explains whether the source for the indicative market bid and ask rates that were used to derive the mid-rate was a third party pricing source, the market risk traders of State Street Global Markets or, for some emerging markets, subcustodian quotes or other independent dealer quotes.
- **Indicative Rate Local Time.** This will be the local time at which the relevant indicative market spot rates are obtained.
- **Indicative Spot Mid-Rate.** This will be the indicative spot mid-rate to which the mark-up or mark-down is applied, as discussed above.
- **Execution Rates.** These are the actual spot execution rates for each automated dividend and income repatriation foreign exchange transaction. With respect to certain restricted currency transactions, the execution rate will be reported as described above for purchase and sale activity because they only trade when the local market is open.
- **Actual Mark-up or Mark-Down.** This is the actual mark-up or mark-down, in basis points, applied to the Indicative Spot Rate.

State Street, as custodian, does not negotiate, review or approve any of the rates for foreign exchange transaction requests sent to State Street Global Markets or any subcustodian for execution. State Street expects that investment managers will review and approve these rates on an ongoing basis.

State Street receives the foreign exchange rate applied by the subcustodian to each deal and passes these on to the client. As a custodian, State Street monitors the timely execution of the foreign exchange requests by the subcustodian. State Street is readily available to contact the subcustodian on a case-by-case basis upon request by the client to pursue further details of the foreign exchange rates applied by the subcustodian.

Subcustodians

The forgoing pricing methodologies, including the applicable mark-ups and mark-downs, do not apply to custody foreign exchange transactions that are processed through subcustodians because State Street Global Markets does not make a market in the applicable currency pairs. For a list of currencies in which State Street Global Markets is able to execute custody foreign exchange transaction requests, you should refer to the table set forth above in the Custody Foreign Exchange Services section.

The pricing of foreign exchange transactions requests executed by the local subcustodian is determined solely by the subcustodian, except for transactions involving the Korean won and Taiwan dollar, for which State Street Global Markets provides the pricing at the individual transaction level consistent with the description above with respect to the processing of requests to facilitate settlement of purchase and sale activity, and automated dividend and interest income repatriation activity. Although the foreign exchange transaction requests related to the Korean won and Taiwan dollar are executed by the subcustodian resident in those jurisdictions, State Street Global Markets obtains the revenue associated with the mark-up or mark-down.

State Street, as custodian, is not compensated by the subcustodian in relation to the foreign exchange activity forwarded to the subcustodian per our client instructions. State Street does not mark-up or mark-down this foreign exchange activity processed by the subcustodian. The subcustodian is compensated for services and the execution of foreign exchange requests by the foreign exchange rate applied to the respective foreign exchange deal(s) and transaction charges where it may be applicable. This potential business is included in our negotiations for favorable fees with our subcustodians to support our business with them as a global custodian.

Employee Retirement Income Security Act of 1974

State Street Global Markets uses policies and procedures that are designed to comply with Section 408(b)(18) under the Employee Retirement Income Security Act of 1974, as amended, when executing foreign exchange transactions under these custody foreign exchange services. Accordingly, if an investment manager instructs State Street to execute foreign exchange transactions through State Street Global Markets on behalf of a plan that is subject to the Employee Retirement Income Security Act, as amended, that investment manager is deemed to be representing and warranting to State Street and State Street Global Markets that such foreign exchange transactions are related solely to the purchase, sale or holding of securities or other investments on behalf of that plan. These foreign exchange transactions may also include currency hedging transactions designed to hedge currency risk directly associated with securities and other assets held for investment.

Operational Requirements for Custody Foreign Exchange Services

There are several operational requirements that should be considered by investment managers that elect to use custody foreign exchange services. These include:

- No oral instructions to request, amend or cancel a foreign exchange transaction with State Street Global Markets or any subcustodian will be accepted.
- At a minimum, instructions must be authenticated and include the following information: the fund account number, ISO currency code, amount of currency bought or sold, offsetting ISO currency code, and the desired value date.
- With respect to a foreign exchange transaction request accompanying a securities trade advice, if no amount is listed as bought or sold, then State Street will direct a foreign exchange transaction against the net amount of the security trade.
- If an instruction to execute a foreign exchange transaction is sent to State Street electronically via MT52x (Custom Format), which is an individual securities transaction instruction, the foregoing information should be included in Field 72 of the ISITC security trade advice using the code word, AFXC or AFXA, in conjunction with the offsetting ISO currency code (e.g., Field72:/AFXC/USD). Using these codes indicates that State Street, as custodian, should, upon receipt of such security trade advice, direct the execution of a foreign exchange transaction to State Street Global Markets or the local subcustodian as described above versus the offsetting currency indicated.
- If instructions are sent electronically via MT54x, which is a securities transaction instruction, the foregoing information should be included in Field 11A (TRADDET BLOCK) of the ISITC security trade advice using the appropriate code word, FXIB or FXIS, in conjunction with the offsetting ISO currency code (e.g., Field 11A:/FXIB/USD). Using these codes indicates that State Street, as custodian, should, upon receipt of such securities transaction instruction, direct the execution of a foreign exchange transaction to State Street Global Markets or the local subcustodian as described above versus the offsetting currency indicated.

- If a value date for settling any foreign exchange transaction request is not included in any of the foregoing instructions, the foreign exchange transaction will be executed with a value date equal to the contractual settlement date of the corresponding securities transaction unless market circumstances dictate otherwise. State Street cannot honor any request to execute a foreign exchange transaction on the actual settlement date of the corresponding securities transaction.
- State Street asks that investment managers use the securities deadlines noted in the Securities Deadline Summary Matrix in the Reference Matrices Chapter of this *Guide*.
- Additionally, if instructions are not received according to the deadlines noted in the Reference Matrices chapter of this *Guide*, the execution date of the foreign exchange transaction may be delayed to the next trading date.
- State Street will not accept liability that may result from instructions that do not meet these requirements. State Street also reserves the right not to process incomplete or unclear instructions. Incomplete instructions, even if clarified or replaced by new instructions, may result in delayed execution of the transaction, for which we cannot assume any liability.

STREETFX® FOREIGN EXCHANGE SERVICES

StreetFx is an advanced technology service that allows foreign exchange transactions to be electronically transmitted directly to State Street Global Markets by the investment manager. These transactions are executed by State Street Global Markets throughout the trading day as directed by the investment manager at benchmark rates with a mark-up or mark-down agreed upon with the investment manager. StreetFx allows an investment manager to customize how foreign exchange transactions are electronically delivered, executed, confirmed and reported.

STATE STREET GLOBAL MARKETS CONTACTS

Boston

Foreign Exchange Trading
+ 1 800 DOLLAR FX
+ 1 800 365 5273

Confirmations
+1 800 9 AFFIRM
+1 800 923 3476

Middle Office
+1 617 664 8302

Canada

24 Hour Toll-Free Service
+1 888 SSFOREX

FX Confirmations
+1 800 923 3476

London

UK — FX Sales/Trading
+44 203 395 1955

UK — Toll-Free Service
+0800 56 0800

Operations
+44 203 395 7292

Middle Office
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Tokyo

FX Sales/Trading
+813 4530 7610

Trade/Payment Confirmation
+813 4530 7640

Sydney

24 Hour Toll-Free Service
+1 800 644 218

New Zealand Toll Free FX
+0800 443 055

FX Trading — Sydney
+612 8249 1150

Operations
+(61) 2 8249 1122

Hong Kong

FX Trading — Hong Kong
+(852) 2810 8012

Operations
+(852) 2978 9218

Seoul

FX Trading — Seoul
+(822) 3706 4550

Operations
+(852) 2978 9218

Singapore

FX Toll-Free Service
+(800) 616 1481

FX Trading — Singapore
+(65) 6826 7113

Operations
+(852) 2978 9218

Taiwan

FX Trading — Taiwan
+(886) 2 2735 3011

Operations
+(852) 2978 9218

THIRD-PARTY FOREIGN EXCHANGE

Requirements for Third-Party Foreign Exchange

Investment managers may execute foreign exchange transactions with third-party (i.e., non-State Street) FX providers. State Street must receive authenticated instructions with correct currency payment and receipt details by the deadlines noted in the Reference Matrices chapter of this *Guide*. Instructions, regardless of type, received after the relevant deadline specified in the Reference Matrices chapter will be processed on a reasonable efforts basis. This may result in delayed currency payments, delayed posting of currency receipts, or both.

The instructions must include the following:

- Fund Number
- Fund Name
- Trade Date/Settlement Date
- Purchase Amount and ISO Currency
- Sale Amount and ISO Currency
- Exchange Rate
- Cash Remittance Instructions
  - Receiving Bank S.W.I.F.T. TID or Bank Identifier Code (BIC)
  - Beneficiary Name and Location or Beneficiary S.W.I.F.T. TID or BIC
  - Beneficiary Account Number

Investment managers that execute third-party foreign exchange contracts must also ensure that they provide their counterparty with the correct payment details for State Street. Care should be given as State Street payment details may differ based upon client domicile. State Street will, based on receipt of a pre-advice, credit client accounts on contractual value date for receipt of funds expected from third parties and reserves the right to reverse them from the client account by debiting the same amount with original value after three business days if the funds have not been delivered in the market. Payments received by State Street and its agents after contractual value date incur a delayed value cost. This expense may be claimed if State Street receives an instruction from the investment manager to do so. If claims are not attempted, or are unsuccessful, the expense, if greater than $500, will be applied to the portfolio's cash account.

Foreign exchange contracts executed by investment managers with third-party providers should be in the name of the underlying client, not in the name of State Street.

State Street will not accept liability that may result from instructions that do not meet these requirements. State Street also reserves the right not to process incomplete or unclear instructions. Incomplete instructions, even if clarified or replaced by new instructions, may result in delayed processing of the transaction, for which State Street cannot assume any liability.

OVERDRAFTS

- Overdrafts that occur as a result of related securities transaction(s) failing will be charged to the client's account and will be borne by the client. Accordingly, the investment manager should incorporate such charges into the portfolio's daily cash funding requirements.
- To minimize potential overdrafts, investment managers may initiate a foreign exchange transaction after monitoring settlement activity and reviewing local cash balances.

NETTING

Many investment managers have recognized the settlement risk reduction advantages of netting settlement obligations for forward foreign exchange transactions that close out large hedge positions. When presented with authenticated instructions and required information (including gross deal detail as well as net payment/receipt amount), State Street will pay and/or receive net amounts in settlement of the associated gross obligations. Please note that legal agreements are required between the parties to establish a netting arrangement in order for the net settlement to clear the gross obligations. As our mutual client's agent, it is the responsibility of investment managers to be certain that effective netting agreements are in place with the counterparties with whom they settle on a net basis. State Street will respond to your instructions accordingly. Authenticated netting instructions must be received by State Street by the deadlines noted in the Reference Matrices chapter of this *Guide*.

DELIVERABLE CURRENCY TRADING ----- METHODS OF EXECUTION

The following table describes the various methods by which a State Street custody client or its investment manager can execute foreign exchange transactions. *The Third-Party Foreign Exchange Matrix* below provides details on trading foreign exchange with third-party dealers. Clients are not obligated to execute foreign exchange transactions through State Street Global Markets. The markets in which State Street Global Markets is able to trade foreign exchange are provided for informational purposes only.

Deliverable Currency Trading — Methods of Execution

Market	Currency	Eligible for Third Party Execution	State Street Global Markets				Subcustodian	
			Currency FX					
			Purchase and Sell	Ask	StreetFX	FX Sales Trading	Trades	AIR
Argentina	ARS	▲					✓	
Australia	AUD	✓	✓	✓	✓	✓		
Bahrain	BHD	✓					✓	✓
Bangladesh	BDT						✓	✓
Benin	XOF	✓					✓	✓
Bermuda	BMD	✓					✓	✓
Botswana	BWP	✓					✓	✓
Brazil	BRL*	▲	✓	✓				
Bulgaria	BGN	✓	✓	✓	✓	✓		
Burkina Faso	XOF	✓					✓	✓
Canada	CAD	✓	✓	✓	✓	✓		
Cayman Islands	KYD	✓					✓	✓
Chile	CLP	▲					✓	
China	CNY						✓	✓
Colombia	COP	▲					✓	✓
Costa Rica	CRC	✓					✓	✓
Croatia	HRK	✓	✓	✓	✓	✓		
Czech Republic	CZK	✓	✓	✓	✓	✓		
Denmark	DKK	✓	✓	✓	✓	✓		
Ecuador	USD							✓
Egypt	EGP						✓	✓
Estonia	EEK	✓	✓	✓	✓	✓		
Eurozone	EUR	✓	✓	✓	✓	✓		
Ghana	GHS	✓					✓	✓
Great Britain	GBP	✓	✓	✓	✓	✓		
Guinea-Bissau	XOF	✓					✓	✓
Hong Kong	HKD	✓	✓	✓	✓	✓		
Hungary	HUF	✓	✓	✓	✓	✓		
Iceland	ISK						✓	✓
India	INR*	▲	✓	✓				✓
Indonesia	IDR*	✓	✓	✓				
Israel	ILS	✓	✓	✓	✓	✓		
Ivory Coast	XOF	✓					✓	✓
Jamaica	JMD	✓					✓	✓
Japan	JPY	✓	✓	✓	✓	✓		

This matrix speaks to currencies, not settlement market.

*These currencies have trading restrictions related to local regulatory or other requirements and are only traded with clients that custody their assets at State Street. With the exception of the Phillipine peso, these currencies are traded as part of the automated dividend and interest income repatriation service but are priced and executed along with the security purchase and sale activity described above, because they are restricted currencies that trade only when the local market is open.

^Foreign exchange transaction requests related to the Korean won and Taiwan dollar are executed by the subcustodian resident in those jurisdictions, however, State Street Global Markets provides the pricing and liquidity for this activity and obtains the associated revenues. Please see the Foreign Exchange section of this Guide for a further discussion.

The Ecuador and Puerto Rico markets conduct business in USD.

ARS currency is not processed through AIR due to regulations.

Although third-party foreign exchanges are allowed, clients are encouraged to closely review local market considerations, such as regulations, restrictions, documentation and operational limitations.

Deliverable Currency Trading — Methods of Execution (continued)

Market	Currency	Eligible for Third Party Execution	State Street Global Markets				Subcustodian	
			Custody FX					
			Purchase and sell	AIR	Standing FX	FX Sales Trading	Trades	AIR
Jordan	JOD	▲					✓	✓
Kazakhstan	KZT	▲					✓	✓
Kenya	KES	✓					✓	✓
Korea	KRW^	▲					✓	✓
Kuwait	KWD	✓	✓	✓		✓		
Latvia	LVL	✓	✓	✓	✓	✓		
Lebanon	LBP	✓					✓	✓
Lithuania	LTL	✓	✓	✓	✓	✓		
Malaysia	MYR*	✓	✓	✓				
Mali	XOF	✓					✓	✓
Mauritius	MUR	✓					✓	✓
Mexico	MXN	✓	✓	✓	✓	✓		
Morocco	MAD	✓				✓	✓	✓
Namibia	NAD	✓					✓	✓
New Zealand	NZD	✓	✓	✓	✓	✓		
Niger	XOF	✓					✓	✓
Nigeria	NGN	▲					✓	✓
Norway	NOK	✓	✓	✓	✓	✓		
Oman	OMR	✓					✓	✓
Pakistan	PKR	▲					✓	
Palestine	JOD	✓					✓	✓
Peru	PEN	✓	✓	✓	✓	✓		
Philippines	PHP*	▲	✓	✓		✓		
Poland	PLN	✓	✓	✓	✓	✓		
Puerto Rico	USD							✓
Qatar	QAR	✓					✓	✓
Romania	RON	✓				✓	✓	✓
Russia	RUB						✓	
Saudi Arabia	SAR	✓					✓	✓
Senegal	XOF	✓					✓	✓
Serbia	RSD	▲					✓	✓
Singapore	SGD	✓	✓	✓	✓	✓		
South Africa	ZAR	✓	✓	✓	✓	✓		
Sri Lanka	LKR	▲					✓	✓
Swaziland	SZL	✓					✓	✓

This matrix speaks to currencies, not settlement market.

*These currencies have trading restrictions related to local regulatory or other requirements and are only traded with clients that custody their assets at State Street. With the exception of the Phillipine peso, these currencies are traded as part of the automated dividend and interest income repatriation service but are priced and executed along with the security purchase and sale activity described above, because they are restricted currencies that trade only when the local market is open.

^Foreign exchange transaction requests related to the Korean won and Taiwan dollar are executed by the subcustodian resident in those jurisdictions, however, State Street Global Markets provides the pricing and liquidity for this activity and obtains the associated revenues. Please see the Foreign Exchange section of this Guide for a further discussion.

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Deliverable Currency Trading — Methods of Execution (continued)

Market	Currency	Eligible for Third Party Execution	State Street Global Markets				Subcustodian	
			Custody FX					
			Purchase and sell	AIP	StreetFX	FX Sales Trading	Trades	AIR
Sweden	SEK	✓	✓	✓	✓	✓		
Switzerland	CHF	✓	✓	✓	✓	✓		
Taiwan	TWD^	▲					✓	✓
Thailand	THB*	▲	✓	✓				
Togo	XOF	✓					✓	✓
Trinidad and Tobago	TTD	✓					✓	✓
Tunisia	TND	✓					✓	✓
Turkey	TRY	✓	✓	✓	✓	✓		
Uganda	UGX	✓					✓	✓
Ukraine	UAH						✓	
United Arab Emirates	AED	✓					✓	✓
United States	USD	✓	✓	✓	✓	✓		
Uruguay	UYU	✓					✓	✓
Venezuela	VEF	▲					✓	✓
Vietnam	VND	▲					✓	✓
Zambia	ZMK	✓					✓	✓
Zimbabwe	ZWD	✓					✓	✓

This matrix speaks to currencies, not settlement market.

*These currencies have trading restrictions related to local regulatory or other requirements and are only traded with clients that custody their assets at State Street. With the exception of the Phillipine peso, these currencies are traded as part of the automated dividend and interest income repatriation service but are priced and executed along with the security purchase and sale activity described above, because they are restricted currencies that trade only when the local market is open.

^Foreign exchange transaction requests related to the Korean won and Taiwan dollar are executed by the subcustodian resident in those jurisdictions, however, State Street Global Markets provides the pricing and liquidity for this activity and obtains the associated revenues. Please see the Foreign Exchange section of this Guide for a further discussion.

The Ecuador and Puerto Rico markets conduct business in USD.

ARS currency is not processed through AIR due to regulations.

Although third-party foreign exchanges are allowed, clients are encouraged to closely review local market considerations, such as regulations, restrictions, documentation and operational limitations.

THIRD-PARTY FOREIGN EXCHANGE MATRIX

This matrix is for informational purposes only and should not be construed as, or used as a substitute for, appropriate legal, investment or tax advice. The contents of this matrix have been researched using various resources believed to be reliable. However, due to the complexities of the markets, we cannot guarantee that it is complete and accurate in every respect. This information was last reviewed in its entirety in November 2009.

Third-Party Foreign Exchange Matrix

**For Foreign Exchange, Execution — Restriction Categories are as follows: A: Third-party FXs are allowed. B: FX must directly relate to underlying investment activity. C: Repatriation restrictions such as proof of funds policy. D: No overdrafts allowed. Account must be funded prior to any debit. E: Documentation must be executed in market to settle FX. F: FX must be dealt with locally licensed FX institution.

Market	Currency	Currency Code	Foreign Exchange Execution — Restriction Categories:**	Comments
Argentina	Argentine peso	ARS	A*, B, C*, D, E, F	A* - Third-party FXs are allowed; however, there are challenges in transferring documentation for the cash reserve. Inflow of cash subject to a one-year, 30% USD cash reserve. C* - No restrictions on repatriation of income of National Government Bonds, provided that the investor can demonstrate that the funds are related to an interest payment. No restrictions on repatriation of interest and principal of National Government Bonds issued in USD. Repatriation of principal is subject to various conditions such as proof of inward remittance, proof of portfolio transaction that generated the funds, etc. No restrictions on repatriation of dividends, provided that the investor can demonstrate that the funds are related to a dividend payment. No restrictions on repatriation of principal and interest from corporate bonds issued by Argentine companies in USD. To benefit from the above exemptions, the investor must prove that between the time the income was received and the time the income is repatriated, the income earned was not used to fund any type of investment. Details of repatriation restrictions are: Up to USD5,000/month (for State Street as a whole) without any terms or documentation; USD5,001 up to USD500,000/month, no central bank approval required, provided below terms are fulfilled - Provide proof of the original entrance of funds into the country through the official foreign exchange market or through a credit in a local U.S. dollar account; - Provide proof that the funds were kept for 365 calendar days. The period of 365 days is to be counted from the date on which the investor entered the cash into the country and not the date on which the securities were effectively bought; - Provide proof of the use and flow of funds since they entered the country until the portfolio liquidation or transaction that generated the funds to be repatriated. Above USD500,000, central bank approval required. State Street is unaware of central bank granting such approval.
Australia	Australian dollar	AUD	A	
Austria	Euro	EUR	A	
Bahrain	Bahraini dinar	BHD	A	

Third-Party Foreign Exchange Matrix (continued)

**For Foreign Exchange Execution — Restriction Categories are as follows: A: Third-party FXs are allowed. B: FX must directly relate to underlying investment activity. C: Repatriation restrictions such as proof of funds inflow. D: No overdrafts allowed. Account must be funded prior to any debit. E: Documentation must be executed in market to settle FX. F: FX must be dealt with locally licensed FX institution.

Market	Currency	Currency Code	Foreign Exchange Execution — Restriction Categories:**	Comments
Bangladesh	Bangladesh taka	BDT	B, D, F	In the Bangladesh market, a third-party FX is not allowed for investment in securities. For securities investment purpose, a special type of cash account called NITA is used (non-resident investor taka account). As per central bank regulation, NITA account can only be credited through three main sources: - Inward remittance - Sales proceeds of securities - Income proceeds Moreover, the reporting responsibility related to the NITA account only lies with the NITA account holding bank, which also restricts the third-party FX dealing.
Belgium	Euro	EUR	A	
Benin	Franc de la Communauté Financière Africaine	XOF	A, D, F	
Bermuda	Bermuda dollar	BMD	A	There is no market for BMD outside of Bermuda. The rate is set across Bermuda.
Botswana	Botswanan pula	BWP	A, B, C*, F	C* - A non-resident account must be funded by the inward remittance of foreign currency, with the balance being freely convertible into any currency. Capital and income derived from investments purchased with inwardly remitted funds are also freely convertible. Intra-day overdrafts only.
Brazil	Brazilian real	BRL	A*, D, E, F	A*- MT210 (exclusive of IOF tax) must be sent to subcustodian by Noon (local time) on Value Date for pre-matching purposes. Party executing FX is responsible for providing FX details to Central Bank and paying IOF to Tax Authorities. Clients continue to maintain the dual account structure. FX purchases must be instructed, as settling in the equities (formerly exempt) or other instruments (formerly non-exempt) account, depends on the security being purchased. 2% IOF tax will apply to all foreign exchange (FX) inflows.
Bulgaria	Bulgarian lev	BGN	A, C*, E*	C* - Repatriation of investment income is subject to the investor's payment of any taxes due; however, non-resident investors are subject to statutory withholding tax rates of 5% on dividends and 10% on interest. E* - A legal agreement must be in place between the two FX counterparts to perform FX transactions.
Burkina Faso	Franc de la Communauté Financière Africaine	XOF	A, D, F	
Canada	Canadian dollar	CAD	A	
Cayman Islands	Cayman dollar	KYD	A	All settlements occur free-of-payment, with USD moving offshore.
Chile	Chilean peso	CLP	A*, B*, D, E, F	A* - Entity executing FX must report FX details to the central bank and provide a copy of the "*Planilla de comercio invisible*" to the Subcustodian. B* - Only foreign investors entering the market under Resolutions 5412 and 43; FX must be directly related to underlying investment activity.

Third-Party Foreign Exchange Matrix (continued)

**The Foreign Exchange Execution — Restriction Categories are as follows: A. Third-party FXs are allowed. B. FX must directly relate to underlying investment activity. C. Repatriation restrictions such as proof of funds inflow. D. No overdrafts allowed. Account must be funded prior to any debit. E. Documentation must be executed in market to settle FX. F. FX must be dealt with locally licensed FX institution.

Market	Currency	Currency Code	Foreign Exchange Execution — Restriction Categories:**	Comments
China	Chinese renminbi	CNY	B*, C*, D, F*	CNY is not freely convertible. B* - QFII should make securities investment within 10 business days after converting foreign currency into CNY. For quota injection, SAFE will publish the conversion rates of various foreign currencies against United States dollars (USD) on the 25th day of every month. If a QFII's base currency is not USD, the QFII will calculate the quota injection in accordance with the conversion rates published by SAFE. C* - Foreign institutional investors must obtain quota approval from the State Administration of Foreign Exchange. Principal remitted into China will be converted into CNY and deposited into the investor's cash account. Repatriation of principal is subject to a lock-in period. F* - According to QFII regulation, QFII's FXs shall be processed via its local custodian bank.
Colombia	Colombian peso	COP	A*, B, D*, E*, F	A* - The Local Administrator (subcustodian) is responsible for registering the FX with the central bank and would rely on the third-party to complete the registration form and return it to the subcustodian, which may cause delays. D* - Overdraft cannot exceed 5 days. E* - All foreign exchange transactions must be registered with the central bank on a trade-by-trade basis.
Costa Rica	Costa Rican colon	CRC	A	Third-party FXs are allowed but are not market practice as the majority of trades settle vs. USD.
Croatia	Croatian kuna	HRK	A, D*, F	D* - Overdrafts in non-resident investors' accounts are not permitted.
Cyprus	Euro	EUR	A	
Czech Republic	Czech koruna	CZK	A, F*	F* - Investors may conduct foreign exchange transactions only through local banks and financial institutions licensed by the *Česká národní banka* (CNB).
Denmark	Danish kroner	DKK	A	
Ecuador	United States dollar	USD	N/A	All trades settle versus USD.
Egypt	Egyptian pound	EGP	B, C, D, F	Central Bank of Egypt's (CBE) regulations do not support third-party (FX) transactions or clean cash payments.
Estonia	Estonian kroon	EEK	A	
Finland	Euro	EUR	A	
France	Euro	EUR	A	
Germany	Euro	EUR	A	
Ghana	Ghanaian cedi	GHC	A, C, D*, F	D* - Accounts may be overdrawn if a prior agreement is in place.
Greece	Euro	EUR	A	
Guinea Bissau	Franc de la Communauté Financière Africaine	XOF	A, D, F	
Hong Kong	Hong Kong dollar	HKD	A	
Hungary	Hungarian forint	HUF	A*	*Offshore FXs are allowed; however, settlement always occurs in Hungary.

Third-Party Foreign Exchange Matrix (continued)

**For Foreign Exchange Execution — Restriction Categories are as follows: A. Third-party FXs are allowed. B. FX must directly relate to underlying investment activity. C. Repatriation restrictions such as proof of funds inflow. D. No overdrafts allowed. Account must be funded prior to any debit. E. Documentation must be executed in market to settle FX. F. FX must be dealt with locally licensed FX institution.

Market	Currency	Currency Code	Foreign Exchange Execution — Restriction Categories:**	Comments
Iceland	Icelandic króna	ISK	B, C, D, E	Recent restrictions within the Icelandic market: - Withdrawals from Icelandic króna (ISK) accounts for the transfer of capital are not allowed - There are no restrictions on transfers between ISK accounts of non-residents in Iceland - Principal repayment and maturity proceeds from ISK-denominated bonds or securities may not be repatriated in foreign currency; however, coupon payments are freely convertible and may be repatriated - Investors may settle spot FX transactions entered into prior to the issuance of the rules - ISK-denominated instruments must be settled in ISK - Non-residents may reinvest ISK from a mature deposit or FX swap in ISK-denominated securities - ISK-denominated instruments may not be settled in foreign currency but non-resident investors may trade ISK-denominated bonds with other non-resident investors - Derivatives made before the rules entered into force may be settled; however, payments must be made to ISK accounts Transfers abroad from these accounts for capital transactions are prohibited.
India	Indian rupee	INR	A*, B, C, D, F	A* - Third-party FXs for inward remittances are permitted, but, not recommended because of risk of late or misdirected payment, missing FX documentation, etc. Outbound FXs can only be done through the bank holding the FII's cash account, per central bank regulations.
Indonesia	Indonesian rupiah	IDR	A, B, D, E, F*	F* - The central bank regulation prohibits IDR to be traded outside the country or offshore.
Ireland	Euro	EUR	A	
Israel	Israeli shekel	ILS	A	
Italy	Euro	EUR	A	
Ivory Coast	Franc de la Communauté Financière Africaine	XOF	A, D, F	
Jamaica	Jamaican dollar	JMD	A	
Japan	Japanese yen	JPY	A	
Jordan	Jordanian dinar	JOD	A*	A* - The subcustodian's experience is that third-party FXs cause trade failures and delays in receiving funds on time.

Third-Party Foreign Exchange Matrix (continued)

**For Foreign Exchange Execution — Restriction Categories are as follows: A: Third-party FXs are allowed. B: FX must directly relate to underlying investment activity. C: Repatriation restrictions such as proof of funds inflow. D: No overdrafts allowed. Account must be funded prior to any debit. E: Documentation must be executed in market to settle FX. F: FX must be dealt with locally licensed FX institution.

Market	Currency	Currency Code	Foreign Exchange Execution — Restriction Categories:**	Comments
Kazakhstan	Kazakhstan tenge	KZT	A*, C*, F	A* - There is no explicit regulation prohibiting third-party FXs, however, there may be difficulties because the interbank KZT cash payment deadline is 6:00 p.m., whereas KASE security settlements must be finished by 5:00 p.m. If a third-party FX is executed, there is a potential risk that funds will be received by the subcustodian later than required to settle a pending transaction which may result in the trade being rejected/cancelled. C* - In order to convert KZT into foreign currency, the subcustodian must present and retain proof of receipt of KZT proceeds or income, in the form of a trade ticket, a KASE confirmation, or sale-purchase agreement. The market allows overdrafts, provided that separate documentation is signed, and an overdraft limit is established. An overdraft facility is not currently in place with the subcustodian and will be reviewed on a client-by-client basis.
Kenya	Kenyan shilling	KES	A, C, E, F	
Korea	Korean won	KRW	A*, D, F*	A* - A registered foreign investor may also execute FX deals for the purpose of securities investment with any bank licensed to engage in FX business by the Ministry of Finance and Economy (MOFE). If an investor's local subcustodian is not used as the FX Bank, i.e., a third-party FX bank is used, the investor must open a cash account with the third-party FX bank. Third-party funding for securities purchases must be received into the foreign investor's cash account for securities settlement at the local subcustodian by 4:00 pm, on SD-1. F* - Foreign investors are required to open a "Non-Resident Cash Account opened Exclusively for Securities Investments" with a bank licensed to operate in Korea, and a foreign exchange must be performed via this account.
Kuwait	Kuwaiti dinar	KWD	A	
Latvia	Latvian lat	LVL	A	No restrictions of any kind exist regarding foreign exchange transactions.
Lebanon	Lebanese pound	LBP	A	Settlement of equities is against USD. T-bills settle against LBP. Foreign investors may not hold LBP overnight.
Lithuania	Lithuanian lita	LTL	A	
Luxembourg	Euro	EUR	A	
Malaysia	Malaysian ringgit	MYR	A, B*, E, F	B*- Deliverable forward FX must be executed onshore, needs to be linked to a transaction, and is required at the point of FX execution of which the dealer will request some evidence of the confirmed contract. Although regulations provide for exceptions, overdraft of ringgit is prohibited.
Mali	Franc de la Communauté Financière Africaine	XOF	A, D, F	
Malta	Euro	EUR	A	
Mauritius	Mauritian rupee	MUR	A, F	

Third-Party Foreign Exchange Matrix (continued)

**For Foreign Exchange Execution — Restriction Categories are as follows: A. Third-party FXs are allowed. B. FX must directly relate to underlying investment activity. C. Repatriation restrictions such as proof of funds inflow. D. No overdrafts allowed. Account must be funded prior to any debit. E. Documentation must be executed in market to settle FX. F. FX must be dealt with locally licensed FX institution.

Market	Currency	Currency Code	Foreign Exchange Execution — Restriction Categories:**	Comments
Mexico	Mexican peso	MXN	A*, E*, F	A* - Third Party FXs are allowed although not common. E* - There is no need to register in the country as a foreign investor to execute FXs. F* In order to execute a 3rd Party FX, an institution needs to have a direct agreement with the local FX institution, which can be a Bank, Broker house or Currency Exchange Agency.
Morocco	Moroccan dirham	MAD	A, C, D*, F	D* - Only technical overdrafts are permitted.
Namibia	Namibian dollar	NAD	A, D, F	
Netherlands	Euro	EUR	A	
New Zealand	New Zealand dollar	NZD	A	
Niger	Franc de la Communauté Financière Africaine	XOF	A, D, F	
Nigeria	Nigerian naira	NGN	A*, B, C, D, E, F	A* - Third-party FXs are permitted but not recommended due to risk of mishandled FX documentation (especially Certificate of Capital Importation), etc.
Norway	Norwegian krone	NOK	A	
Oman	Omani riyal	OMR	A	
Pakistan	Pakistani rupee	PKR	A*, B, C, D, E, F	A* - Allowed but not encouraged because of possible failed trades due to settlement cut-off times. Foreign portfolio investors' PKR funds are held in Special Convertible Rupee Accounts (SCRAs) through which repatriation of sale proceeds and dividend income is freely allowed. The authorized foreign exchange bank/dealer is required to maintain a Proceeds Realization Certificate (PRC) summarizing details of the origin of the funds. The FX bank will provide the PRC to the subcustodian, and will require a "form R" from the subcustodian in return. The form R specifies the purpose of the funds received (e.g. purchase of shares). The FX Bank in turn would file this return with the State Bank of Pakistan.
Palestine	Jordanian dinar/ United States dollar	JOD / USD	A, D	Trades settle vs. USD or JOD. Overnight and technical overdrafts are not permitted in Palestine. Palestine Monetary Authority's (PMA) prior approval is required for foreign investors to have overdraft facilities.
Peru	Peruvian nuevo sol	PEN	A	*Banco Central de Reserva del Perú*, the central bank, requires 48 hours to process a commercial bank's request to transfer funds abroad.

Third-Party Foreign Exchange Matrix (continued)

**For Foreign Exchange Execution — Restriction Categories are as follows: A. Third-party FXs are allowed. B. FX must directly relate to underlying investment activity. C. Repatriation restrictions such as proof of funds inflow. D. No overdrafts allowed. Account must be funded prior to any debit. E. Documentation must be executed in market to settle FX. F. FX must be dealt with locally licensed FX institution.

Market	Currency	Currency Code	Foreign Exchange Execution — Restriction Categories:**	Comments
Philippines	Philippine peso	PHP	A*, B*, C, D, E, F	A* - Allowed but not encouraged because of possible failed trade due to settlement cut-off times. B* - Not always necessary; however, should the client need to repatriate the funds in the future, they will not be able to unless it is further invested in either equities, government securities or time deposits (with maturities of 90 days or greater), as supporting documents are required (such as the Bangko Sentral Registration Document (BSRD)). Foreign investors are permitted to remit funds without prior regulatory approval and repatriate funds, provided that these are invested in eligible instruments. *Bangko Sentral ng Pilipinas* requires that subcustodians maintain a registry of all foreign funding and evidence of inward conversions called a Bangko Sentral Registration Document (BSRD). A third-party agent must send a Certificate of Inward Remittance to the subcustodian bank at the same time it transfers the PHP.
Poland	Polish zloty	PLN	A, F	Polish zloty (PLN) is a convertible currency; however, some foreign exchange controls exist for investors who are not domiciled in a European Union (EU), Organization for Economic Cooperation and Development (OECD), or European Economic Area (EEA) member country. Foreign investors are allowed to conduct foreign exchange transactions only through one of the Polish banks authorized and supervised by the National Bank of Poland (NBP) to perform such transactions.
Portugal	Euro	EUR	A	
Puerto Rico	United States dollar	USD	N/A	
Qatar	Qatari riyal	QAR	A	
Romania	Romanian leu	RON	A, B*, D, F	RON accounts established under State Street's custody agreement are intended for activity related to securities investment. RON FX activity not linked to an underlying securities investment may result in delayed settlement.
Russia	Russian ruble	RUB	A*	A* - Foreign investors settle cash obligations off-shore versus USD. For State Street clients, no FX takes place in the market.
Saudi Arabia	Saudi riyal	SAR	A	
Senegal	Franc de la Communauté Financière Africaine	XOF	A, D, F	
Serbia	Serbian dinar	RSD	A*, C, F	Prior to the repatriation of sales proceeds and dividends, foreign investors must satisfy their tax obligations. Clients must open both RSD and EUR accounts at the subcustodian to support settlements and entitlements. Cash prefunding is a requirement prior to execution of a trade.
Singapore	Singapore dollar	SGD	A	
Slovak Republic	Euro	EUR	A	
Slovenia	Euro	EUR	A	
South Africa	South African rand	ZAR	A	
Spain	Euro	EUR	A	

Third-Party Foreign Exchange Matrix (continued)

**For Foreign Exchange Execution — Restriction Categories are as follows: A: Third-party FXs are allowed. B: FX must directly relate to underlying investment activity. C: Repatriation restrictions such as proof of funds inflow. D: No overdrafts allowed. Account must be funded prior to any debit. E: Documentation must be executed in market to settle FX. F: FX must be dealt with locally licensed FX institution.

Market	Currency	Currency Code	Foreign Exchange Execution — Restriction Categories:**	Comments
Sri Lanka	Sri Lanka rupee	LKR	A*, B, C, D, F	A* - Allowed but not encouraged because of possible failed trade due to settlement cut-off times. Exchange control regulations require that all payments relating to the purchase and sale of shares by foreigners be routed through a Share Investment External Rupee Account (SIERA), which must be opened by each foreign investor. Remittance of dividends requires tax clearance. Similarly, exchange control regulations require that all payments relating to the purchase and sale of government treasury bonds and bills by foreigners be routed through a Treasury Investment External Rupee Account (i.e. TIERA for bonds and TIERA2 for bills), which must be opened by each foreign investor. Remittance of interest income and sales proceeds is freely permitted.
Swaziland	Swaziland lilangeni	SZL	A, B, C, D, F	
Sweden	Swedish krona	SEK	A	
Switzerland	Swiss franc	CHF	A	
Taiwan	New Taiwan dollar	TWD	A*, C*, D, E, F	A* - Although not prohibited by regulation, third-party FXs are not common due to reporting requirements and need to have funding in place on T+1. State Street's subcustodians reserve the right to charge a processing fee for third-party FX transactions due to manual reporting required. C* - The investor's local Tax Filing Agent must authorize repatriation of any gains in the market; gains are defined as any amount over the total inwardly remitted TWD.
Thailand	Thai baht	THB	A*, D	A* - Clients instructing clean payments through third-parties to fund securities investments must instruct the sending bank to pay the THB directly to State Street's NRBS account. Clients executing securities-related FX with third-party on-shore banks, State Street's NRBS number must be referenced as the receiving/paying account to the resident institution executing the FX. The third-party may request underlying information (e.g. broker contract) before executing the FX. THB can only transfer between like accounts, NRBS to/from NRBS, or NRBA to/from NRBA. The total daily outstanding amounts for THB cash accounts of non-resident investors must not exceed THB300 million per non-resident entity.
Togo	Franc de la Communauté Financière Africaine	XOF	A, D, F	
Trinidad and Tobago	Trinidad and Tobagan dollar	TTD	A*, D	A* - Funds are typically delivered directly to the broker. Offshore FX is allowed, but, this is not market practice.
Tunisia	Tunisian dinar	TND	A, D, F	
Turkey	Yeni Turk lirasi	TRY	A	
UAE - ADX	UAE dirham	AED	A	
UAE - DFM	UAE dirham	AED	A	
UAE - DIFC	US dollar / UAE dirham	USD AED	A	
Uganda	Ugandan shilling	UGX	A, F	
Ukraine	Ukrainian hryvna	UAH	C	Foreign investors settle cash obligations offshore versus USD. For State Street clients, no FX takes place in the market. Proof of inward remittance is required for repatriations. However, it is normally not available because of offshore cash settlement. Consequently, dividends may be non-repatriable.

Third-Party Foreign Exchange Matrix (continued)

**For Foreign Exchange Execution — Restriction Categories are as follows: A. Third-party FXs are allowed. B. FX must directly relate to underlying investment activity. C. Repatriation restrictions such as proof of funds inflow. D. No overdrafts allowed. Account must be funded prior to any debit. E. Documentation must be executed in market to settle FX. F. FX must be dealt with locally licensed FX institution.

Market	Currency	Currency Code	Foreign Exchange Execution — Restriction Categories:**	Comments
United Kingdom	British pound sterling	GBP	A	
United States	US dollar	USD	N/A	
Uruguay	Uruguayan peso/ US dollar	UYU USD	A*, D	A*- The majority of securities are issued and trade vs.USD.
Venezuela	Venezuelan bolivar fuerte	VEF	A*, B*, C*, D, F	A* - Third-party FXs are not market practice due to the fixed rate (1 USD = 2.1446 VEF) established by the central bank. B* - Central Bank must approve all purchases of VEF. C* - Sale of VEF has been suspended since February 5, 2003.
Vietnam	Vietnamese dong	VND	A*, B, C*, D, F	VND is not freely convertible and cannot be traded offshore. A* - United States dollars (USD) can be remitted and exchanged for VND for further payment to a local third-party, at a prevailing exchange rate within a fixed margin of the official exchange rate, fixed by the State Bank of Vietnam (SBV) on a daily basis (the SBV announces a daily USD/VND official exchange rate and the current ceiling rate is +/- 5%). All other FX exchange rates e.g., EUR/VND, JPY/VND are currently still market driven. Please note that third-party FXs for securities investment is not a common practice in Vietnam and there are no clearly defined procedures/documentation requirements in such cases. In the case of a third-party FX, the subcustodian bank will require a written confirmation from the third-party bank. Third-party FXs are more complicated for repatriation, as the remitting bank must ensure that all taxes are paid prior to repatriation and need to be aware of the source of funds for the investments. C* - Conversion of VND into foreign currency is permitted if the VND can be linked to a previous conversion of foreign currency into VND for investment purpose. Repatriation can be done after payment of relevant taxes.
Zambia	Zambian kwacha	ZMK	A, D, F	
Zimbabwe	Zimbabwean dollar	ZWD	A, B, C, D, F	

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, ET AL.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 11-cv-12049-MLW
	)	
STATE STREET BANK AND TRUST COMPANY AND STATE STREET GLOBAL MARKETS LLC	)	
	)	
Defendants.	)	

AFFIDAVIT OF ANALYSIS GROUP, INC. IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Michael Quinn states:

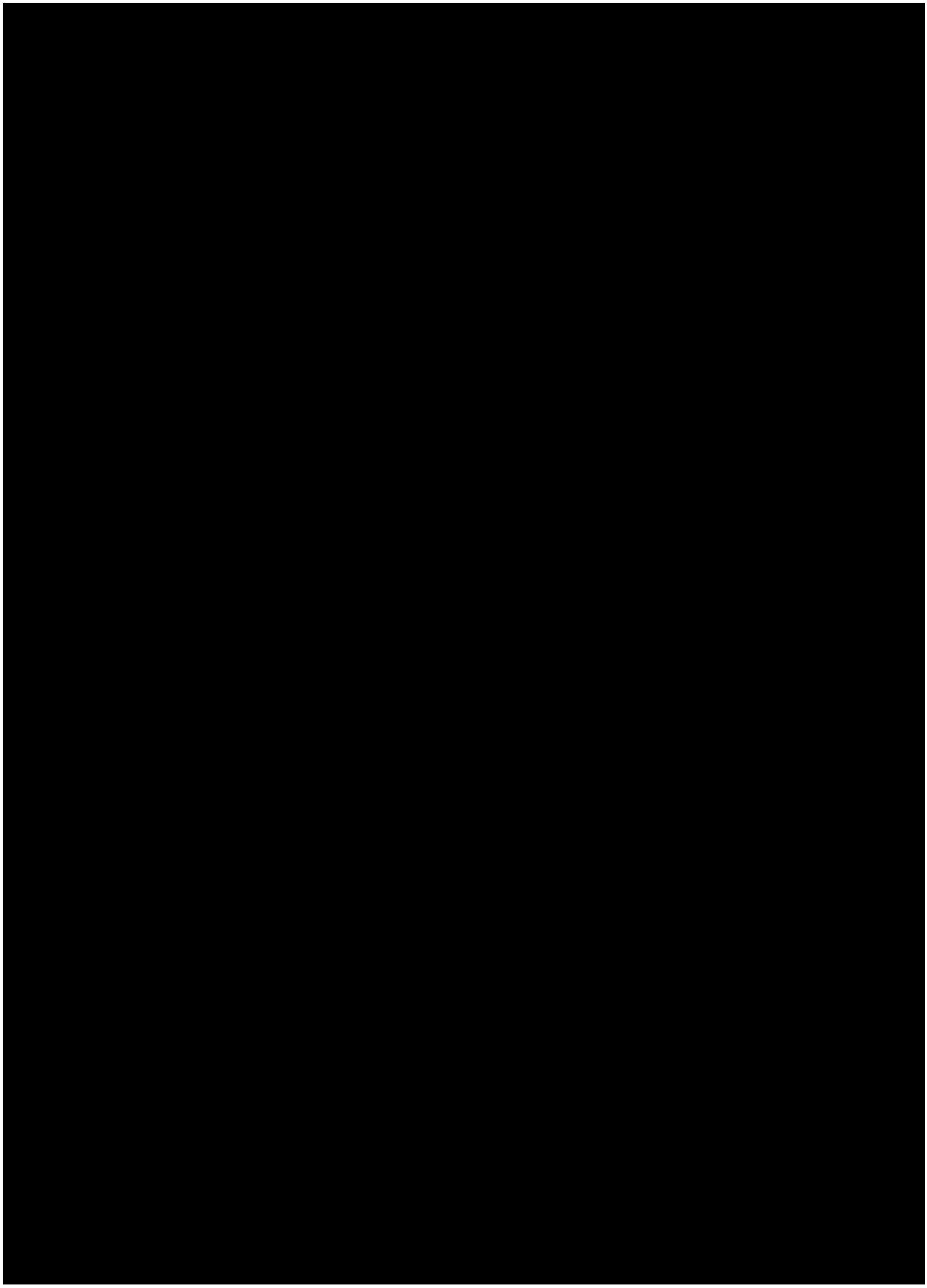
Background and Qualifications

1. I am a Managing Principal in Analysis Group, Inc. ("Analysis Group"), a consulting firm that, among other things, performs data analysis.

2. I have a Ph.D. in Economics from Princeton University. I supervised the work summarized below.

3. I state in this affidavit the source of any information that is not based on personal knowledge.

4. I am authorized by Analysis Group to submit this affidavit in support of Defendants' motion to dismiss the Complaint in the matter captioned above.



I declare under penalty of perjury that the forgoing is true and correct to the best of my personal knowledge, information, or belief.

EX. 48

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, AND THOSE SIMILARLY SITUATED, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS LLC AND DOES 1-20, Defendants.	CIVIL ACTION No. 11-cv-12049-MLW

PLAINTIFFS' MOTION FOR DISCOVERY AND TO RESET BRIEFING SCHEDULE

Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland ("Plaintiffs") respectfully request, pursuant to Fed. R. Civ. P. 7(b) and Local Rule 7.1 that the Court enter an Order (1) establishing a discovery schedule on factual matters raised in Defendants' Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6) ("Motion"), and (2) resetting the briefing schedule on the Motion as set forth below. Defendants State Street Bank and Trust Company and State Street Global Markets LLC oppose this Motion. For the reasons set forth in the Memorandum in support of this Motion, the Plaintiffs respectfully request the Court enter an Order as follows:

a. Plaintiffs' Motion for Discovery and to Reset Briefing Schedule is granted;

b. Plaintiffs may take discovery of Defendants on the factual matters raised in Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1);

c. Discovery is limited to matters relevant to issues raised in Defendants' Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6);

d. Plaintiffs shall serve their first round of document requests, requests for admission, and/or interrogatories, if any, not later than thirty days (30) following entry of this Order;

e. Plaintiffs shall complete deposition discovery, if any, not later than one hundred twenty (120) days following entry of this Order;

f. Plaintiffs shall serve their Opposition to Defendants' Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6) no later than one hundred fifty (150) days following entry of this Order;

g. Defendants shall serve their reply (if any) to Plaintiffs' opposition no later than one hundred sixty-five (165) days following entry of this Order;

h. Discovery taken pursuant to this Order shall not count against general merits discovery limits imposed by Federal or Local rules of civil procedure; and

i. If discovery disputes requiring intervention of the Court delay the completion of discovery in accordance with the foregoing schedule, either Party may move the Court to extend the briefing schedule.

Dated: May 11, 2012

Respectfully submitted,

By: /s/ Bryan T. Veis
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Attorneys for Plaintiffs

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

I certify pursuant to Local Rule 7.1(A)(2) that Plaintiffs' counsel conferred with Defendants' counsel by telephone and via email prior to filing this motion to resolve the issues raised. Defendants have indicated that they oppose this motion.

/s/Bryan T. Veis
Bryan T. Veis

CERTIFICATE OF SERVICE

I, Bryan T. Veis, hereby certify that on the date set forth below a copy of the foregoing **Document** was served upon all counsel of record via the court's ECF filing system.

Dated: May 11, 2012

\s\ Bryan T. Veis
Bryan T. Veis
McTigue & Veis LLP

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, AND THOSE SIMILARLY SITUATED, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS LLC AND DOES 1-20, Defendants.	CIVIL ACTION No. 11-cv-12049-MLW

[PROPOSED] ORDER

Upon consideration of the Plaintiffs Motion for Discovery and to Reset Briefing Schedule pursuant to Fed. R. Civ. P. 7(b) and Local Rule 7.1., the Defendants' Opposition thereto, and the record herein, it is hereby ORDERED:

a. Plaintiffs' Motion for Discovery and to Reset Briefing Schedule is granted;

b. Plaintiffs may take discovery of Defendants on the factual matters raised in Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1);

c. Discovery is limited to matters relevant to issues raised in Defendants' Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6);

d. Plaintiffs shall serve their first round of document requests, requests for admission, and/or interrogatories, if any, not later than thirty days (30) following entry of this Order;

e. Plaintiffs shall complete deposition discovery, if any, not later than one hundred twenty (120) days following entry of this Order;

f. Plaintiffs shall serve their Opposition to Defendants' Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6) no later than one hundred fifty (150) days following entry of this Order;

g. Defendants shall serve their reply (if any) to Plaintiffs' opposition no later than one hundred sixty-five (165) days following entry of this Order;

h. Discovery taken pursuant to this Order shall not count against general merits discovery limits imposed by Federal or Local rules of civil procedure; and

i. If discovery disputes requiring intervention of the Court delay the completion of discovery in accordance with the foregoing schedule, either Party may move the Court to extend the briefing schedule.

It is so Ordered.

This _____ day of _____, 2012

_____
Honorable Mark L. Wolf
United States District Judge

EX. 49

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, AND THOSE SIMILARLY SITUATED, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS LLC AND DOES 1-20, Defendants.	CIVIL ACTION No. 11-cv-12049-MLW *Motion to Impound Pending*

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR DISCOVERY AND TO RESET BRIEFING SCHEDULE

I. Introduction

Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland ("Plaintiffs") have moved the Court, pursuant to Fed. R. Civ. P. 7(b) and Local Rule 7.1 to enter an Order (1) establishing a discovery schedule on factual matters raised in Defendants' Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6) ("Motion"), and (2) resetting the briefing schedule on the Motion. In support of their motion, Plaintiffs state the following:

Defendants filed their Motion on April 9, 2012.[1] (Document 34). Plaintiffs' opposition to the Motion is now due on May 15, 2012.

[1] Under the terms of Plaintiff Henriquez' Assented to Motion to Extend Time to Amend Complaint and Set Briefing Schedule (Document 23), Defendants' Motion was due on April 5, 2012. On April 5, 2012, the Plaintiffs assented to an extension of time until April 9, 2012

In the Motion, Defendants challenge the accuracy of the factual allegations giving rise to subject matter jurisdiction. Specifically, in their Memorandum in Support of Motion to Dismiss ("Def. Mem."), which was filed under seal, Defendants rely on six affidavits (five from State Street Bank and Trust officers or employees, and one from an outside consultant or expert), also filed under seal, to support their contention that none of the Plaintiffs suffered an injury-in-fact on account of the conduct complained of. Accordingly, Defendants contend, none of the Plaintiffs have standing, and the Court lacks subject matter jurisdiction. *See* Def. Mem. at 1-9 (factual assertions), 9-18 (arguments on standing).

II. Legal Background

It is well-established that where a defendant challenges the accuracy, as opposed to the sufficiency, of the facts alleged to support subject matter jurisdiction in a motion under Rule 12(b)(1), the Court may order discovery on issues of jurisdictional fact.

> In a situation where the parties dispute the predicate facts allegedly giving rise to the court's jurisdiction, the district court will often need to engage in some preliminary fact-finding. In that situation, the district court "enjoys broad authority to order discovery, consider extrinsic evidence, and hold evidentiary hearings in order to determine its own jurisdiction."

Skwira v. United States, 344 F.3d 64, 71-72 (1st Cir. 2003) (citing *Valentin v. Hospital Bella Vista*, 254 F.3d 358, 363 (1st Cir. 2001)), *cert denied*, 542 U.S. 903 (2004); *see also Rivera-Flores v. Puerto Rico Tel. Co.*, 64 F.3d 742, 748 (1st Cir. 1995). This Court has recognized the need for and granted such discovery, where appropriate, as have courts in other districts in this circuit. *See Lopez v. United States*, 349 F. Supp. 2d 179, 181 (D. Mass. 2004) (Collings, M.J.) (granting discovery); *Biogen, Inc. v. Schering AG*, 954 F. Supp. 391, 395 (D. Mass. 1996) (Wolf, J.) (considering "the affidavits and depositions submitted by the parties to determine whether the

(Document 34), with the understanding that Defendants will assent to a comparable extension of time (after May 15) for Plaintiffs' opposition.

facts establish its jurisdiction"); *see also Molina Rivera v. Yacoub*, 425 F. Supp. 2d 202, 204-05 (D.P.R. 2006) (considering deposition testimony on motion under Rule 12(b)(1)); *Knight v. Industrial Distribution Group, Inc.* 2004 WL 2300477 at *1,*3 (D.N.H. Oct. 12, 2004) (permitting discovery on "critical factual dispute" regarding jurisdiction under Family Medical Leave Act; denying motion to dismiss pending completion of discovery).

III. Argument

In order to properly respond to Defendants' factual assertions and arguments, Plaintiffs must have discovery.

Defendants have asserted facts regarding transactions by or within certain collective investment funds. [redacted]

In this regard, Defendants' affiants also make assertions regarding the responsibilities of various divisions of Defendant State Street Bank and Trust Company, and imply that actions of separate,

[redacted]

nonjuridical, divisions of Defendant State Street Bank and Trust Company are not attributable to other divisions or to Defendant State Street Bank and Trust Company as an entity. *See* Affidavit of Mark A. Curran ¶¶ 1-2, 4-7; Dempsey Affidavit ¶¶ 1-2,13, 25; Affidavit of Lisa B. Duncan ¶ 4; Affidavit of John Connolly ¶ 4.

[redacted] The Defendants conclude, based upon the factual assertions in the various affidavits, that none of the Plaintiffs could have been injured by the conduct complained of, that the Plaintiffs have no standing to pursue the claims set forth in the Amended Complaint, and that the Court should, therefore, dismiss the Amended Complaint for lack of subject matter jurisdiction.

Defendants also make assertions of fact regarding the execution of foreign currency transactions. [redacted] Defendants provide no additional support for this assertion.

The facts asserted can be known only to State Street Bank and Trust Company and State Street Global Markets LLC insiders. Unless Plaintiffs are allowed access to the underlying documents, database(s), and witnesses, they will not have the factual background necessary to successfully challenge Defendants' factual assertions.

If Plaintiffs' motion is granted, the discovery Plaintiffs expect to conduct includes, but may not be limited to:

- Depositions of the six affiants who have made substantive affidavits. (Plaintiffs do not seek discovery of defense counsel who submitted an additional affidavit authenticating certain documents.) Plaintiffs will also seek the depositions of other State Street Bank and Trust or State Street Global Management, LLC officers or employees who are identified in the affidavits as providing information on which affiants rely. In addition, Plaintiffs may seek depositions of additional individuals or entities identified in the course of discovery, e.g. in the documents produced or in depositions, as well as Fed. R. Civ. P. 30(b)(6) depositions.
- Requests for Admission and/or Interrogatories testing the accuracy and completeness of Defendants' assertions regarding the [redacted] scope of Defendants' foreign exchange activities with respect to be named Plaintiffs' ERISA retirement plans.
- Requests for documents, including without limitation:
    - All the documents under which the named Plaintiffs' retirement plans — the Waste Management Retirement Savings Plan, the Citigroup 401(k) Plan, and the Retirement Plan of Johnson & Johnson ("Plans") — were established and operated. These include, but are not limited to, trust, custody, investment management, portfolio management, transition management, and fund mapping agreements.
    - [redacted]
    - Documents, such as prospectuses, fund summaries, and audit reports, describing the nature and functioning of Defendants' collective funds identified in the Amended Complaint and Defendants' motion to dismiss

filings as being offered, directly or indirectly, in the named Plaintiffs' retirement plans.[3]

- Defendants' manuals, guides, policy statements, and similar documents concerning procedures and practices regarding foreign-exchange trading.
- Account Opening documents for the Plans' investment managers, including but not limited to, any "ERISA/Fiduciary Status Letter … required for each ERISA account", and any "Income Repatriation Letter…authorizing State Street Bank to convert income from local currency to base currency…[also] required for each account", as described in State Street Bank and Trust's Investment Manager Guides [4]
- [redacted]
- Documents identifying the unique client and fund codes referred to in Defendants' motion to dismiss filings as assigned to the Plans, Executing Funds, Selected Funds (*see* Dempsey Affidavit2 ¶23), Sub-Funds and Other Funds.

IV. Conclusion

Plaintiffs respectfully request that the Court enter the proposed order filed herewith. Plaintiffs are prepared to serve requests for production of documents promptly upon issuance of the Order. Based upon preliminary discussions, the parties anticipate that there may be disagreements concerning the method and the scope of discovery requiring motions practice. Allowing for such motions practice, Plaintiffs anticipate that the production of documents would

[3] These funds have been variously identified as the: Aggressive Focus Fund, Conservative Asset Allocation Fund, Moderate Asset Allocation Fund, Aggressive Asset Allocation Fund, Emerging Market Equity Fund, Daily EAFE Securities Lending Fund Series A, EAFE Index Securities Lending Series – Class T, Daily Emerging Markets Index Non Lending Series Fund, International Equity Fund, SSgA Target Retirement Fund 2030, SSgA MSCI ACWI I EX-US Index Fund, Active Intl Stock Selection SL SF CL I (CM8J [*sic*], International Alpha Select SL Series Fund, and SSgA International Growth Opportunities Fund Series A Non-Lending.

[4] *See* page 131 of Exhibit O and page 139 of Exhibit C, respectively, to Adam Hornstine, Esq.'s Declaration in support of Defendants' Motion to Dismiss (Document 20), in *Arkansas Teacher Retirement System, et al*, vs. *State Street Corp., et al.*, No. 1:11-CV-10230 (MLW) (D. Mass).

take at least 60 to 90 days, with depositions to follow. Accordingly, Plaintiffs request, as set out in the proposed order, that the Court grant them a period of 120 days to conduct discovery, and set the date for filing of Plaintiffs' Opposition to Defendants' Motion to Dismiss 30 days after the close of discovery on jurisdictional issues.

The parties are negotiating a protective order to protect any confidential information or documents produced in this litigation. Plaintiffs are also requesting that any discovery taken pursuant to the requested Order not count against the limitations on merits discovery set forth in Local Rule 26.1(c) or the Federal Rules of Civil Procedure.

Dated: May 11, 2012

Respectfully submitted,

\s\ Bryan T. Veis
Bryan T. Veis

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Bryan T. Veis, hereby certify that on the date set forth below the foregoing document, which is subject to a pending motion to impound, was served upon all counsel of record by electronic mail.

Dated: May 11, 2012

\s\ Bryan T. Veis
Bryan T. Veis
McTigue & Veis LLP

EX. 50

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 11-cv-12049-MLW
	)	
STATE STREET BANK AND TRUST COMPANY, STATE STREET GLOBAL MARKETS LLC, AND DOES 1-20,	)	
	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR JURISDICTIONAL DISCOVERY

Defendants State Street Bank and Trust Company ("State Street") and State Street Global Markets, LLC ("LLC") submit this memorandum in response to the Plaintiffs' request for overbroad, unfocused jurisdictional discovery.

Defendants have moved to dismiss the Amended Complaint on standing and other grounds. Instead of responding to the motion, Plaintiffs proposed a long period in which to conduct jurisdictional discovery and sought at least five months for the filing of any opposition. In response, Defendants noted that the facts included in the record in support of their jurisdictional motion were not extensive, and proposed that Plaintiffs draft the discovery requests they would propose and share them with Defendants. Defendants would then work with Plaintiffs to negotiate a limited amount of discovery allowing Plaintiffs to address the facts Defendants relied upon to move to dismiss on standing grounds. Plaintiffs initially agreed, but then recanted. They refused to permit Defendants or the Court to see just what discovery they

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have in mind, and instead insist on unfettered discovery addressed to a list of topics that are just too broad.

In their motion, Plaintiffs pared back their initial list of topics somewhat, but it is still too broad. Moreover, it makes no sense to invite a raft of motions concerning the scope of discovery by permitting the Plaintiffs to proceed with jurisdictional discovery without letting Defendants and the Court know what actual requests Plaintiffs plan to make. Plaintiffs at some point are going to have to describe their document requests and any other discovery demands. They should do so now. The discipline of actually drafting the requests should cause Plaintiffs further to narrow and focus their demands, thereby decreasing the grounds for disputes between the parties and allowing the Defendants and the Court to evaluate the actual utility and burden of what Plaintiffs propose.

The reality is that the facts that are dispositive of the scope of the Court's jurisdiction are those relied upon in the affidavits filed in support of Defendants' Motion. There is no need for early merits discovery in the guise of jurisdictional discovery. [redacted] Plaintiffs' acknowledge that they have no information to the contrary, although it is their threshold burden to plead and prove injury.

In these circumstances, courts have repeatedly emphasized that jurisdictional discovery should be limited to the essential facts necessary to determine the Court's subject matter jurisdiction. Plaintiffs are not entitled to put Defendants to the burden and expense of responding to expansive and unfocused discovery not relevant to Defendants' Rule 12(b)(1) Motion. Nor can they contend that their discovery proposal meets this test. For example, they

request permission to fish for whatever information they later would claim to be relevant "to issues raised in Defendants' [separate] Motion to Dismiss Pursuant to **Rule**[] . . . **12(b)(6)**." (*See* Pls.' Proposed Order, at 2 (emphasis added).) Obviously, discovery relative to the separate motion for failure to state a claim is broader than necessary to address the jurisdictional motion and impermissible at this stage of the proceedings.

Accordingly, Plaintiffs' motion should be denied and jurisdictional discovery should be limited to the facts relied on in the affidavits filed in support of Defendants' Motion to Dismiss (as set forth in Defendants' Proposed Discovery Order (Exh. 1)).[1]

Background

Plaintiffs are allegedly participants in defined contribution retirement plans who caused the plans to invest assets in collective investment funds managed by State Street (the "DC Plaintiffs"), or participants in a defined benefit plan for which State Street served as custodian of assets (the "DB Plaintiffs").[2] On February 24, 2012, Plaintiffs filed an Amended Complaint alleging that Defendants violated the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA"), with respect to so-called "indirect" foreign currency exchange transactions that Plaintiffs claim the collective funds or the defined benefit plan executed with the State Street Global Markets division of State Street ("SSGM"). (*See* Dkt. No. 24.)[3] Plaintiffs

[1] Exhibits are attached to the Declaration of Nolan J. Mitchell.

[2] The State Street Global Advisor's division of State Street ("SSgA") is the investment manager for the collective funds. SSgA is separate from those divisions of State Street that act as a foreign currency principal dealer or that provide custodial banking services to retirement plans. (*See* Defs.' Br. in Support of Motion to Dismiss, at 1-2.)

[3] On November 18, 2011, one of the present Plaintiffs, Arnold Henriquez, filed a Complaint alleging similar ERISA claims. After Defendants moved to dismiss those claims on January 20, 2012 for lack of standing and failure to state a claim, the Plaintiff exercised his right to amend the Complaint rather than respond to Defendants' motion. Pursuant to a proposed briefing schedule agreed to by the parties, the Amended Complaint was filed on February 24, 2012.

purport to represent a putative class of all ERISA-covered plans for which State Street acted as custodian of assets or which invested in collective investment funds managed by State Street, and which executed so-called "indirect" foreign exchange transactions with State Street over an eleven-year putative class period from January 1, 2001 to the present.[4]

A. Defendants' Motion To Dismiss

On April 9, 2012, Defendants moved to dismiss the Amended Complaint under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. In support of their Rule 12(b)(1) motion, Defendants submitted affidavits of State Street employees and a consultant showing that Plaintiffs lacked Article III standing because they were never injured by alleged indirect foreign exchange trading with SSGM. [redacted]

[redacted]

On March 3, 2012, the parties filed a joint report, pursuant to Fed. R. Civ. P. 26(f), in which they agreed to defer a discovery plan on the merits of Plaintiffs' claims "until twenty-one days after any adverse ruling on Defendants' soon-to-be-filed motion to dismiss …, or seven days prior to any scheduling conference ordered by the court." (Dkt. No. 25, Report at 1). Plaintiffs reserved their right to seek preliminary discovery only "[t]o the extent that Defendants again assert fact-based defenses in their anticipated motion to dismiss, *e.g.*, another Motion to Dismiss under Fed. R. Civ. P. 12(b)(1) …." (*Id*. at 3-4.)

[4] State Street offers a variety of foreign exchange methods falling into two general categories, referred to in the Amended Complaint as "direct" and "indirect" foreign exchange trading. (Compl. ¶ 18.) The Complaint makes no allegation with respect to "direct" foreign exchange transactions.

[5] The DC Plaintiffs assert claims on behalf of the Waste Management Retirement Savings Plan and the Citigroup 401(k) Plan. (Compl. ¶¶ 10-11.)

[redacted]

Defendants' 12(b)(1) Motion with respect to the DB Plaintiffs focused on the adequacy of the Amended Complaint's injury allegations—not their accuracy.[7] Defendants relied principally on deficiencies in the Amended Complaint (i.e., its failure to allege actual or imminent injury as a result of any challenged conduct), and on publicly-available documents like the plan's public filings with the Department of Labor, to show that the plan is adequately funded and in no imminent danger of becoming unable to pay benefits. (*See* Defs.' Br. in Support of Motion to Dismiss, at 12-13.) To the extent the Motion relied on the publicly

[redacted]

[7] The DB Plaintiffs assert claims on behalf of the Retirement Plan of Johnson and Johnson. (Compl. ¶¶ 12-13.)

disclosed fact that the DB plan at issue paid DB Plaintiffs benefits in full every month, that information is equally (if not more readily) available to DB Plaintiffs.

B. Plaintiffs' Premature and Overbroad Discovery Motion

After the motion to dismiss was filed, Defendants and Plaintiffs (together, the "Parties") conferred on April 23, 2012 about discovery. Defendants proposed that the Parties attempt to negotiate a reasonable discovery plan that would provide Plaintiffs with an opportunity to test the jurisdictional facts relied upon in support of Defendants' Motion. To do so, the Parties agreed that Plaintiffs would serve written discovery requests as a basis for discussion, after which the Parties would again confer as to the scope of any jurisdictional discovery.[8] On May 9, 2012, Plaintiffs changed course and informed Defendants that they intended to file the instant motion without serving discovery requests. When pressed, Plaintiffs described in an email a list of sixteen discovery topics of expansive scope, which were described as illustrative. (*See* Exh. 2, Email Exchange, at 1-2 ("We are not representing that this is an exhaustive list.")

These topics are too broad; and Plaintiffs' refusal to say just what they are looking for suggests strongly that what they actually intend to demand is broader still. For example, Plaintiffs indicated that they would seek documents, *including voicemails and emails, relating to all* "Direct and Indirect FX transactions between [SSGM] and [SSgA] managed investment funds covered by ERISA and certain other SSgA managed funds subject to ERISA" over the eleven-year asserted class period (even though the Amended Complaint makes no allegation regarding "Direct" foreign exchange transactions, and Plaintiffs could not have been injured by alleged

[8] *See* Ex. 2, Email Exchange, at 3 ("Plaintiffs' counsel intend serve a formal request for production of documents pursuant to FRCP 34 related to your FRCP 12(b)(1) motion. As you suggested in our phone conference, after we have served the document requests, we should confer again concerning scheduling of discovery and briefs in this case and the other matters listed in the agenda.")

indirect foreign exchange trading by funds in which Plaintiffs' plan accounts had no interest whatsoever). Plaintiffs also overreached in proposing to demand all documents related to SSgA-managed collective funds (regardless of any tether to the jurisdictional issue or the funds in which Plaintiffs caused plan assets to be invested) and all documents related to a variety of State Street policies and practices regarding foreign exchange trading generally (which clearly addresses the merits and not jurisdiction). These are just three examples. [redacted]

Although the instant motion for jurisdictional discovery appears to have cut back on some of the most extreme discovery demands from the May 9th email exchange, it nonetheless suggests that Plaintiffs intend to fire a discovery cannon loaded with grapeshot. For example, they state that "the discovery Plaintiffs expect to conduct includes, *but may not be limited to*" depositions of not only the six affiants (which itself is cumulative and unnecessary), but also "of other [State Street] or [LLC] officers or employees who are identified in the affidavits" and "additional individuals or entities identified in the course of discovery . . . , as well as Fed. R. Civ. P. 30(b)(6) depositions." Plaintiffs also intend to serve Requests for Admissions and Interrogatories on as yet unspecified topics relating to State Street's foreign exchange activities "with respect to the named Plaintiffs' *retirement plans*," notwithstanding the fact that Defendants' Motion addresses only indirect foreign exchange trading by collective investment

[9] (*See* Defs.' Br. in Support of Motion to Dismiss, at 12 n. 11.)

funds in which the DC Plaintiffs have alleged a direct or indirect interest (because the grounds for dismissing the DB plan claims do not depend on the extent of foreign exchange trading between the DB plan and SSGM).

Plaintiffs' description of the documents they intend to seek also contains other categories that sweep far beyond the facts necessary to resolve Defendants' standing Motion, and includes "*without limitation*":

- "*[R]ecords of all foreign exchange transactions*" executed between SSGM and *any counterparty* over the *eleven-year* putative class period;[10]
- Various documents and agreements relating to the operation and establishment of the collective funds and plans that were not relied on or referenced in Defendants' Motion and which have nothing to do with the Plaintiffs' threshold standing issue;
- Unspecified manuals, guides, policy statements, and similar documents concerning State Street's procedures and practices regarding foreign-exchange trading generally;
- Account Opening Documents for the Plans' investment managers (including third-party investment managers other than State Street) that were apparently referenced in *other litigation*[11]; and
- [redacted]

(*See* Pls.' Br. in Support of Discovery Mot. at 5-6 (emphasis added).)

Without the benefit of actual discovery demands it is impossible to anticipate the scope of discovery Plaintiffs will ultimately seek, but Plaintiffs' motion plainly requests broad authority

[redacted]

[11] *See* Pls. Discovery Motion, at 6 & n. 4 (seeking discovery of information referenced in declarations filed in *Arkansas Teachers Retirement System v. State Street*, No. 11-CV-10230 (D. Mass. April 15, 2011)).

with respect to a "moving target." Although Plaintiffs purport to ask for only "limited" jurisdictional discovery—which they assert should "not count against general merits discovery limits"—this simply isn't true. They seek discovery on matters they acknowledge relate only to Defendants' separate Rule 12(b)(6) motion and on topics that are well beyond the scope of the allegations in the Amended Complaint, much less those raised by Defendants' standing Motion to Dismiss. (*See* Proposed Order, at 2; Pls.' Mem. in Support of Mot. at 5-6.)[12]

[12] In their Rule 12(b)(6) motion, Defendants argued that Plaintiffs failed to state a claim under ERISA for breach of fiduciary duty because, as the allegations in the Amended Complaint and documents incorporated therein plainly demonstrate, State Street's SSGM division was not acting in a fiduciary capacity when it executed foreign exchange transactions at the direction of State Street's custodial clients or their third-party investment managers. In particular, Defendants' motion pointed out that notwithstanding Plaintiffs' speculation to the contrary, SSGM was not the agent for any of the plans with respect to foreign currency exchange, but rather a principal dealer that traded foreign currency with counterparties on an arm's-length basis. (*See* Defs.' Br. in Support of Motion, at 21-25.) Plaintiffs' requests for discovery related to Defendants' lack of fiduciary status only underscore the extent to which their fiduciary allegations are based on no more than guesswork even as to matters as basic as the foreign exchange services provided by Defendants, on which their claims depend. Indeed, notwithstanding Defendants' repeated representations that LLC is a separate State Street entity that has nothing to do with foreign currency exchange, they continue to name LLC as a Defendant. *Compare* Ex. 4, Dkt. No. 33, Order, *Arkansas Teachers Retirement System v. State Street*, No. 11-CV-10230 (May 16, 2012) (Wolf, J.) (dismissing by stipulation of the parties claims against LLC challenging indirect foreign exchange trading). To the extent the Court later determines Plaintiffs have stated a fiduciary claim minimally adequate to survive dismissal (which, as Defendants have argued, they have not), Defendants believe limited discovery on the straightforward, threshold issue of the type of foreign exchange services SSGM provides and its lack of fiduciary status with respect to foreign exchange trading by State Street's custodial clients could be warranted. No such discovery should take place, however, unless and until Plaintiffs' Amended Complaint survives the motion to dismiss on Rule 12(b)(6) grounds.

Argument

I. Jurisdictional Discovery Should Be Limited To The Facts Relied Upon In Defendants' Affidavits That Are Essential to Resolve The Jurisdictional Issue.

A. Legal Standard

When considering a motion to dismiss under Rule 12(b)(1), the Court "has great latitude to direct *limited* discovery." *Rivera-Flores v. Puerto Rico Telephone Co.*, 64 F.3d 742, 748 (1st Cir. 1995) (emphasis added). Nonetheless, a plaintiff's entitlement to jurisdictional discovery "is not absolute." *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 626 (1st Cir. 2001) (discussing discovery as to personal jurisdiction); *see also Blair v. City of Worcester*, 522 F.3d 105, 110-11 & n.8 (1st Cir. 2008) (explaining that the standard for adjudicating motions for jurisdictional discovery under Fed. R. Civ. P. 12(b)(1), (2) and (5) is similar and cases may be cited "interchangeably").

Courts have repeatedly cautioned against allowing jurisdictional discovery to serve as "a fishing expedition based only upon bare allegations, under the guise of jurisdictional discovery." *Eurofins Pharma U.S. Holdings v. BioAlliance Pharma SA*, 623 F.3d 147, 157 (3d Cir. 2010); s*ee, e.g.*, *Sanchez v. United States*, 671 F.3d 86, 98-99 (1st Cir. 2012) (affirming denial of plaintiffs' "sweeping" jurisdictional discovery requests, which were tantamount to a "fishing expedition" covering "broad range of documents, many of which had no apparent relationship to jurisdictional questions"). Thus, when a party challenges subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), "discovery and fact-finding should be limited to the essentials necessary to determining the preliminary question of jurisdiction." *Federal Ins. Co. v. Richard I. Rubin & Co., Inc.*, 12 F.3d 1270, 1284 n.11 (3rd Cir. 1993); *see, e.g., Crocker v. Hilton Int'l Barbados, Ltd.*, 976 F.2d 797, 801 (1st Cir. 1992) (affirming denial of jurisdictional discovery requests to the extent they were not relevant to the narrow jurisdictional issue); *Strahan v. Roughead*, No.

08-cv-10919, 2010 WL 4827880, at *12 (D. Mass. Nov. 22, 2010) (Wolf, J.) (denying motion for jurisdictional discovery except to the extent it sought "documents … relie[d] upon" in defendants' jurisdictional challenge); *Artis v. Greenspan*, 223 F. Supp. 2d 149, 154 (D.D.C. 2002) (noting that "jurisdictional discovery should be 'carefully controlled and limited'"); *Hoover v. Lanois*, No. 00-1266, 2000 WL 1708300, at *2 n.4 (E.D. La. Nov. 13, 2000) ("Discovery and concomitantly, fact-finding, should be limited to the essentials necessary to determining the preliminary question of jurisdiction.").

B. Plaintiffs' Motion Should Be Denied As Premature.

Plaintiffs' motion for jurisdictional discovery lacks basic information necessary to support the relief it requests, and it should be denied as premature and for lack of particularity. *See* Fed. R. Civ. P. 7(b) (requiring motions "to state with particularity the grounds for seeking the order"). Without the benefit of actual discovery demands, or some other method clearly demarking the jurisdictional discovery Plaintiffs seek, there is no way for Defendants (or the Court) meaningfully to respond to their discovery motion, the schedule they propose, or their request that "[d]iscovery taken pursuant to this Order shall not count against general merits discovery limits imposed by Federal or Local rules of civil procedure." (Pls.' Proposed Order.) Given that the law requires tailored and targeted discovery, Plaintiffs' refusal to come clean about what they really propose, coupled with their overbroad list of topics, ensures only an unseemly negotiation via motion papers or further motion practice. Instead, Plaintiffs should make actual requests consistent with the limited scope to which they are entitled, engage in discussion with Defendants, and put before the Court only clear disputes that the parties cannot resolve.

B. Plaintiffs' Motion Should Be Denied As Overbroad.

Plaintiffs' motion should also be denied to the extent it seeks discovery of facts beyond those relied upon in the affidavits submitted in support of Defendants' Motion. Only those facts are necessary to resolve this Court's jurisdiction. In their motion, Plaintiffs have proposed a non-exhaustive list of discovery topics, most of which have no conceivable connection to the discrete facts on which Defendants' standing challenge turns. These are: (1) whether the Selected Funds or Sub-Funds engaged in indirect foreign exchange transactions with SSGM at a time when assets from Plaintiffs' individual accounts were invested in those funds (directly or indirectly); [redacted].[13]

Thus, while Defendants are willing to negotiate with Plaintiffs a reasonable discovery plan concerning the facts Defendants relied on in their standing Motion, there is no reason to engage in the extensive and unfocused discovery Plaintiffs propose. In order to frame that discussion, Defendants would agree to provide Plaintiffs with the following:

[13] With respect to the DB Plaintiffs, no jurisdictional discovery is warranted at all because the Amended Complaint fails to allege that their individual plan benefits have been or will imminently be reduced as a result of any indirect foreign exchange trading between the Johnson and Johnson plan and SSGM. The absence of such allegations alone is sufficient to support dismissal. (*See* Defs.' Br. in Support of Motion to Dismiss, at 12-13.) To the extent matters outside the pleadings were referenced in Defendants' motion—for example, that the DB Plaintiffs have received all of the plan benefits to which they are entitled, and (according to its public filings) the plan is adequately funded—there is no need for jurisdictional discovery *from Defendants* because those facts are equally available to the Plaintiffs.

- Plan or collective fund documents relied on in the affidavits submitted in support of Defendants' Motion;
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- Tax records confirming that the DB Plaintiffs have been paid in full every month since they began receiving payments; and
- Depositions of up to six affiants, limited to the jurisdictional facts relied upon in their respective affidavits (even though Plaintiffs could very well limit the depositions to Robert Dempsey and Michael Quinn).[15]

[redacted]

[15] Depositions of State Street's relationship managers for the named plans will shed no light on the jurisdictional facts at issue, which turn exclusively on indirect foreign exchange trading by *SSgA*-managed collective funds. While Plaintiffs assert that these depositions are necessary to test the affiants' statements "regarding the responsibilities of various divisions of [State Street, which] … imply that actions of separate non-juridical, divisions of [State Street] are not attributable to other divisions," those facts have nothing to do with Defendants' standing challenge and simply provide relevant context [redacted]

This information will provide Plaintiffs with more than sufficient information to test the facts on which Defendants' Rule 12(b)(1) standing motion relies, and will avoid putting Defendants (and the Court when discovery issues undoubtedly arise) through the burden and expense of responding to voluminous unnecessary discovery (including electronic discovery) or motion practice that would be avoided by requiring Plaintiffs to be clear at the outset.

Plaintiffs are not entitled to explore under the guise of jurisdictional discovery factual "matters relevant to issues raised in Defendants' Motion to Dismiss Pursuant to Rule [12(b)(6)]" or topics as to which the Amended Complaint makes no allegation.[16] Nor are they entitled to seek discovery that is cumulative and unnecessary to the Court's resolution of the core jurisdictional dispute. For example, there is no reason to depose State Street employees other than the affiants, who are capable of testifying as to all of the facts relied upon in support of Defendants' Motion. Likewise, there is no need to engage in extensive written discovery (including Requests for Admissions and Interrogatories) or electronic discovery (including emails and voicemails) where the discrete facts supporting Defendants' standing challenge are set forth in the affidavits and Plaintiffs can be provided with the relevant documents referenced therein.

Indeed, a narrowly-tailored discovery plan is particularly appropriate here because the burdens and costs of engaging in even focused jurisdictional discovery in this case are potentially enormous. State Street is a massive institution with world-wide operations, and Plaintiffs'

[16] These requests include, for example, State Street's records of *direct* foreign exchange transactions or indirect foreign exchange trading by non-ERISA covered entities; plan documents which relate to investments in which Plaintiffs have alleged no interest; policy documents describing State Street's foreign exchange procedures and practices generally; and "Account Opening documents" for the Plan's investment managers, including third-party investment managers referenced in unrelated litigation. (*See infra* at 8 & n.11.)

allegations cut across at least three major divisions of the bank (excluding LLC). State Street's custody division is among the largest in the world, with more than *$20 trillion* in assets held in custody. (*See* Exh. 4, State Street Corp. 2011 Annual Report at 46). Its custody division has thousands of pension fund clients, each of which may invest plan assets in a variety of investment vehicles managed by a variety of investment managers. (*Id*.) State Street's separate SSgA division is the largest investment manager for pension plan assets in the United States, and it operates numerous collective funds in which ERISA-covered entities may choose to invest. (*Id*. at 47.) Those entities may or may not also be State Street custody clients. Moreover, State Street's separate SSGM division has executed millions of foreign currency transactions over the asserted class period for a wide variety of counterparties. (*See generally id.* at 48.) Given the breadth of Plaintiffs' claims and the potential burdens of discovery, Plaintiffs should not be permitted to engage in the merits discovery they propose without first showing that they can meet their preliminary burden of proving Article III standing.

CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court deny the expansive relief requested in Plaintiffs' motion and enter the attached Proposed Order limiting jurisdictional discovery to the essential facts necessary to determine the Court's subject matter jurisdiction and rule upon Defendants' Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1).

Respectfully submitted,

STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS LLC

By its attorneys,

/s/ William H. Paine
Jeffrey B. Rudman (BBO# 433380)

William H. Paine (BBO# 550506)
Mark C. Fleming (BBO# 639358)
Nolan J. Mitchell (BBO# 668145)
Robert Tannenbaum (BBO# 680568)
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts, 02109
(617) 526-6000

Dated May 29, 2012

CERTIFICATE OF SERVICE

I, Nolan J. Mitchell, certify that on May 29, 2012 this document filed under seal will be sent to all counsel of record via E-mail and First Class mail.

/s/ Nolan J. Mitchell
Nolan J. Mitchell

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, ET AL.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 11-cv-12049-MLW
	)	
STATE STREET BANK AND TRUST COMPANY AND STATE STREET GLOBAL MARKETS LLC AND DOES 1-20	)	
	)	
Defendants.	)	

DECLARATION OF NOLAN J. MITCHELL IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFFS' DISCOVERY MOTION

I am a senior associate with the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Defendants Street Bank and Trust Company and State Street Global Markets, LLC (collectively, "State Street") in the above-captioned matter. I submit this declaration in support of Defendants' Response to Plaintiffs' Discovery Motion.

1. Attached hereto as Exhibit 1 is Defendants' Proposed Discovery Order.

2. Attached hereto as Exhibit 2 is a true and correct copy of an email exchange between Plaintiffs and Defendants' counsel regarding jurisdictional discovery.

3. Attached hereto as Exhibit 3 is a true and correct copy of the Court's May 8, 2010 Order in *Arkansas Teacher Retirement System v. State Street*, No. 11-CV-10230 (D. Mass.).

4. Attached hereto as Exhibit 4 is a true and correct copy of relevant excerpts of State Street Corporation's 2011 Annual Report on Form 10-K.

I declare under penalty of perjury, as provided in 28 U.S.C. § 1746, that the foregoing is true and correct. Executed in Boston, Massachusetts, on May 29, 2012.

/s/ Nolan J. Mitchell
Nolan J. Mitchell

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, ET AL. Plaintiff, v. STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS LLC AND DOES 1-20 Defendants.	)	C.A. No. 11-cv-12049-MLW

[PROPOSED] DISCOVERY ORDER

Upon consideration of the submissions of the parties, it is hereby ORDERED THAT:

1. The Parties' proposed briefing scheduled (Dkt. No. 23) is reset;

2. The Parties may take limited, jurisdictional discovery on the factual matters necessary to resolution of Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1);

3. Plaintiffs' discovery shall be limited to the facts and documents relied on in the affidavits filed in support of Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1);

4. Defendants' discovery shall be limited to the individual Plaintiffs' alleged investments in State Street-managed collective investments funds;

5. The Parties shall serve discovery requests consistent with this Order within 14 days following entry of this Order;

6. Within 14 days of serving those requests, the Parties shall meet and confer in an attempt to negotiate a reasonable schedule for discovery and for briefing the balance of Defendants' motion to dismiss; and

7. Within 14 days of the Parties' conference, the Parties shall file a joint status report setting forth their proposed discovery and briefing schedule.

So ordered:

_____
The Honorable Mark L. Wolf

Exhibit 2

Mitchell, Nolan J

From: James Moore [jmoore@mctiguelaw.com]
Sent: Wednesday, May 09, 2012 3:57 PM
To: Mitchell, Nolan J; Bryan Veis
Cc: Brian McTigue; Emily Peterson; Bond, David; Michael Brickman (mbrickman@rpwb.com); Kim Keevers (kkeevers@rpwb.com); Nina Fields (nfields@rpwb.com); James Bradley; 'Jon Axelrod'; 'Cathy Campbell'; Paine, William; Halston, Daniel
Subject: RE: Henriquez v. State Street

Nolan,

As promised in my previous e-mail, below is a list of topics for which Plaintiffs currently intend to seek document discovery. We are not representing that this is an exhaustive list.

Documents, including voicemails and e-mails, related to:

- [redacted]
- [redacted]
- Any SSBT collective fund identified in the Defs MTD
- Any communication with, and data sent by or to, Analysis Group
- Account opening document identified in any Investment Managers Guides
- Any Plan Document, e.g. trust and custody agreement, for the WM, J&J, and Citigroup Plans
- Any Declaration of Trust for the SSBT Investment Funds for Tax Exempt Plans
- Any Fund Declaration of any SSBT Investment Fund for Tax Exempt Plans
- Any Financial and Audit Report created per a Declaration of Trust
- Any Manual, guide policy statement, and similar document concerning procedures and practices regarding FX and Prohibited Transaction Exemptions
- [redacted]
- Any Employee of SSGM referred to in the Hayes-Duffy Affidavit in Support of Defs MTD
- [redacted]
- [redacted]

- SSBT collective funds identified in the Defs MTD
- Citigroup Plan fiduciaries selection of Sub-funds in which SSBT Collective Funds held interests

Jim

==========

James A. Moore, Esq.
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Washington, DC 20016
(202) 364-6900, x309; fax (202) 364-9960
jmoore@mctiguelaw.com
www.mctiguelaw.com

Member of the District of Columbia and Pennsylvania Bars

From: Mitchell, Nolan J [mailto:Nolan.Mitchell@wilmerhale.com]
Sent: Tuesday, May 08, 2012 1:55 PM
To: Bryan Veis
Cc: Brian McTigue; James Moore; Emily Peterson; Bond, David; Michael Brickman (mbrickman@rpwb.com); Kim Keevers (kkeevers@rpwb.com); Nina Fields (nfields@rpwb.com); James Bradley; 'Jon Axelrod'; 'Cathy Campbell'; Paine, William; Halston, Daniel
Subject: RE: Henriquez v. State Street

Bryan,

Based on our conversation on April 23rd, we understood that plaintiffs' intended to serve Rule 34 discovery requests and that, after defendants received those requests, we would confer again to discuss the scope and timing for any discovery and the balance of the briefing schedule on defendants' motion to dismiss. As your summary below reflects, we had agreed that it "would be more appropriate to wait to file any motion for an extension until after Plaintiffs have served the document requests and we have discussed them with you. That would allow the parties to report to the court on the status of discovery and the parties' views on the time needed to complete discovery, including depositions, and to file briefs on the motion to dismiss."

We believe that the parties' prior understanding, as reflected in your email of April 23d, makes more sense as the more orderly approach to any discovery concerning defendants' motion to dismiss. We continue to believe that it is premature to set a timetable for discovery until the parties have had the opportunity to discuss the scope of any such discovery in light of the plaintiffs' actual discovery demands. We also continue to be more than willing to assent to a motion to reset the proposed briefing schedule currently in place until these issues can be resolved. Please let me know whether plaintiffs' will reconsider their proposed motion to conform with the parties' prior understanding.

Best,

Nolan

From: Bryan Veis [mailto:bveis@mctiguelaw.com]
Sent: Monday, April 23, 2012 4:55 PM
To: Paine, William; Halston, Daniel; Mitchell, Nolan J
Cc: Brian McTigue; James Moore; Emily Peterson; Bond, David; Michael Brickman (mbrickman@rpwb.com); Kim Keevers (kkeevers@rpwb.com); Nina Fields (nfields@rpwb.com); James Bradley; 'Jon Axelrod'; 'Cathy Campbell'
Subject: Henriquez v. State Street

Bill, Dan, and Nolan,

Following up on our phone call today, the parties have reached no agreement on any of the items listed in the agenda attached to my Outlook invitation arranging our conference call, other than your agreement on Friday that Plaintiffs' opposition to the motion to dismiss is not due today, but rather is due on the date set under the stipulated schedule.

Plaintiffs' counsel intend serve a formal request for production of documents pursuant to FRCP 34 related to your FRCP 12(b)(1) motion. As you suggested in our phone conference, after we have served the document requests, we should confer again concerning scheduling of discovery and briefs in this case and the other matters listed in the agenda.

Thank you for your offer to stipulate to an extension of the briefing schedule to allow time for these matters, particularly discovery issues, to be resolved by the parties. On reflection, rather than immediately seeking some sort of indefinite extension, we believe that it would be more appropriate to wait to file any motion for an extension until after Plaintiffs have served the document requests and we have discussed them with you. That would allow the parties to report to the court on the status of discovery and the parties' views on the time needed to complete discovery, including depositions, and to file briefs on the motion to dismiss.

Regards,

Bryan

Bryan T. Veis
McTigue & Veis LLP

4530 Wisconsin Ave. N.W.
Suite 300
Washington, DC 20016
(202) 364-6900 (202)364-9960 fax
bveis@mctiguelaw.com

Member of the District of Columbia Bar

Exhibit 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, et al, Plaintiffs,	)	
v.	)	
	)	C.A. No. 11-10230-MLW
STATE STREET CORPORATION, STATE STREET BANK & TRUST COMPANY, and STATE STREET GLOBAL MARKETS, LLC Defendants.	)	

ORDER

WOLF, D.J. May 8, 2012

For the reasons described in detail in court on May 8, 2012, it is hereby ORDERED that:

1. Defendants' Motion to Dismiss (Docket No. 18) is ALLOWED to the extent that the claims against defendant State Street Corporation are DISMISSED and, by agreement of the parties, the claims against defendant State Street Global Markets, LLC are DISMISSED without prejudice. The Motion to Dismiss is DENIED with regard to the claims against defendant State Street Bank & Trust Company.

2. By July 13, 2012, representatives of the parties and their counsel shall meet at least once to discuss the possibility of settling this case; report, jointly if possible but separately if necessary, concerning whether they have reached an agreement to do so; and, if not, report whether they both wish to engage in

mediation, either privately or before a magistrate judge.

3. If case is not settled and there is no agreement to engage in mediation, by August 30, 2012, the parties shall respond to the attached Notice of Scheduling Conference.

4. If necessary, a scheduling conference shall be held on September 18, 2012, at 3:00 p.m. Representatives of the parties with settlement authority shall attend.

/s/ Mark L. Wolf
UNITED STATES DISTRICT JUDGE

Exhibit 4

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

Form 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2011
OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File No. 001-07511

STATE STREET CORPORATION
(Exact name of registrant as specified in its charter)

Massachusetts	**04-2456637**
(State or other jurisdiction of incorporation)	(I.R.S. Employer Identification No.)
One Lincoln Street **Boston, Massachusetts**	**02111**
(Address of principal executive office)	(Zip Code)

617-786-3000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

(Title of Each Class)	(Name of each exchange on which registered)
Common Stock, $1 par value	New York Stock Exchange
Fixed-to-Floating Rate Normal Automatic Preferred Enhanced Capital Securities of State Street Capital Trust III (and Registrant's guarantee with respect thereto)	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the per share price ($45.09) at which the common equity was last sold as of the last business day of the registrant's most recently completed second fiscal quarter (June 30, 2011) was approximately $22.40 billion.

The number of shares of the registrant's common stock outstanding as of January 31, 2012 was 487,849,175.

Portions of the following documents are incorporated by reference into Parts of this Report on Form 10-K, to the extent noted in such Parts, as indicated below:

(1) The registrant's definitive Proxy Statement for the 2012 Annual Meeting of Shareholders to be filed pursuant to Regulation 14A on or before April 30, 2012 (Part III).

Generally, servicing fees are affected, in part, by changes in daily average valuations of assets under custody and administration, while management fees are affected by changes in month-end valuations of assets under management. Additional factors, such as the level of transaction volumes, changes in service level, balance credits, client minimum balances, pricing concessions and other factors, may have a significant effect on our servicing fee revenue. Generally, management fee revenue is more sensitive to market valuations than servicing fee revenue. Management fees for enhanced index and actively managed products are generally earned at higher rates than those for passive products. Enhanced index and actively managed products may also involve performance fee arrangements. Performance fees are generated when the performance of certain managed funds exceeds benchmarks specified in the management agreements. Generally, we experience more volatility with performance fees than with more traditional management fees.

In light of the above, we estimate, assuming all other factors remain constant, that a 10% increase or decrease in worldwide equity values would result in a corresponding change in our total revenue of approximately 2%. If fixed-income security values were to increase or decrease by 10%, we would anticipate a corresponding change of approximately 1% in our total revenue.

The following table presents selected equity market indices as of and for the years ended December 31, 2011 and 2010. Daily averages and the averages of month-end indices demonstrate worldwide changes in equity market valuations that affect our servicing and management fee revenue, respectively. Year-end indices affect the value of assets under custody and administration and assets under management at those dates. The index names listed in the table are service marks of their respective owners.

INDEX

	Daily Averages of Indices			Averages of Month-End Indices			Year-End Indices		
	2011	2010	% Change	2011	2010	% Change	2011	2010	% Change
S&P 500®	**1,268**	1,140	11%	**1,281**	1,131	13%	**1,258**	1,258	—
NASDAQ®	**2,677**	2,350	14	**2,701**	2,334	16	**2,605**	2,653	(2)%
MSCI EAFE®	**1,590**	1,525	4	**1,609**	1,511	6	**1,413**	1,658	(15)

FEE REVENUE

Years ended December 31, (Dollars in millions)	2011	2010	2009	% Change 2010-2011
Servicing fees	**$4,382**	$3,938	$3,334	11%
Management fees	**917**	829	766	11
Trading services	**1,220**	1,106	1,094	10
Securities finance	**378**	318	570	19
Processing fees and other	**297**	349	171	(15)
Total fee revenue	**$7,194**	$6,540	$5,935	10

Servicing Fees

Servicing fees include fee revenue from U.S. mutual funds, collective investment funds worldwide, corporate and public retirement plans, insurance companies, foundations, endowments, and other investment pools. Products and services include custody; product- and participant-level accounting; daily pricing and administration; record-keeping; investment manager and alternative investment manager operations outsourcing; master trust and master custody; and performance, risk and compliance analytics.

We are the largest provider of mutual fund custody and accounting services in the U.S. We distinguish ourselves from other mutual fund service providers by offering clients a broad range of integrated products and services, including accounting, daily pricing and fund administration. At December 31, 2011, we calculated approximately 40.6% of the U.S. mutual fund prices provided to NASDAQ that appeared daily in *The Wall*

Street Journal and other publications with an accuracy rate of 99.87%. We serviced U.S. tax-exempt assets for corporate and public pension funds, and we provided trust and valuation services for more than 5,500 daily-priced portfolios at December 31, 2011.

We are a service provider outside of the U.S. as well. In Germany, Italy and France, we provide depotbank services for retail and institutional fund assets, as well as custody and other services to pension plans and other institutional clients. In the U.K., we provide custody services for pension fund assets and administration services for mutual fund assets. At December 31, 2011, we serviced approximately $711 billion of offshore assets, primarily domiciled in Ireland, Luxembourg and the Cayman Islands. At December 31, 2011, we had $1.04 trillion of assets under administration in the Asia/Pacific region, and in Japan, we held approximately 93% of the trust assets held by non-domestic trust banks in that region.

We are an alternative asset servicing provider worldwide, servicing hedge, private equity and real estate funds. At December 31, 2011, we had approximately $816 billion of alternative assets under administration.

The 11% increase in servicing fees from 2010 primarily resulted from the impact on current-period revenue of new business awarded to us and installed during 2011 and prior periods, the addition of a full year of revenue generated by the acquired Intesa securities services and Mourant International Finance Administration, or MIFA, businesses and increases in daily average equity market valuations. For 2011, servicing fees generated outside the U.S. were approximately 42% of total servicing fees compared to approximately 41% for 2010.

At year-end 2011, our total assets under custody and administration were $21.81 trillion, compared to $21.53 trillion a year earlier. The increase compared to 2010 was primarily the result of a higher level of new servicing business won and installed prior to December 31, 2011, partly offset by net client redemptions and distributions, as well as decreases in worldwide equity market valuations. These asset levels as of year-end did not reflect new business awarded to us during 2011 that had not been installed prior to December 31, 2011. The value of assets under custody and administration is a broad measure of the relative size of various markets served. Changes in the values of assets under custody and administration do not necessarily result in proportional changes in our servicing fee revenue.

Assets under custody and administration consisted of the following as of December 31:

ASSETS UNDER CUSTODY AND ADMINISTRATION

As of December 31, (Dollars in billions)	2011	2010	2009	2008	2007	2010-2011 Annual Growth Rate	2007-2011 Compound Annual Growth Rate
Mutual funds	**$ 5,265**	$ 5,540	$ 4,734	$ 4,093	$ 5,200	(5)%	—
Collective funds	**4,437**	4,350	3,580	2,679	3,968	2	3%
Pension products	**4,837**	4,726	4,395	3,621	5,246	2	(2)
Insurance and other products	**7,268**	6,911	6,086	5,514	5,799	5	6
Total	**$21,807**	$21,527	$18,795	$15,907	$20,213	1	2

FINANCIAL INSTRUMENT MIX OF ASSETS UNDER CUSTODY AND ADMINISTRATION

As of December 31, (In billions)	2011	2010	2009
Equities	**$10,849**	$11,000	$ 8,828
Fixed-income	**8,317**	7,875	7,236
Short-term and other investments	**2,641**	2,652	2,731
Total	**$21,807**	$21,527	$18,795

GEOGRAPHIC MIX OF ASSETS UNDER CUSTODY AND ADMINISTRATION[1]

As of December 31, (In billions)	2011	2010	2009
United States	**$15,745**	$15,889	$14,585
Other Americas	**622**	599	606
Europe/Middle East/Africa	**4,400**	4,067	2,773
Asia/Pacific	**1,040**	972	831
Total	**$21,807**	$21,527	$18,795

(1) Geographic mix is based on the location at which the assets are custodied or serviced.

Management Fees

Through SSgA, we provide a broad range of investment management strategies, specialized investment management advisory services and other financial services for corporations, public funds, and other sophisticated investors. Based on assets under management at December 31, 2011, SSgA was the largest manager of institutional assets worldwide, the largest manager of assets for tax-exempt organizations (primarily pension plans) in the U.S., and the third largest investment manager overall in the world. SSgA offers a broad array of investment management strategies, including passive and active, such as enhanced indexing and hedge fund strategies, using quantitative and fundamental methods for both U.S. and global equities and fixed-income securities. SSgA also offers exchange traded funds, or ETFs, such as the SPDR® ETF brand.

The 11% increase in management fees from 2010 resulted primarily from the impact of increases in average month-end equity market valuations, the addition of revenue from the acquired BIAM business and, to a lesser extent, the impact of new business won and installed during 2011 and prior periods. Average month-end equity market valuations, individually presented in the foregoing "INDEX" table, increased an average of 12% compared to 2010. Management fees generated outside the U.S. were approximately 41% of total management fees for 2011, up from 34% for 2010.

At year-end 2011, assets under management were $1.86 trillion, compared to $2.01 trillion at year-end 2010. Such amounts include assets of the SPDR® Gold ETF, for which we act as distribution agent rather than investment manager, and certain assets managed for the U.S. government under programs adopted during the financial crisis. While certain management fees are directly determined by the value of assets under management and the investment strategy employed, management fees reflect other factors as well, including our relationship pricing for clients who use multiple services, and the benchmarks specified in the respective management agreements related to performance fees.

The overall decrease in assets under management at December 31, 2011 compared to December 31, 2010, which can be seen in the tables that follow this discussion, generally reflected net lost business (including the planned reduction associated with the U.S. Treasury's winding down of its portfolio of agency-guaranteed mortgage-backed securities) and depreciation in the values of the assets managed. These decreases were partly offset by the addition of approximately $23 billion of managed assets from the BIAM acquisition. Passive fixed-income assets under management declined 32% year over year, mainly reflective of the sale of U.S. government securities associated with the U.S. Treasury's winding down of its mortgage-backed securities portfolio. Managed cash balances declined 11%, and reflected the effect of reductions of securities lending volumes associated with continued weak loan demand. These declines were partly offset by an increase in sales of passive exchange-traded funds as well as other actively managed products.

The net lost business of $140 billion for 2011 presented in the following analysis of activity in assets under management does not reflect $20 billion of new business awarded to us during 2011 that had not been installed prior to December 31, 2011. This new business will be reflected in assets under management in future periods after installation, and will generate management fee revenue in subsequent periods.

Assets under management consisted of the following as of December 31:

ASSETS UNDER MANAGEMENT

As of December 31, (Dollars in billions)	2011	2010	2009	2008	2007	2010-2011 Annual Growth Rate	2007-2011 Compound Annual Growth Rate
Passive:							
Equities	**$ 638**	$ 655	$ 504	$ 344	$ 522	(3)%	5%
Fixed-income	**246**	363	395	200	178	(32)	8
Exchange-traded funds[1]	**274**	255	205	170	171	7	13
Other	**208**	210	211	163	171	(1)	5
Total Passive	**1,366**	1,483	1,315	877	1,042	(8)	7
Active:							
Equities	**50**	55	66	72	179	(9)	(27)
Fixed-income	**19**	17	25	32	38	12	(16)
Other	**45**	28	28	17	105	61	(19)
Total Active	**114**	100	119	121	322	14	(23)
Cash	**378**	427	517	468	632	(11)	(12)
Total	**$1,858**	$2,010	$1,951	$1,466	$1,996	(8)	(2)

(1) Includes SPDR® Gold Fund, for which State Street is not the investment manager but acts as distribution agent.

GEOGRAPHIC MIX OF ASSETS UNDER MANAGEMENT[1]

As of December 31, (In billions)	2011	2010	2009
United States	**$1,298**	$1,425	$1,397
Other Americas	**30**	29	29
Europe/Middle East/Africa	**320**	341	345
Asia/Pacific	**210**	215	180
Total	**$1,858**	$2,010	$1,951

(1) Geographic mix is based on the location at which the assets are managed.

The following table presents activity in assets under management for the three years ended December 31:

ASSETS UNDER MANAGEMENT

Years Ended December 31, (In billions)	2011	2010	2009
Balance at beginning of year	**$2,010**	$1,951	$1,466
Net new (lost) business[1]	**(140)**	(68)	261
Assets added from BIAM acquisition	**23**	—	—
Market appreciation (depreciation)	**(35)**	127	224
Balance at end of year	**$1,858**	$2,010	$1,951

(1) Amount for 2011 included the sale of approximately $125 billion of U.S. government securities associated with the U.S. Treasury's winding down of its portfolio of agency-guaranteed mortgage-backed securities. Future sales by the U.S. Treasury of the remaining portfolio of approximately $47 billion, which are anticipated to occur in 2012, will further reduce our assets under management.

Trading Services

Trading services revenue includes revenue from foreign exchange trading, as well as brokerage and other trading services. We earn foreign exchange trading revenue by acting as a market maker. We offer a range of foreign exchange, or FX, products, services and execution models which focus on clients' global requirements for our proprietary research and the execution of trades in any time zone. Most of our FX products and execution models can be grouped into three broad categories: "direct FX," "indirect FX," and electronic trading. Foreign exchange trading revenue is influenced by three principal factors: the volume and type of client foreign exchange transactions; currency volatility; and the management of currency market risks. We also offer a range of brokerage and other trading products tailored specifically to meet the needs of the global pension community, including transition management, commission recapture and self-directed brokerage. These products are differentiated by our position as an agent of the institutional investor. Direct and indirect FX revenue is recorded in foreign exchange trading revenue; revenue from electronic trading is recorded in brokerage and other trading services revenue.

Trading services revenue increased 10%, to $1.22 billion, for the year ended December 31, 2011 from $1.11 billion for the year ended December 31, 2010. In the same comparison, foreign exchange trading revenue increased 14% to $683 million for 2011 from $597 million for 2010. The increase resulted from higher client volumes, which were up 10%, partly offset by a 4% decline in currency volatility.

We enter into FX transactions with clients and investment managers that contact our trading desk directly. These trades are all executed at negotiated rates. We refer to this activity, and our market-making activities, as direct FX. Alternatively, clients or their investment managers may elect to route FX transactions to our FX desk through our asset servicing operation; we refer to this activity as indirect FX. We execute indirect FX trades as a principal at rates based on a published formula. We calculate revenue for indirect FX using an attribution methodology based on estimated effective mark-ups/downs and observed client volumes.

For the years ended December 31, 2011 and 2010, our indirect FX revenue was approximately $331 million and $336 million, respectively, a decline of approximately 1% year over year. All other FX revenue not included in this indirect FX revenue, and unrelated to electronic trading, is considered by us to be direct FX revenue. For the years ended December 31, 2011 and 2010, our direct FX revenue was $352 million and $261 million, respectively, an increase of approximately 35% year over year. For the year ended December 31, 2009, our indirect FX revenue was approximately $369 million, and our direct FX revenue was $308 million.

Our clients may choose to execute FX transactions through one of our electronic trading platforms. This service generates revenue through a "click" fee. For the years ended December 31, 2011 and 2010, our revenue from electronic FX trading platforms, which is recorded in brokerage and other trading services revenue, was $282 million and $240 million, respectively, an increase of approximately 18% year over year.

During 2011, particularly in the second half of the year, some of our clients who relied on our indirect model to execute their FX transactions transitioned to other methods to conduct their FX transactions. Through State Street, they can transition to either direct FX execution, including our "Street FX" service where trades are executed at agreed-upon benchmarks, where State Street continues to act as a principal market maker, or to one of our electronic trading platforms.

Brokerage and other trading services revenue increased 6% to $537 million for the year ended December 31, 2011, compared to $509 million for the year ended December 31, 2010. The increase was largely related to higher electronic trading volumes and higher trading profits, partly offset by lower levels of revenue from transition management. Our transition management revenue was adversely affected by compliance issues in our U.K. business, the reputational impact of which may adversely affect our revenue from transition management in 2012.

Securities Finance

Our securities finance business consists of two components: investment funds with a broad range of investment objectives which are managed by SSgA and engage in agency securities lending, which we refer to as the SSgA lending funds; and an agency lending program for third-party investment managers and asset owners, which we refer to as the agency lending funds.

Our securities finance business provides liquidity to the financial markets, as well as an effective means for clients to earn incremental revenue on their securities portfolios. By acting as a lending agent and coordinating loans between lenders and borrowers, we lend securities and provide liquidity to clients worldwide. Borrowers provide collateral in the form of cash or securities to State Street in return for loaned securities. Borrowers are generally required to provide collateral equal to a contractually agreed percentage equal to or in excess of the fair value of the loaned securities. As the fair value of the loaned securities changes, additional collateral is provided by the borrower or collateral is returned to the borrower. Such movements are typically referred to as daily mark-to-market collateral adjustments.

We also participate in securities lending transactions as a principal, rather than an agent. As principal, we borrow securities from the lending client and then lend such securities to the subsequent borrower, either a State Street client or a broker/dealer. Our involvement as principal is utilized when the lending client is unable to transact directly with the market and requires us to execute the transaction and furnish the securities. We provide our credit rating to the transaction as well as our ability to source securities through our assets under custody and administration.

For cash collateral, our clients pay a usage fee to the provider of the cash collateral, and we invest the cash collateral in certain investment vehicles or managed accounts as directed by the owner of the loaned securities. In some cases, the investment vehicles or managed accounts may be managed by SSgA. The spread between the yield on the investment vehicle and the usage fee paid to the provider of the collateral is split between the lender of the securities and State Street as agent. For non-cash collateral, the borrower pays a fee for the loaned securities, and the fee is split between the lender of the securities and State Street.

Securities finance revenue, composed of our split of both the spreads related to cash collateral and the fees related to non-cash collateral, is principally a function of the volume of securities on loan and the interest-rate spreads and fees earned on the underlying collateral. For 2011, securities finance revenue increased 19% from 2010, substantially the result of higher spreads across all lending programs, partly offset by a 9% decrease in average lending volumes. Average spreads increased 28% for 2011 compared to 2010, and securities on loan averaged $361 billion for 2011 compared to $396 billion for 2010.

As previously reported, in December 2010, we divided certain of the agency lending collateral pools into liquidity pools, from which clients can obtain cash redemptions, and duration pools, which are restricted and operate as liquidating accounts. These actions were taken to provide greater flexibility to participants with respect to their control of their level of participation in our agency lending program. As of December 31, 2011, the aggregate net assets of the liquidity pools and duration pools were $25.3 billion and $3.5 billion, respectively, compared to $26.2 billion and $11.8 billion, respectively, as of December 31, 2010.

The decline in the aggregate net assets of the duration pools from year-end 2010 reflected both pay-downs on securities held by some of the pools and in-kind redemptions by clients into separately managed accounts. These declines were partly offset by improvement in the market value of securities held by the pools. The return obligations of participants in the agency lending program represented by interests in the duration pools exceeded the market value of the assets in the duration pools by approximately $198 million as of December 31, 2011, compared to $319 million as of December 31, 2010. This amount is expected to be eliminated as the assets in the duration pools mature or pay down.

Market influences continued to affect our revenue from, and the profitability of, our securities lending activities during 2011, and may do so in future periods. As long as securities lending spreads remain below the levels generally experienced prior to late 2007, client demand is likely to remain at a reduced level and our revenues from our securities lending activities will be adversely affected relative to the revenues we earned in 2007, 2008 (which were extraordinarily high) and 2009. In addition, proposed or anticipated regulatory changes may affect the volume of our securities lending activity and related revenue in future periods.

Processing Fees and Other

Processing fees and other revenue includes diverse types of fees and revenue, including fees from our structured products business, fees from software licensing and maintenance, equity income from our joint venture

investments, gains and losses on sales of leased equipment and other assets, and amortization of our investments in tax-advantaged financings. Processing fees and other revenue declined 15% to $297 million for 2011, from $349 million for 2010. This decrease primarily resulted from fair-value adjustments related to positions in the fixed-income trading initiative, as well as lower net revenue from joint ventures.

NET INTEREST REVENUE

Net interest revenue is defined as total interest revenue earned on interest-earning assets less interest expense incurred on interest-bearing liabilities. Interest-earning assets, which principally consist of investment securities, interest-bearing deposits with banks, repurchase agreements, loans and leases and other liquid assets, are financed primarily by client deposits, short-term borrowings and long-term debt. Net interest margin represents the relationship between annualized fully taxable-equivalent net interest revenue and total average interest-earning assets for the period. Revenue that is exempt from income taxes, mainly that earned from certain investment securities (state and political subdivisions), is adjusted to a fully taxable-equivalent basis using a federal statutory income tax rate of 35%, adjusted for applicable state income taxes, net of the related federal tax benefit.

The following tables present the components of average interest-earning assets and average interest-bearing liabilities, related interest revenue and interest expense, and rates earned and paid, for the periods indicated:

	2011			2010			2009		
Years ended December 31,	**Average Balance**	**Interest Revenue/ Expense**	**Rate**	**Average Balance**	**Interest Revenue/ Expense**	**Rate**	**Average Balance**	**Interest Revenue/ Expense**	**Rate**
(Dollars in millions; fully taxable-equivalent basis)									
Interest-bearing deposits with banks	**$ 20,241**	**$ 149**	**.74%**	$ 13,550	$ 93	.69%	$ 24,162	$ 156	.64%
Securities purchased under resale agreements	**4,686**	**28**	**.61**	2,957	24	.83	3,701	24	.65
Federal funds sold	**—**	**—**	**—**	—	—	—	68	—	.29
Trading account assets	**2,013**	**—**	**.01**	376	—	—	1,914	20	1.02
Investment securities	**103,075**	**2,615**	**2.54**	96,123	3,140	3.27	81,190	2,943	3.63
Investment securities purchased under AMLF[1]	**—**	**—**	**—**	—	—	—	882	25	2.86
Loans and leases	**12,180**	**280**	**2.30**	12,094	331	2.73	9,703	242	2.49
Other interest-earning assets	**5,462**	**2**	**.03**	1,156	3	.24	1,303	2	.15
Total interest-earning assets	**$147,657**	**$3,074**	**2.08**	$126,256	$3,591	2.84	$122,923	$3,412	2.78
Interest-bearing deposits:									
U.S.	**$ 4,049**	**$ 11**	**.27%**	$ 8,632	$ 37	.43%	$ 7,616	$ 61	.81%
Non-U.S.	**84,011**	**209**	**.25**	68,326	176	.26	61,551	134	.22
Securities sold under repurchase agreements	**9,040**	**10**	**.11**	8,108	4	.05	11,065	3	.03
Federal funds purchased	**845**	**—**	**.05**	1,759	1	.05	956	—	.04
Short-term borrowings under AMLF[1]	**—**	**—**	**—**	—	—	—	877	18	2.02
Other short-term borrowings	**5,134**	**86**	**1.67**	13,590	252	1.86	16,847	197	1.17
Long-term debt	**8,966**	**289**	**3.22**	8,681	286	3.30	7,917	304	3.84
Other interest-bearing liabilities	**3,535**	**8**	**.24**	940	7	.69	1,131	5	.46
Total interest-bearing liabilities	**$115,580**	**$ 613**	**.53**	$110,036	$ 763	.69	$107,960	$ 722	.67
Interest-rate spread			**1.55%**			2.15%			2.11%
Net interest revenue - fully taxable-equivalent basis		**$2,461**			$2,828			$2,690	
Net interest margin - fully taxable-equivalent basis			**1.67%**			2.24%			2.19%
Tax-equivalent adjustment		**$ (128)**			$ (129)			$ (126)	
Net interest revenue - GAAP basis		**$2,333**			$2,699			$2,564	

(1) Amounts represent averages of asset-backed commercial paper purchases from eligible unaffiliated money market mutual funds under the Federal Reserve's Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, or AMLF, and associated borrowings. The AMLF expired in February 2010.

EX. 51

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiff, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No.: 1:11-cv-10230-MLW
ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, and STATE STREET GLOBAL MARKETS, LLC, and DOES 1-20 Defendants.	No.: 1:11-cv-12049-MLW
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on behalf of itself, and JAMES PEHOUSHEK STANGELAND, and all others similarly situated, Plaintiff, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No.: 1:12-cv-11698-MLW

STIPULATION AND JOINT MOTION TO STAY

IT IS HEREBY STIPULATED AND AGREED, in order to facilitate the exchange of

discovery and information by and among the Parties in the above-captioned Actions, subject to the approval of the Court:

1. The above-captioned Actions (No. 1:11-cv-10230-MLW; No. 1:11-cv-12049-MLW; and No. 1:12-cv-11698-MLW) are hereby consolidated for pre-trial purposes.

2. The Parties will engage in informational exchanges, including formal document discovery where necessary, until December 1, 2013, during which time the Parties may also seek document discovery from and issue subpoenas to non-parties. The Parties reserve all rights with respect to formal discovery, including seeking relief from the Court where necessary, but prior to presenting any issue to the Court, the parties will use their best efforts in cooperation with the mediator to resolve any dispute concerning information exchange or discovery.

3. In all other respects, the above-captioned Actions are hereby stayed until December 1, 2013. This stay may be modified by the written agreement of the Parties, subject to Court approval, or by motion of any Party (with an opportunity to object afforded to all Parties). The Court also retains the right to modify this stay upon written notice to the Parties, and the Parties shall have an opportunity to object to any such modifications.

4. The Parties hereby withdraw the following pending motions without prejudice:

a. *Andover* Action (No.: 1:12-cv-11698-MLW)

a) Docket No. 15 (Joint Motion for Protective Order)

b. *Henriquez* Action (No.: 1:11-cv-12049-MLW)

a) Docket No. 34 (Defendants' Motion to Dismiss for Lack of Jurisdiction and Motion to Dismiss for Failure to State a Claim)

b) Docket No. 43 (Plaintiffs' Motion for Order for Discovery and to Reset Briefing Schedule)

c) Docket No. 80 (Joint Motion for Protective Order)

c. *Arkansas Teacher* Action (No.: 1:11-cv-10230-MLW)

a) Docket No. 57 (Joint Motion for Protective Order)

So Ordered:

November 19, 2012

The Honorable Mark L. Wolf,
Chief Judge, United States District Court for the District of Massachusetts

Respectfully submitted by the parties, this 19th day of November, 2012,

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CERTIFICATE OF SERVICE

I, Jeffrey B. Rudman, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) dated November 16, 2012.

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