

EX. 103

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JAMS, Inc.

Reference No. 1345000011

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In Re State Street Attorneys Fees

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June 5, 2017

3:13 p.m.

BEFORE:

Special Master Hon. Gerald Rosen, United
States District Court, Retired

Deposition of MARITZA BOLANO,
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. CS2629858

Page 6

[REDACTED]

Page 8

1 BOLANO
 2 case in particular was a securities
 3 broker/dealer case.
 4 Subsequent to that I've
 5 practiced on my own and then I did a stint
 6 with the City of New York as a legislative
 7 attorney and drafted legislation and
 8 resolutions and a lot of policy-related
 9 work.
 10 And then also for the city I
 11 transitioned into an in-house counsel
 12 position with the New York City Health and
 13 Hospitals Corporation, their HMO division,
 14 Metroplus health plan.
 15 I worked there for about
 16 two-and-a-half years and then I decided to
 17 go back into private practice as a
 18 contract attorney, mostly because I needed
 19 a lot more flexibility in my schedule at
 20 that point in my life, and have continued
 21 to do contract work, having done a stint
 22 with Labaton in 2009 for about five months
 23 and then I left and did some other work
 24 and then I came back to Labaton in 2015
 25 for the State Street case.

Page 7

1 BOLANO
 2 awards previously ordered and whether any
 3 or all of them should be reduced; E,
 4 whether any misconduct occurred in
 5 connection with such awards; and, if so,
 6 F, whether it should be sanctioned.
 7 That's why we're here.
 8 If I could just ask you to
 9 describe your background beginning with
 10 your education.
 11 A. Certainly.
 12 I graduated from Fordham Law
 13 School in 1992 with my JD and previous to
 14 that I was a graduate -- received my
 15 bachelor's degree from University of
 16 Michigan and a master's degree from
 17 Juliard School.
 18 So after graduating law school
 19 I clerked in the southern and eastern
 20 districts of New York for two different
 21 judges there and followed up with a stint
 22 at a major law firm by the name of Epstein
 23 Becker & Green, where I was a litigation
 24 associate assigned to commercial
 25 litigation cases, some of them -- one

Page 9

1 BOLANO
 2 Q. Only because I'm fascinated by
 3 it, what was your masters from Juliard in?
 4 A. I was a classical harpist and I
 5 performed professionally in South America
 6 with symphony orchestras at festivals and
 7 also was the harpist for the Helmsley
 8 Palace Hotel in the Eighties.
 9 And I got involved in the
 10 negotiation of our contracts with the
 11 hotel industry, collective bargaining
 12 agreements, and after a time I decided,
 13 you know what, I've always been interested
 14 in the law so I think I'll go to law
 15 school and that's what I did.
 16 Q. You may be one of the most
 17 interesting people I have deposed.
 18 A. Well, you know...
 19 Q. Thank you for sharing that.
 20 Have you found that your prior
 21 life as a commercial litigator has been of
 22 use to you in your tenure as a staff
 23 attorney at Labaton?
 24 A. Absolutely, yes.
 25 I think that I'm very grateful

| | |
|---|---|
| <p style="text-align: right;">Page 10</p> <p>1 BOLANO</p> <p>2 for my early training that I had as a</p> <p>3 lawyer working in the Federal courts as a</p> <p>4 clerk.</p> <p>5 Actually, one of the courts</p> <p>6 that I worked at handled all of the FDIC</p> <p>7 cases at that time in the early Eighties</p> <p>8 and Nineties, so we did a lot of</p> <p>9 commercial cases there.</p> <p>10 Subsequently the training that</p> <p>11 I had at Epstein Becker, having had the</p> <p>12 good fortune to work with a very fine</p> <p>13 senior associate on a big case and</p> <p>14 preparing the case for one of the partners</p> <p>15 to litigate, so I am very grateful for</p> <p>16 that experience with the judges and with</p> <p>17 those senior attorneys.</p> <p>18 And I think that that pretty</p> <p>19 much, you know, was the foundation for</p> <p>20 being involved in many different kinds of</p> <p>21 litigated matters as a commercial</p> <p>22 litigation attorney and as a staff</p> <p>23 attorney, being able to pick up right away</p> <p>24 what we're looking at and getting to</p> <p>25 understand the documents that are key for</p> | <p style="text-align: right;">Page 12</p> <p>1 BOLANO</p> <p>2 team?</p> <p>3 A. Well, I think they were looking</p> <p>4 to add reviewers who could bring more</p> <p>5 substantive analysis to the allegations,</p> <p>6 to the theory of the case, and looking at</p> <p>7 the documents in a more critical kind of</p> <p>8 analysis.</p> <p>9 I had a background in contract</p> <p>10 law having been a procurement officer at</p> <p>11 the City of New York with the Metroplus</p> <p>12 plan and so I oversaw all of the</p> <p>13 procurement for that agency and prepared</p> <p>14 RFPs when they came in, and then the</p> <p>15 contracts, prepared the contracts in</p> <p>16 collaboration with the executive team</p> <p>17 there.</p> <p>18 So I had a good background for</p> <p>19 looking at these custodial contracts that</p> <p>20 were at issue in State Street case.</p> <p>21 Q. Had you done other cases that</p> <p>22 were document review intensive prior to</p> <p>23 State Street?</p> <p>24 A. Yes.</p> <p>25 Q. Can you tell me how many cases</p> |
| <p style="text-align: right;">Page 11</p> <p>1 BOLANO</p> <p>2 the evidence that we needed to gather and</p> <p>3 making a theory of the case to sustain the</p> <p>4 complaint, the allegations in the</p> <p>5 complaint.</p> <p>6 Q. You have been a full-time</p> <p>7 employee during your tenure at Labaton?</p> <p>8 A. Yes.</p> <p>9 Q. You receive benefits?</p> <p>10 A. Yes.</p> <p>11 Q. Are you eligible for overtime?</p> <p>12 A. The way we are paid is on a per</p> <p>13 hour basis and we can bill up to 50 hours</p> <p>14 a week at the rate that we have according</p> <p>15 to the seniority that we're at at the</p> <p>16 firm.</p> <p>17 Q. Maritza, you worked on the</p> <p>18 State Street case?</p> <p>19 A. Yes, I did.</p> <p>20 Q. When did you begin working on</p> <p>21 State Street?</p> <p>22 A. I joined the team in January of</p> <p>23 2015.</p> <p>24 Q. Was there any particular reason</p> <p>25 why in January you were asked to join the</p> | <p style="text-align: right;">Page 13</p> <p>1 BOLANO</p> <p>2 fall into that category?</p> <p>3 A. It is hard for me to say how</p> <p>4 many.</p> <p>5 From the fall of 2005 onward I</p> <p>6 had been doing -- looking on many</p> <p>7 different cases, it is hard for me to say</p> <p>8 if it was ten or 20 or 30 cases.</p> <p>9 Q. A whole bunch?</p> <p>10 A. A whole bunch of cases,</p> <p>11 sometimes, you know, depending on what --</p> <p>12 where the case was at when I was brought</p> <p>13 in, you know, it varied a lot; mostly</p> <p>14 finance and banking-related cases.</p> <p>15 Q. Any securities cases?</p> <p>16 A. Yes, I was on cases involving</p> <p>17 some of the major banking institutions,</p> <p>18 mortgage-backed security cases, both</p> <p>19 residential and commercial mortgage-backed</p> <p>20 securities.</p> <p>21 Some of them involved</p> <p>22 international issues and I have background</p> <p>23 in foreign languages.</p> <p>24 Q. What languages do you speak?</p> <p>25 A. I speak Spanish and Portuguese</p> |

Page 14

1 BOLANO
2 and my Italian is gone now.
3 Q. The more questions I ask, the
4 more inadequate I feel.
5 MS. LUKEY: Justifiably.
6 MR. SINNOTT: Thank you, Joan.
7 A. I kind of grew up with those
8 languages.
9 Q. You've got quite a background.
10 Any of your international
11 experience in foreign exchange matters?
12 A. I had some, yes, prior to the
13 State Street case with a large banking
14 institution.
15 And then subsequently I'm
16 actually on an FX case now.
17 Q. While you were working on State
18 Street, were you working at other cases
19 for Labaton?
20 A. No.
21 Q. So this was your exclusive
22 case?
23 A. Yes.
24 Q. If you can remember, Maritza,
25 how many hours a week on average, I know

Page 16

[REDACTED]

Page 15

[REDACTED]

Page 17

[REDACTED]

EX. 104

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JAMS, Inc.

Reference No. 1345000011

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In Re State Street Attorneys Fees

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June 6, 2017

2:58 p.m.

BEFORE:

Special Master Hon. Gerald Rosen, United
States District Court, Retired

Deposition of KELLY GRALEWSKI,
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

Page 6

1
 2 whether it should be sanctioned.
 3 So that is why we're here, and
 4 Attorney Gralewski, or Kelly, I would ask
 5 at this point that you raise your right
 6 hand and be sworn in by the court
 7 reporter.
 8 KELLY GRALEWSKI,
 9 having first been duly sworn by a Notary
 10 Public of the State of New York, was
 11 examined and testified as follows:
 12 EXAMINATION BY
 13 MR. SINNOTT:
 14 Q. Thanks for being here, Kelly.
 15 Can you tell us your background
 16 beginning with your undergraduate
 17 education.
 18 A. I went to California State
 19 University, Chico, and got a double major
 20 in international business and French.
 21 And then I went to California
 22 Western School of Law in San Diego.
 23 Q. When did you graduate from law
 24 school?
 25 A. 1997.

Page 7

[REDACTED]

Page 8

1 GRALEWSKI
 2 Q. How long did you work on that
 3 particular case for?
 4 A. Oh, gosh, I can't remember,
 5 maybe a year, a year-and-a-half.
 6 Q. Was there an interruption in
 7 your employment at Lieff or did you roll
 8 into another case?
 9 A. No, I would automatically roll
 10 into another case, but I did stop working
 11 in fall of 2011 by choice.
 12 Q. How long did you stop working
 13 for?
 14 A. Just a year, and then I was
 15 called and asked to be on another case.
 16 Q. When you came back in 2012,
 17 what was the case that you were called
 18 back for?
 19 A. BoNY Mellon.
 20 Q. Were your duties in the Mellon
 21 case as primarily a document reviewer?
 22 A. Correct.
 23 Q. When you were brought in for
 24 that, did you receive an onboarding
 25 orientation or training?

Page 9

[REDACTED]

Page 10
[Redacted text]

Page 12
[Redacted text]

Page 11
[Redacted text]

Page 13
1 GRALEWSKI
2 Q. Do you remember what the
3 documents that you were shown in the State
4 Street case were?
5 A. The amended complaint and I
6 believe it was the opposition to motion to
7 dismiss.
8 Q. Your training on Catalyst, was
9 that by Lieff personnel or by vendors?
10 A. We had one training with the
11 Catalyst and then we had a Lieff
12 Cabraser-only training as well.
13 Q. Were you working out of Lieff's
14 offices or remotely?
15 A. Remotely.
16 Q. Was your training also
17 conducted remotely or did you report to
18 the San Francisco office?
19 A. It was remotely.
20 Q. Was that pretty seamless and
21 uneventful, as far as you were concerned?
22 A. Yes.
23 Q. You didn't have any problems
24 with the database or running the database?
25 A. No.

EX. 105

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JAMS, Inc.

Reference No. 1345000011

-----x

In Re State Street Attorneys Fees

-----x

June 5, 2017

4:44 p.m.

BEFORE:

Special Master Hon. Gerald Rosen, United
States District Court, Retired

Deposition of TRYPHENA GREENE,
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. CS2629858

EX. 106

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JAMS, Inc.

Reference No. 1345000011

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In Re State Street Attorneys Fees

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June 6, 2017

8:13 a.m.

BEFORE:

Special Master Hon. Gerald Rosen, United
States District Court, Retired

Deposition of TANYA ASHUR,
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

Page 10

[REDACTED]

Page 12

1 ASHUR
2 Cabraser.
3 Q. So you went from those
4 positions to Lieff?
5 A. Correct.
6 Q. You started at Lieff in 2013,
7 is that correct?
8 A. Yes.
9 Q. When you were hired into Lieff,
10 what was your position?
11 A. Contract attorney.
12 Q. Were you hired for a particular
13 matter or for general purposes?
14 A. A particular matter.
15 Q. What was, just a case name, if
16 you remember, that you were brought in
17 for?
18 A. Bank of New York Mellon.
19 Q. How long did you work on the
20 BoNY Mellon case?
21 A. A little over a year,
22 approximately one year and three months.
23 Q. How did that come to an end?
24 A. I think it was being settled
25 and we stopped reviewing documents and

Page 11

[REDACTED]

Page 13

[REDACTED]

Page 14

1 ASHUR
2 contract attorney?
3 A. I did.
4 Q. Medical benefits?
5 A. Lief Cabraser made a
6 contribution on my behalf to a program in
7 San Francisco called Healthy San Francisco
8 and I was able to use those funds to pay
9 for medical expenses.
10 Q. When you began working on the
11 State Street case, was your expectation
12 that your tenure at Lief would end at the
13 conclusion of that case or were you now
14 onboard for the long haul?
15 A. I didn't really have an
16 expectation at that time.
17 Q. How was your compensation
18 figured for your tenure, what were your
19 expectations as far as how you were being
20 paid, would it be by the hour, would it be
21 by document?
22 A. It was by the hour.
23 Q. On average, how many hours a
24 week did you work?
25 A. 40.

Page 16

[REDACTED]

Page 15

[REDACTED]

Page 17

[REDACTED]

Page 18

1 ASHUR
2 for the State Street case?
3 A. On a daily basis, it was Kirti
4 Dugar and then also Dan Chiplock.
5 Q. Were Kirti and Dan available if
6 you needed guidance or had found something
7 that you needed to be relayed up the
8 chain?
9 A. Yes.
10 Q. Were they in those spaces that
11 you were?
12 A. Kirti was; Dan was available by
13 e-mail or phone.
14 Q. Was Kirti also your direct
15 supervisor in the Mellon case?
16 A. Yes.
17 Q. You came into the State Street
18 case in what month and year, as best you
19 recall?
20 A. January 2015.
21 Q. Was there any time when you
22 were working on both the State Street case
23 and the Mellon case?
24 A. No.
25 Q. How long did you work on the

Page 20

[REDACTED]

Page 19

[REDACTED]

Page 21

[REDACTED]

EX. 107

From: Garrett Bradley
Sent: Tuesday, July 28, 2015 1:57 PM
To: Michael
Subject: Re: Lieff Lodestar info

500

Garrett&

On Jul 28, 2015, at 2:54 PM, Michael Lesser <MLesser@tenlaw.com>wrote:

We can plug some different numbers in the below – and I’ve already instructed Evan to change Mike Bradley to something more than the contract attorneys – Garrett, do you have a suggestion? State Street also assumes Mike T. at Bob L and Larry numbers – around 500, and Garrett at Belfi numbers – as instructed – at around 600. This is the only benefit of two full years of mediation sessions.

&

From: Evan Hoffman
Sent: Tuesday, July 28, 2015 2:51 PM
To: Michael Lesser
Subject: RE: Lieff Lodestar info

&

Thornton:

&

BNYM:

&

Hours: 2,582.70

&

Lodestar: \$1,550,828

&

State Street:

&

Hours: 13,324.65

&

Lodestar**: \$6,398,587

&

&

**\$425 for contract attorneys; \$400 for Mike Bradley/Andrea; \$650 MAL; \$485 ERH; \$850 MPT; \$800 GJB.

&

&

From: Michael Lesser
Sent: Tuesday, July 28, 2015 2:24 PM
To: Evan Hoffman
Subject: RE: Lieff Lodestar info

&

Now I need both for Thornton as well.&

&

From: Evan Hoffman
Sent: Tuesday, July 28, 2015 2:01 PM
To: Garrett Bradley
Cc: Michael Lesser
Subject: Lieff Lodestar info

&
BNYM (thru May 31, 2015)

&
Hours: 42,206.40

&
Lodestar: \$20,029,063.

&
&
State Street (thru May 31, 2015)

&
Hours: 16,792.3

&
Lodestar: \$8,619,858

&
Evan R. Hoffman, Esq. & | & Thornton Law Firm LLP
100 Summer Street, 30th Floor & | & Boston, MA & 02110

t: (617) 720.1333 & | & f: (617) 720.2445 & | & ehoffman@tenlaw.com
&

EX. 108

The Law Office of Michael G. Bradley, Esq.
80 Washington Square, Bld. K
Norwell MA 02061

LEGAL ENGAGEMENT AGREEMENT

This Engagement Agreement dated April 15, 2017 sets forth the terms of legal representation by The Law Office of Michael G. Bradley ("Attorney or Firm") of you, [REDACTED] "Client" (whether one or more) with regard to your legal problems, (the "Matter"). The information discussed between Client and Attorney is personal and confidential to Client and is protected and privileged against disclosure.

Scope of Engagement

Client agrees to employ the Attorney to undertake the legal representation of Client. Such representation will include, but is not limited to, court appearances, telephone conferences, office conferences, legal research, preparing for and conducting depositions and/or witness interviews, review of file materials and documents sent or received, time spent in case resolution, including plea bargaining in criminal cases, drafting of pleadings or instruments, correspondence, office memoranda and travel. It does not include appellate or other post-conviction work, unless specified below. The subject "Matter" herein is: **Motion to seal criminal record associated with Commonwealth v. [REDACTED] Quincy District Court Docket [REDACTED]**

Attorney's Obligations and Representations

The Attorney will use accepted professional practices to secure a result in the "Matter" consistent with the ends of justice and applicable legal and ethical principles provided, however, that the Client recognizes and acknowledges that the Attorney does not, at this point, have full and sufficient knowledge of all the pertinent facts in the Matter to predict results, which in any event are not within the control of either Attorney or Client, and absolutely no promises, guarantees, or meaningful predictions can be, or are being, made relative to outcome, either explicitly or implicitly.

Confidential

info@mbradleylegal.com

Phone (617)-786-0281 • Fax (781) 871-7220

Page 1

The Law Office of Michael G. Bradley, Esq.
80 Washington Square, Bld. K
Norwell MA 02061

The Firm/Attorney reserves the right to delegate any and all legal work, including the actual trial of the "Matter", to attorneys working for or associated with the Firm, as it, in its sole professional discretion, sees fit; the Client expressly assents to such delegation of legal work. It is understood that if the venue of the matter is outside of Massachusetts and if the Attorney is not a licensed member of the Bar of said state, it will be hiring a licensed, local attorney as resident counsel and to move its admission, pro hoc vice, to appear in the subject case. At present, the Firm employs attorneys licensed only in Massachusetts.

Client's Obligations and Representations

Client will pay to Attorney the legal fees and expenses incurred herein specified below in a timely manner. It is expressly understood that should Attorney not be compensated accordingly, he is entitled to withdraw from representing Client in the Matter, subject to applicable ethical considerations. Client will cooperate fully with Attorney and provide all information known by or available to Client which may aid Attorney in representing Client in the Matter. If Client is more than one entity or individual, all of Client's obligations are joint and several without apportionment and without exception.

Legal Fees and Expenses

The parties hereby acknowledge that the Client will be charged a rate of \$500.00 per hour. Said fee does not include costs and charges incurred, which shall be an additional expense to Client, and may include, but are not limited to expenses in relation to court reporters, stenographers, private investigators, expert psychiatrists,

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info@mbradleylegal.com
Phone (617)-786-0281 • Fax (781) 871-7220
Page 2

The Law Office of Michael G. Bradley, Esq.
80 Washington Square, Bld. K
Norwell MA 02061

psychologists, physicians, counselors, economists, accountants, accident reconstruction personnel, chemists, engineers, appraisers, etc., other attorneys, including those hired as local counsel in other jurisdictions, travel, lodging, meals, telephone, facsimile, copying, courier services, transcripts, computer research, filing fees, postage, including overnight mail services, etc.

Such legal fee shall be paid in full at the completion of the representation, unless otherwise agreed to in writing, and may, in the attorney's sole discretion be deposited in the firm's Operating , rather than Client's bank account, and if the latter, may be transferred to the Operating Account at the attorney's sole discretion.

Post-Conviction/Post Mistrial

Should Attorney not be permitted by leave of Court to withdraw from any appeal or other post-conviction phase of the Matter, or should the Client contract with the Attorney for representation for appeal or other post-conviction matters, the fee and expenses of same shall be a mutually negotiated and agreed-upon additional expense to the Client, and the other conditions contained in the Agreement shall remain in full force and effect. And should criminal charges be reinstated after a successful post-conviction challenge or after a declared mistrial, the fee and expenses of legal representation for those renewed charges, whether resolved by trial, by negotiated plea agreement or by dismissal, shall also be an additional negotiated cost to the Client.

Withdrawal As Counsel/Termination of Attorney-Client Relationship

The Attorney reserves the right to withdraw from the "Matter" if Client fails to honor this Agreement, or for any just reason as permitted or required under the Massachusetts Rules of Professional Conduct, or as permitted or required by the Rules of Court of the Commonwealth of Massachusetts. Notification of withdrawal shall be made in writing to Client.

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info@mbradleylegal.com

Phone (617)-786-0281 • Fax (781) 871-7220

Page 3

The Law Office of Michael G. Bradley, Esq.
80 Washington Square, Bld. K
Norwell MA 02061

Client acknowledges being fully advised by Attorney that withdrawal by Attorney when Client is at risk, particularly during trial, absent written

agreement, may be precluded by Attorney's professional obligation to the Client, who, being fully so aware, nonetheless makes this Agreement, subject to the Court's approval or disapproval of any request to withdraw as counsel, and Attorney may so advise or inform any Court in connection with any withdrawal by Attorney. The Attorney is not hereby seeking to reduce his ethical obligations, but only to fully advise and inform Client that he may seek, consistent with its ethical obligations, to terminate employment absent compliance with the provisions of this Agreement.

Upon termination of the legal representation for any reason by either Attorney or Client, Attorney agrees to cooperate with any successor counsel to accommodate a smooth transition of the legal representation.

Retention of Files

The Attorney agrees consistent with its ethical obligations to Client, to retain and maintain all major and significant components of the files relative to the Matter for a reasonable period of a time, and during such time to afford Client reasonable access to such files, or to return same to Client if so requested.

Governing Law / Complete Integration /Binding upon All Parties

This Agreement contains the entire agreement between Client and Attorney regarding the "Matter" and the fees, charges, and expenses to be paid relative thereto. This Agreement shall not be modified except by a written document signed by Client and Attorney, except that if the Attorney agrees to represent the Client in additional "Matters", such an Agreement can simply be contained in a letter sent by the Attorney to the Client reflecting an additional flat fee but with the operative terms of this Agreement remaining in full force and effect in the expanded representation.

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info@mbradleylegal.com

Phone (617)-786-0281 • Fax (781) 871-7220

Page 4


The Law Office of Michael G. Bradley, Esq.
80 Washington Square, Bld. K
Norwell MA 02061

This Agreement shall be binding upon Client and Attorney and their respective heirs, executors, legal representatives, successors and assigns. This Agreement shall be construed under the laws of the Commonwealth of Massachusetts and any dispute arising hereunder shall be determined under Massachusetts law for conflict of laws purposes, and resolved with Massachusetts as the forum state for purposes of actual venue.

The Client expressly acknowledges that it has been informed that it may, if it so chooses, review this Agreement with independent legal counsel prior to its execution. By signing this Agreement, the Client represents that it has either done so or knowingly waived same.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

AUTHORIZED BINDING SIGNATURE FOR FIRM

BY: 

Michael G. Bradley, Esq.
BBO # 662274

AUTHORIZED BINDING SIGNATURE (S) FOR CLIENT

BY: _____


Date: 4/15/17

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info@mbradleylegal.com
Phone (617)-786-0281 • Fax (781) 871-7220
Page 5

EX. 109

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,)
on behalf of itself and all others similarly situated,) No. 11-cv-10230 MLW
Plaintiffs,)

v.)

STATE STREET BANK AND TRUST COMPANY,)
Defendant.)

ARNOLD HENRIQUEZ, MICHAEL T. COHN,)
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,) No. 11-cv-12049 MLW
and those similarly situated,)
Plaintiffs,)

v.)

STATE STREET BANK AND TRUST COMPANY,)
STATE STREET GLOBAL MARKETS, LLC and)
DOES 1 – 20,)
Defendants.)

THE ANDOVER COMPANIES EMPLOYEYEE)
SAVINGS AND PROFIT SHARING PLAN, on behalf) No. 11-cv-11698 MLW
of itself, and JAMES PEHOUSHEK-STANGELAND,)
and all others similarly situated,)
Plaintiffs,)

v.)

STATE STREET BANK AND TRUST COMPANY,)
Defendant.)

**ANSWERS OF MICHAEL BRADLEY, ESQ. TO
SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.)
FIRST SET OF INTERROGATORIES**

Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure and the Court's March 8, 2017 Order, Michael Bradley (hereinafter "Mr. Bradley"), by and through his counsel, hereby answers the Special Master's first set of interrogatories.

General Objection

Mr. Bradley respectfully objects to the Special Master's authority to issue these interrogatories to Mr. Bradley. In its March 8, 2017 Order appointing the Special Master, the Court defined "Parties" on page 2, n. 2 as "the nine law firms that served as class counsel and named plaintiffs [] collectively," a definition which does not include Mr. Bradley. The Court granted the Special Master the authority to "require the production of documents and other records from the parties and third-parties" but gave no similar authority for issuing interrogatories to third parties.

Interrogatory No. 1.

Describe the nature of your law practice, including any areas of specialty, number of attorneys and/or employees, and representative matters.

Response No. 1

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley's legal practice focuses on criminal defense, personal injury, labor & employment law, real estate, and trust & estates. He practices as a solo practitioner, with offices in Quincy and Norwell, Massachusetts. His matters range from small criminal cases (such as minor motor vehicle offenses) to major felony representation. In his civil practice, Mr. Bradley has administered large estates, litigated labor and employment cases, and negotiated real estate transactions. Mr. Bradley incorporates by reference the contents of his resume, produced on June 1, 2017 at bates range SSSM_MB_000001-02.

Interrogatory No. 2.

Explain how and when you became involved in the SST Litigation and/or SST Document Review. Please describe whom you spoke with, the substance of those conversations, job duties and/or tasks assigned to you, and any other terms agreed upon relating to your work in that matter

Response No. 2

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley became involved in the SST litigation in approximately late February 2013, after speaking to Garrett Bradley (“Mr. G. Bradley”) on the telephone. Mr. G. Bradley informed Mr. Bradley that his law firm, Thornton Law Firm (“Thornton”), had a case against State Street that he thought Mr. Bradley might be interested in working on, based on his background and experience (including his years of practice as a criminal lawyer and his role as former head of the Massachusetts Underground Economy Task Force). Mr. G. Bradley explained the general nature of the case and asked if Mr. Bradley would be interested and able to conduct document review on a contingency basis, and Mr. Bradley agreed. Mr. Bradley understood that he would not be compensated unless and until the SST litigation settled and fees were collected.

Mr. G. Bradley instructed Mr. Bradley to contact Thornton attorney Michael Lesser to further discuss the matter and the exact nature of the work. That same day, Mr. Bradley spoke to Mr. Lesser, who explained the background of the case, as well as the type and nature of the document review Mr. Bradley would be conducting. Mr. Bradley asked Mr. Lesser if he needed to have a background in securities litigation and was told by Mr. Lesser that it was not necessary. Mr. Lesser told Mr. Bradley that the litigation required a great deal of document review, and that

Thornton wanted to ensure the documents were reviewed by competent attorneys. Although Mr. Bradley does not remember the precise details of the instructions he was given, he recalls that Mr. Lesser explained that Thornton was specifically looking for any evidence or suggestion of fraud or deception, including any emails evidencing an instruction to not inform State Street clients of any particular course of action or method of FX trades. After discussing the purpose and goals of the document review, Mr. Lesser directed Mr. Bradley to follow up with Thornton attorney Evan Hoffman. Mr. Hoffman sent Mr. Bradley a copy of the Amended Complaint in the State Street litigation, which Mr. Bradley reviewed. After reviewing the Amended Complaint, Mr. Bradley spoke to Mr. Hoffman about the substance of the litigation, the types of documents Mr. Bradley should look for, and the logistics of the document review, including how to utilize the document review platform (Catalyst).

Interrogatory No. 3.

Identify and describe any past experiences you have had working in the areas of securities, management/mismanagement of retirement funds, and/or the foreign-exchange market prior to working on the SST Litigation/SST Document Review.

Response No. 3

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Prior to working on the State Street litigation, Mr. Bradley had no specific experience in the areas of securities, management/mismanagement of retirement funds, and/or the foreign-exchange market.

Interrogatory No. 4.

Identify and describe any training you received relating to the substantive allegations in the SST Litigation/SST Document Review, including your understanding of any and all legal theories, key witnesses, defenses, liabilities, and/or critical topics raised in the case.

Response No. 4

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley refers to his response to Interrogatory No. 2.

Interrogatory No. 5.

Identify and describe any electronic and/or technical training you received, and from whom, relating to your use of the Catalyst database, including any procedures/protocols for coding documents, search terms, accessing documents, or log-in credentials received.

Response No. 5

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley refers to his response to Interrogatory No. 2. Mr. Bradley further responds that Mr. Hoffman trained him on how to use the Catalyst database including, but not limited to: how to log in, how to navigate the Catalyst system generally, how to select batches of documents to review, how to select and view the subset of documents within each batch to review, how to view the content of documents, and how to physically code documents. Mr. Bradley recalls Mr. Hoffman instructed him to code each document as having been “reviewed” and then assess whether or not the document was relevant to the State Street litigation and if so, code the

document as relevant and indicate why it was relevant. Mr. Bradley was also asked to write comments in the comment field of the Catalyst platform for any particular document that Mr. Bradley felt needed additional attention or a second review by another attorney.

Interrogatory No. 6.

Describe in detail all work you performed on the SST Litigation/SST Document Review. Please include the frequency with which you worked on the Litigation, the average time spent each week and/or month, the nature of your involvement, and identify/describe any memoranda or work product you produced as part of your work.

Response No. 6

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley refers to his response to Interrogatory Nos. 2 and 5, and his documents produced on June 1, 2017 at Bates range SSSM_MB_000003-75. Mr. Bradley further responds that he did not produce any memorandum or other work product aside from his review, coding, and notes on documents in the Catalyst system.

Interrogatory No. 7.

Explain how you recorded your time spent on the SST Litigation, including the intervals you used for recording time, any guidance you received from Thornton and/or the Plaintiffs' Law Firms for time recording, and how and the frequency with which time was transmitted to Thornton.

Response No. 7

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley refers to his documents produced on June 1, 2017 at Bates range SSSM_MB_000003-75. Mr. Bradley further responds that he recorded his time via handwritten contemporaneous time sheets, in which he entered the actual start and finish time for the document review he conducted. Mr. Bradley then transcribed these handwritten entries into regular emails sent to Mr. Hoffman at Thornton. Mr. Bradley did not receive any specific guidance on how to record his time.

Interrogatory No. 8.

Identify all persons at Thornton with whom you communicated regarding your work on the SST Litigation/SST Document Review, including the basic substance of your communications with each.

Response No. 8.

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley refers to his response to Interrogatory Nos. 2, 5, and 7. Mr. Bradley further responds that he discussed his billable rate with Mr. G. Bradley. Mr. Bradley also spoke to Mr. Hoffman to discuss questions or issues that arose with the document review as it was ongoing.

Interrogatory No. 9.

Identify all persons at the Plaintiffs' Law Firms with whom you communicated regarding your work on the SST Litigation, including the basic substance of your communications with each.

Response No. 9

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding

these objections, and without waiving them, in an effort to cooperate with the Special Master,

Mr. Bradley responds as follows:

Mr. Bradley had no communication with persons at the Plaintiff's Law Firms regarding his work on the State Street litigation.

Interrogatory No. 10.

Explain how you and Thornton agreed to an hourly rate of \$500/hour as compensation for your work performed in the SST Litigation/SST Document Review. Please identify all individuals who participated in these discussions and/or had knowledge of the \$500/hour rate prior to you beginning work on the SST Litigation.

Response No. 10

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley spoke to Mr. G. Bradley in or around late February 2013 about Mr. Bradley's fee. Mr. G. Bradley explained that Mr. Bradley's fees were all contingent, meaning that he would only be paid if Thornton either settled or obtained a favorable judgment on the matter. Mr. G. Bradley asked Mr. Bradley for his billable rate. Mr. Bradley explained that he typically had flat fee arrangements with his clients, and not an hourly billable rate, but that he recently had billed and collected \$450 per hour from a client for trusts/estates work. Mr. Bradley requested to be paid a rate of \$500 an hour, a rate he felt was fair and reasonable given the rates he had recently charged coupled with the amount of time and risk involved. Mr. G. Bradley agreed with Mr. Bradley's reasoning and his requested fee.

Interrogatory No. 11.

Do you contend that \$500/hour represents the prevailing rate in the community for similar services performed by lawyers of reasonably comparable skill, experience and reputation for each of the respective tasks performed? Why or why not?

Response No. 11

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley lacks information sufficient to answer this interrogatory. Mr. Bradley contends only that he has billed and collected at least \$450 an hour in his solo law practice for a non-contingency client.

Interrogatory No. 12.

Please describe any other work you have performed for or on behalf of Thornton, before, after or during the SST Litigation, including the nature of that work and the compensation you received (hourly and total).

Response No. 12

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley has received referral fees from Thornton for matters he referred to that firm, including \$12,000 in 2010 and \$6,333.33 in 2012. Mr. Bradley also performed basic probate work for four Thornton clients in 2016 for approximately \$1,689.80.

Interrogatory No. 13.

Please list the hourly rates charged to clients for all legal matters you have worked on, from 2010 to the present, including a brief description of each matter and how it was resolved, the total amount billed in each case, and the total amount realized and/or collected.

Response No. 13

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley refers to his documents produced on June 15 (bates ranges SSSM_MB_000076-380) for exemplar billing records.

Interrogatory No. 14.

Please describe your role, if any, in the drafting, preparing, filing and prosecution of Thornton's Fee Application including whether you reviewed any drafts of Thornton's Fee Petition or Lodestar calculations prior to submission to the Court.

Response No. 14

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley had no role in the drafting, preparing, filing or prosecution of Thornton's Fee Application and did not review any drafts of Thornton's Fee Petition or Lodestar calculations prior to submission to the Court.

Interrogatory No. 15.

Describe when and how you learned about the Boston Globe's inquiry into the Fee Petitions and duplicative billing entries submitted in the Court in the SST Litigation, in or about

November 2010, including with whom you spoke and any documents reviewed in connection with that inquiry.

Response No. 15

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Before the article was published, Mr. G. Bradley told Mr. Bradley that the Boston Globe was likely to be publishing an article related to the State Street litigation billing. Also before the article was published, reporter Andrea Estes reached out to Mr. Bradley for comment, but he declined to comment or answer any questions. Mr. Bradley did not review any documents in connection with the Boston Globe's inquiry.

Interrogatory No. 16.

Describe any involvement you had in drafting, reviewing, and/or contributing to the November 10, 2016 Letter to the Court detailing billing errors, including but not limited to reviewing billing entries/time records, reviewing Fee Petitions, communications between you and Thornton and/or the Plaintiffs' Law Firms, and/or communications with the ERISA firms.

Response No. 16

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley had no role in drafting, reviewing, and/or contributing to the November 10, 2016 Letter to the Court.

Interrogatory No. 17.

Identify any conversations you had with Thornton and/or Mr. G Bradley regarding the December 17, 2016 Article raising concerns about the hourly rates awarded in the Fee Petitions, including the approximate dates and basic substance, and describe any actions you and/or Thornton took on your behalf to respond to the Article.

Response No. 17

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

To the best of his recollection, Mr. Bradley spoke with Mr. G. Bradley about the December 17, 2016 article on or about December 17, 2016 and on at least two other occasions after December 17. During these conversations, Mr. Bradley and Mr. G. Bradley discussed the fact and content of the article generally. Mr. Bradley took no actions in response to the article.

Interrogatory No. 18.

Identify any errors in the Fee Petitions and/or Lodestar calculations, Motion for Attorneys' Fees, or Fee Award that are not addressed above.

Response No. 18

Mr. Bradley incorporates the general and specific objections in his June 1, 2017 submission to the Special Master, as well as the general objection stated above. Notwithstanding these objections, and without waiving them, in an effort to cooperate with the Special Master, Mr. Bradley responds as follows:

Mr. Bradley has no personal, first-hand knowledge of any errors as described in this interrogatory and lacks information sufficient to answer it. Mr. Bradley is aware that Thornton has informed the Court that it underreported Mr. Bradley's hours in Thornton's declaration and

spreadsheet to the Court, but Mr. Bradley was not involved in that calculation or determination, and has not independently investigated or come to any conclusion on that issue.

DATED: June 15, 2017

All of the foregoing answers, signed this 15th day of June 2017, are true and correct to the best of my knowledge and belief under the penalties of perjury.



Michael G. Bradley

As to objections:



Anthony E. Fuller (BBO #633246)

Lauren A. Graber (BBO

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CERTIFICATE OF SERVICE

I hereby certify that this document was served upon William Sinnott, counsel for the Special Master, by electronic mail and first class mail on June 15, 2017.



Anthony E. Fuller (BBO #633246)

EX. 110

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

| | | |
|--|---|---------------------|
| ARKANSAS TEACHER RETIREMENT SYSTEM, |) | |
| on behalf of itself and all others similarly situated, |) | No. 11-cv-10230 MLW |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE STREET BANK AND TRUST COMPANY, |) | |
| |) | |
| Defendant. |) | |

| | | |
|---|---|---------------------|
| ARNOLD HENRIQUEZ, MICHAEL T. COHN, |) | |
| WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, |) | No. 11-cv-12049 MLW |
| and those similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE STREET BANK AND TRUST COMPANY, |) | |
| STATE STREET GLOBAL MARKETS, LLC and |) | |
| DOES 1-20, |) | |
| |) | |
| Defendants. |) | |

| | | |
|--|---|---------------------|
| THE ANDOVER COMPANIES EMPLOYEE SAVINGS |) | |
| AND PROFIT SHARING PLAN, <i>et al.</i> |) | No. 12-cv-11698 MLW |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE STREET BANK AND TRUST COMPANY, |) | |
| |) | |
| Defendant. |) | |

**LEAD COUNSEL’S MOTION FOR AN AWARD
OF ATTORNEYS’ FEES, PAYMENT OF LITIGATION
EXPENSES, AND PAYMENT OF SERVICE AWARDS TO PLAINTIFFS**

Labaton Sucharow LLP (“Labaton Sucharow”), attorneys for Plaintiff Arkansas Teacher Retirement System (“ARTRS”) and Court-appointed Lead Counsel for the Settlement Class, respectfully move, on behalf of all Plaintiffs’ Counsel, pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, for an award of attorneys’ fees in the amount of \$74,541,250.00, plus any accrued interest; payment of Litigation Expenses in the amount of \$1,257,697.94; payment of a Service Award to Plaintiff ARTRS in the amount of \$25,000.00; and 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, in connection with the proposed Settlement of these consolidated Class Actions.

As grounds for this motion, Lead Counsel relies on the accompanying supporting Memorandum of Law; the accompanying supporting Declaration of Lawrence A. Sucharow, with exhibits; the Parties’ Settlement Agreement dated as of July 26, 2016 (ECF No. 89); the Court’s Preliminary Approval Order dated August 11, 2016 (ECF No. 97); and all other prior papers and proceedings in these Class Actions.

WHEREFORE, and for the reasons discussed more fully in the accompanying supporting Memorandum of Law, Lead Counsel respectfully seeks the relief requested.

Pursuant to the Preliminary Approval Order, a proposed Order will be submitted to the Court no later than October 21, 2016.

Request for Oral Argument

Pursuant to Local Rule 7.1(d), Lead Counsel hereby requests oral argument on this motion. The Court has scheduled a hearing on this motion for November 2, 2016, at 2:00 p.m.

Dated: September 15, 2016

Respectfully submitted,

LABATON SUCHAROW LLP

By: /s/ Lawrence A. Sucharow
Lawrence A. Sucharow (*pro hac vice*)
Eric J. Belfi
David J. Goldsmith (*pro hac vice*)
Michael H. Rogers (*pro hac vice*)
Nicole M. Zeiss (*pro hac vice*)
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*Additional Counsel for Plaintiff
ARTRS and the Settlement Class*

Certificate of Compliance with Local Rule 7.1(a)(2)

I certify pursuant to Local Rule 7.1(a)(2) that I conferred with counsel for Defendant State Street Bank and Trust Company (“State Street”) on September 15, 2016 and earlier dates concerning the relief sought in the foregoing motion.

Counsel confirmed that State Street takes no position on the relief sought in the motion.

/s/ David J. Goldsmith
David J. Goldsmith

Certificate of Service

I certify that on September 15, 2016, I caused the (1) foregoing Lead Counsel's Motion for an Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs; (2) accompanying Plaintiffs' Assented-to Motion for Leave to File Plaintiffs' Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs; (3) accompanying [Proposed] Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs; and (4) accompanying 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, with exhibits, to be filed through the ECF system in the above-captioned actions, and accordingly to be served electronically upon all registered participants identified on the Notices of Electronic Filing.

/s/ David J. Goldsmith
David J. Goldsmith

EX. 111

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

| | | |
|---------------------------------|---|---------------------|
| |) | |
| ARKANSAS TEACHER RETIREMENT |) | |
| SYSTEM, on behalf of itself and |) | |
| all others similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Civil Action |
| v. |) | No. 11-CV-10230-MLW |
| |) | |
| STATE STREET CORPORATION, |) | |
| STATE STREET BANK AND TRUST |) | |
| COMPANY and STATE STREET GLOBAL |) | |
| MARKETS, LLC, |) | |
| |) | |
| Defendants. |) | |
| |) | |

BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT JUDGE

HEARING

August 8, 2016
3:08 p.m.

John J. Moakley United States Courthouse
Courtroom No. 10
One Courthouse Way
Boston, Massachusetts 02210

Kelly Mortellite, RMR, CRR
Official Court Reporter
John J. Moakley United States Courthouse
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mortellite@gmail.com

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25 (continued)

1 APPEARANCES: (cont.)

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. Would counsel please
3 identify themselves for the Court and for the record.

4 MR. GOLDSMITH: Good afternoon, Your Honor. David
5 Goldsmith, Labaton Sucharow, for plaintiffs and the settlement
6 class.

7 MR. THORNTON: Good afternoon, Your Honor. Michael
8 Thornton for plaintiffs and the settlement class.

9 MR. CHIPLOCK: Good afternoon. Daniel Chiplock, Lief
03:08 10 Cabraser Heimann & Bernstein, LLP, also here for plaintiffs and
11 the settlement class.

12 MR.KRAVITZ: Carl Kravitz, Zuckerman Spaeder, for the
13 plaintiffs and the settlement class.

14 MR. McTIGUE: Your Honor, Brian McTigue from McTigue
15 Law for the plaintiffs and the settlement class.

16 MR. PAINE: Bill Paine and Bill Halston from Wilmer
17 Hale for the defendants.

18 THE COURT: Okay.

19 We are here, as anticipated at the June 23 hearing,
03:09 20 with regard to the motion for preliminary certification of
21 class action and preliminary approval of the proposed class
22 settlement. The issues presented, I think, were anticipated
23 and discussed somewhat at the June 23, 2016 hearing. I've read
24 the memo in support of the motion and the related documents.

25 I propose to conduct this hearing by having you

1 address first the request for preliminary class certification
2 for settlement purposes; second, whether the proposed
3 settlement appears to be fair, reasonable and adequate and
4 therefore should be circulated to the class; and third, issues
5 relating to the dates and the content of the notices.

6 Does that agenda make sense to the parties?

7 MR. GOLDSMITH: That's fine, Your Honor.

8 THE COURT: Is there anything missing from that
9 agenda?

03:10 10 MR. GOLDSMITH: Your Honor, there's nothing missing,
11 per se. I mean, there may perhaps be one or two elements of
12 the settlement that I might want to bring to the Court's
13 attention.

14 THE COURT: No. I want you to speak to all of this --

15 MR. GOLDSMITH: Sure.

16 THE COURT: -- to the extent that you want to or to
17 the extent that I have questions. But it does appear to me
18 that it's appropriate to certify a class for settlement
19 purposes because the requirements of Rule 23(a) and 23(b)(3)
03:11 20 are met, but I'm interested in hearing from you all on that, I
21 guess.

22 MR. GOLDSMITH: Would Your Honor like me to run
23 through the elements? I'm happy to do that.

24 THE COURT: Sure.

25 MR. GOLDSMITH: Okay. Thank you, Your Honor. David

1 Goldsmith, Labaton Sucharow, for plaintiffs in the class.

2 So as Your Honor said, we argued or discussed a number
3 of issues during the status conference. Your Honor had set a
4 deadline for the parties to complete their lengthy and
5 protracted negotiations and to file the fully executed
6 settlement agreement and exhibits by July 27. We beat that
7 deadline by one day, and that brings us here.

8 Your Honor had set today and now as the time for a
9 hearing on preliminary approval. So one of the matters that
03:12 10 needs to be discussed today, as Your Honor says, is preliminary
11 class certification. The reason why it's preliminary and not
12 final is because class members do have a constitutional right
13 to object to class certification if they see fit to do so. We
14 don't see objections to class cert very often, but it is
15 something they are permitted to do.

16 So the Rule 23 elements are familiar to Your Honor,
17 and they are no different really than the elements that we see
18 in a litigated context, except for the fact that Your Honor
19 doesn't have to consider whether the trial of this action, if
03:12 20 there is a trial, would be manageable or unmanageable. Since
21 we're settling the case, there will be no trial, so Your Honor
22 doesn't have to consider that. And that, of course, is the
23 *Amcan* case.

24 So on the numerosity point, we know from data that we
25 received from State Street that there are approximately 1,300

1 members of the class, so that exceeds the rule of thumb of 40
2 by quite a lot, so we have numerosity.

3 On commonality, we would say that there are quite a
4 few common questions of law or facts that are involved in the
5 case, and we presented many of those to Your Honor during the
6 argument on the motion to dismiss. And, you know, under the
7 *Walmart* case, there really only has to be one question that is
8 common to the class. And whether the defendants allegedly
9 violated, say, the Massachusetts Consumer Protection Act is
03:13 10 itself a common question of law or facts. You can see a common
11 course of conduct that pervades the case. And the claims, you
12 know, would depend on a common contention.

13 With regard to the typicality, the question there,
14 your Honor, is whether the interests of the class and the class
15 representatives are sufficiently aligned. We would say that
16 they are because the claims of the class members and class reps
17 arise from the same essential set of facts. You have a uniform
18 pricing methodology that we have alleged, and you have, as I
19 said a moment ago, an alleged uniform course of conduct. So we
03:14 20 think that the interests of the class and the class
21 representatives are the same. And thus, the plaintiffs
22 themselves are sufficiently typical of the other members of the
23 class.

24 With regard to the adequacy point, that's actually a
25 two-prong showing. We have -- we believe that the class

1 representatives, the plaintiffs, that their interests do not
2 conflict with those of any other class member, which is really
3 the same thing as typicality, some of the case law shows or
4 recognizes. With regard to adequacy also, it requires an
5 inquiry of class counsel. We would respectfully submit that
6 class counsel in this case is adequate and is prepared to
7 settle the case and has been prepared to litigate the case.

8 THE COURT: You're looking for up to \$76 million.

9 MR. GOLDSMITH: We are.

03:15 10 THE COURT: You're going to have to be more than
11 minimally adequate, although you certainly seem to have enough
12 lawyers in the courtroom. Go ahead.

13 MR. GOLDSMITH: Quality over quantity.

14 THE COURT: There's quite a -- how many of these
15 people in the courtroom are plaintiffs' lawyers today? One,
16 two, three. And how many more back in the offices? But
17 anyway, go ahead.

18 MR. GOLDSMITH: Our firm, Your Honor, was appointed
19 back in January of 2012 as the -- I believe the title was
03:15 20 interim class counsel. Your Honor made some findings with
21 regard to adequacy, and we would respectfully suggest there's
22 no reason to depart from those findings today.

23 With regard to the 23(b)(3) prerequisites, there's the
24 question of predominance. There's no -- predominance is
25 similar to commonality, Your Honor, in the sense that the

1 common issues have to predominate over any of the individual
2 issues. We think that's easily shown here. As the Supreme
3 Court has recognized, it's a test that's readily met in certain
4 cases that involve consumer fraud or alleged securities fraud
5 or even antitrust fraud. You have a lot of common issues here,
6 and we think that they outweigh any issue that bears peculiarly
7 on any individual class member. I mean, the principal issue --

8 THE COURT: Am I correct in understanding that with
9 regard to four of the five of Arkansas Teacher's claims they're
03:16 10 common to all class members as a unique contract claim that
11 Arkansas Teacher has; is that right?

12 MR. GOLDSMITH: That's correct. And that claim was
13 brought only individually. So that claim was brought by
14 Arkansas only for itself and not as a class claim. It can be
15 difficult to certify breach of contract claims, and we did not
16 plead it as such.

17 THE COURT: And is there any conflict between Arkansas
18 Teacher's interest in that unique individual claim and the
19 other claims?

03:17 20 MR. GOLDSMITH: I would say no, Your Honor. That's an
21 extra claim that they pleaded. Your Honor did deny the motion
22 to dismiss as to that claim, but that claim will be dismissed
23 as part of the class settlement. Class settlement will result
24 in a dismissal of all the claims in the case.

25 THE COURT: Putting aside that contract claim, am I

1 correct in understanding that the only issue unique to various
2 parties is the amount of damages it would be entitled to?

3 MR. GOLDSMITH: That would be our argument, Your
4 Honor. In all candor, if we were litigating the case, you
5 might hear arguments from the defense on that case. But our
6 argument would be that the only genuine issue that would be
7 individual to class members would be the amount of money that
8 was lost.

9 THE COURT: All right.

03:18 10 MR. GOLDSMITH: The last point, Your Honor, is the
11 superiority point. We think that's virtually self-evident
12 here. To have all of these claims of the class members
13 litigated together is superior to any other method of resolving
14 this controversy. We don't want have to 1,300 separate
15 litigations before the Court, which could produce disparate
16 different judgments and different, you know, results.

17 You only have in this case three custodial clients of
18 all of the clients that proceeded on their own. You had a qui
19 tam action that was spearheaded by the Attorney General of
03:19 20 California. That's a different kind of case than the claims
21 that were brought here. You did have one -- and this was in
22 our brief. You did have one custodial client that resolved its
23 issues privately with State Street without resorting to
24 litigation. But interestingly, those custodial clients did not
25 file opt-out litigations of their own. So I think an inference

1 can be drawn that the custodial clients that remain silent were
2 satisfied as to the claims proceeding on the class basis.

3 THE COURT: Well, they'll get a chance to let me know,
4 won't they?

5 MR. GOLDSMITH: That's exactly right.

6 THE COURT: To the extent a potential class member --

7 MR. GOLDSMITH: That's right.

8 THE COURT: -- you have to opt out possibly pursuant
9 to any settlement agreements.

03:19 10 MR. GOLDSMITH: Correct. But we think at this point
11 class certification is appropriate, and if there's a class
12 member that feels that its interests justify a different path,
13 they have the right to do what they see fit.

14 THE COURT: All right. Mr. Paine, is there anything I
15 should hear from the defendants' perspective?

16 MR. PAINE: No thanks.

17 THE COURT: All right. Subject to a possibility of
18 hearing a persuasive objection to class certification, I do
19 hereby certify the proposed class for settlement purposes only.
03:20 20 I understand if the settlement is not approved, parties may
21 want to litigate the issue of class certification.

22 I find that the requirements of Rule 23 are, for
23 present purposes, met, and the requirements of Rule 23(b)(3)
24 are also, for present purposes, met. I will consider this
25 issue further at the final hearing and decide whether to

1 confirm the class certification or alter my decision, as I
2 understand I would always have the right to do in any event.

3 With regard to the requirements of Rule 23(a), there
4 are 1,300 class members, which satisfies the numerosity
5 requirement. Common issues exist. All of the class claims are
6 applicable to all of the class members. Four of the five
7 claims of Arkansas Teacher arise from the same alleged
8 practices as the claims of all other class members. They are
9 therefore typical. Arkansas Teacher's contract claim does not
03:21 10 undermine my findings of typicality or diminish Arkansas
11 Teacher's incentive to zealously represent the class.

12 Arkansas Teacher is a substantial and sophisticated
13 pension fund. It's represented by experienced, sophisticated
14 counsel. Together I find they will adequately represent the
15 class. And the interests of Arkansas Teacher does not conflict
16 with the interests of other class members.

17 In addition, I find that the requirements of Rule
18 23(b)(3) are met for present purposes. Questions of law and
19 fact common to the class members predominate. The only unique
03:22 20 issues relate to damages and Arkansas Teacher's additional
21 individual contract claim. The class action approach is
22 superior to individual actions who will provide economies of
23 time and effort and judicial resources. Importantly, it also
24 avoids the risk of inconsistent decisions.

25 So I'd like to move next to the reasonableness of the

1 proposed settlement, the terms of the proposed settlement,
2 which should be mentioned at the outset. It would be helpful
3 if the plaintiff at least would address the relationship of the
4 Department of Justice, Department of Labor and SEC settlements,
5 if there is an SEC settlement, and also while it's a large
6 number, why \$300 million is a reasonable sum in the
7 circumstances.

8 MR. GOLDSMITH: Thank you, Your Honor. David
9 Goldsmith for plaintiffs and the class.

03:23 10 So why don't I zero in on the points that Your Honor
11 raised. So preliminary approval, as Your Honor knows, is a
12 preliminary determination. And we get to the guts of it more
13 at final approval. But to respond to those questions, so
14 the -- since we appeared at the end of June, the final
15 settlements between State Street and the SEC and the DOJ were
16 announced publicly, so we now know what those numbers are and
17 how they relate to one another, so I can give the Court the
18 landscape. And the answer is that we, the plaintiffs, the
19 private sector plaintiffs, negotiated a settlement for \$300
03:24 20 million. That's the first thing.

21 Second thing is, State Street has agreed to pay the
22 Department of Justice a penalty of \$155 million.

23 THE COURT: I don't think I saw that in your memo.

24 MR. GOLDSMITH: It's not in the memo, Your Honor,
25 because it was after the memo that the press release came out,

1 and we did not know the number. We were not privy to those
2 discussions. So I think I indicated that a settlement had been
3 reached or would shortly be reached but we didn't know the
4 number. So that's the second piece, broadly speaking. That's
5 1.55.

6 Then the third piece, broadly speaking, is that State
7 Street has also agreed to pay a penalty to the SEC of \$75
8 million. So putting all the monies together, State Street will
9 be paying \$530 million in settlement of these various claims.

03:25 10 Now, within --

11 THE COURT: What about the Department of Labor?

12 MR. GOLDSMITH: Right. So to answer that question,
13 Your Honor, within the \$300 million settlement that we have
14 secured for the class members -- and the 155 million does not
15 go to class members. That goes to government. And 75 million,
16 to our understanding, also does not go to class members and
17 instead goes to the government. But the \$300 million, that
18 does go to class members on a net basis. There are aspects of
19 a plan of allocation, Your Honor, that were negotiated and
03:26 20 agreed upon in part to satisfy certain of the -- certain
21 elements of certain of the regulator settlements. So the
22 allocation -- within the plan of allocation to ERISA plan class
23 members, to the custodial clients that are ERISA plans and the
24 group trust class members, to the extent they have ERISA
25 assets, that is in part in order to satisfy State Street's

1 issues with the Department of Labor. And that allocation, Your
2 Honor, on a gross basis is \$60 million.

3 THE COURT: And is it your understanding essentially
4 that the Department of Labor is relying on this settlement to
5 assuring its responsibilities are satisfied?

6 MR. GOLDSMITH: Yes.

7 THE COURT: Do you anticipate asking them to tell me
8 that in connection with any final settlement hearing?

9 MR. GOLDSMITH: I do not, but -- I do not anticipate
03:27 10 asking them that, but it can be done.

11 THE COURT: I mean, one other thing that's argued is
12 one reason that this is reasonable and an unusual reason is
13 essentially the settlement has been vetted by three federal
14 government agencies. It's part of a global resolution.

15 MR. GOLDSMITH: That's correct.

16 THE COURT: So I'm not -- I don't think I could and
17 I'm not ordering that they be heard, but it would be helpful.

18 MR. GOLDSMITH: Well, I would say, I just want to
19 answer Your Honor's point about the SEC because there is that
03:28 20 as well.

21 MR. PAINE: David, do you mind if I interject with a
22 couple of details?

23 MR. GOLDSMITH: Go ahead.

24 MR. PAINE: So there's really only two government
25 agencies that are formally part in any way of this settlement.

1 So our arrangement with the Department of Justice, their civil
2 division stands alone. It's just a straight agreement that
3 we're paying the money and we're getting a release.

4 With respect to the SEC, there is no formal settlement
5 agreement at this moment. We have made an offer of settlement
6 to them, which they -- which we expect them to accept shortly
7 after final approval of this settlement. And the two pieces of
8 the -- the two financial pieces of that, the penalty is one,
9 and that a certain amount of money go to mutual fund customers
03:29 10 of State Street are elements of that settlement. And so it is
11 in that sense that the SEC has weighed in on the overall. They
12 are relaying on at least that minimum amount of money going to
13 mutual fund recipients via the settlement that we're asking you
14 to approve.

15 Similarly, with respect to the Department of Labor,
16 there is no separate payment, but a condition of the settlement
17 which must be met, which is necessary in order for us to
18 finalize our settlement with the Department of Labor, is that
19 the \$60 million go to ERISA plan participants.

03:29 20 So pretty much exactly what Mr. Goldsmith said with a
21 couple of differences, but we can represent to the Court that
22 each of the SEC and the Department of Labor have made it a
23 condition of our settlement with them that a settlement that
24 has the features that I mentioned be approved by you and that
25 the distribution happen accordingly.

1 THE COURT: Okay. I think it would be helpful when --
2 as I expect we will -- we get to the final settlement that this
3 be addressed in the memo more fully than it is here. At a
4 minimum, it has practical significance.

5 The Department of Justice settlement is independent of
6 what happens in this case?

7 MR. PAINE: Correct. I mean, they're all cross-
8 defaulted; meaning, if this settlement is not finally approved,
9 then we have the right to back out of them all.

03:31 10 THE COURT: I see.

11 MR. PAINE: But there's no contingency the other way
12 on the department, by which I mean --

13 THE COURT: Okay. If I don't approve it, the
14 Department of Justice still collects \$155 million for the
15 treasury.

16 MR. PAINE: Unless we back out.

17 THE COURT: Unless you back out?

18 MR. PAINE: Unless we back out.

19 THE COURT: All right. It would just be valuable to
03:31 20 remind me of this and discuss the implications of it for the
21 reasonableness of the settlement.

22 MR. GOLDSMITH: That's fine, Your Honor.

23 Part of the reason why our memo may not have all the
24 needle-specific details on this is that we naturally have not
25 been privy to the lengthy negotiations that we know that

1 Mr. Paine and his team have had with all the government
2 regulators. So we've been a little bit in the dark on that, on
3 some of those issues.

4 THE COURT: This is a point at which the adversary
5 process usually fails. I mean, the defendant can, and I may
6 order, file its own memo telling you why it's reasonable
7 because there may be certain information that you have that the
8 plaintiff doesn't have.

9 MR. PAINE: Fair enough. I won't weigh in on what it
03:32 10 is that you should order us to do. I think the reality is that
11 this is a pretty complicated and nuanced arrangement.

12 THE COURT: I don't necessarily need all the details.
13 But, you know, the plaintiffs -- I mean, just as a practical
14 matter, if this has indeed -- if what I'm being asked to
15 approve is going to affect something you've negotiated at arm's
16 length with the Department of Justice and something you've
17 negotiated with the SEC and something you've negotiated with
18 the Department of Labor, I think that goes into both the
19 reasonableness of the settlement and the fairness of the
03:33 20 settlement. And it's argued the presumption of reasonableness.
21 You don't just have arm's length bargaining between the parties
22 in this case. You've got other people participating.

23 MR. PAINE: And I agree with that, Your Honor.

24 THE COURT: But then it needs to be explained to some
25 extent.

1 MR. PAINE: Let me reassure you, though, that the
2 elements of our settlement that are key to the other actors
3 have been identified, and they are the payment amounts to the
4 ERISA participants and to the mutual fund participants in the
5 class, and that that is the only place other than the overall
6 approval of the arrangement where the regulatory settlements
7 and this settlement intersect.

8 THE COURT: Okay.

9 MR. GOLDSMITH: Thank you, Your Honor. So Your Honor
03:34 10 asked a question, I believe, about how the \$300 million relates
11 to -- I think Your Honor had asked --

12 THE COURT: Yeah. How does it relate to the damage
13 issue you're seeking and the amount --

14 MR. GOLDSMITH: So the damages issues here are
15 reasonably complex, and there are various scenarios. We will
16 be setting all of that out in the final approval brief for Your
17 Honor to review.

18 THE COURT: In connection with that, am I correct in
19 assuming that the plaintiffs have an expert who estimates the
03:34 20 damages at something and the defendants have an expert that
21 estimates the damages at a lower amount?

22 MR. GOLDSMITH: So we've received a large amount of
23 data from the defendants that we've been reviewing and we've
24 been crunching in different ways. I know the defendants have
25 been doing the same. As we review the case, and the defendants

1 will differ on this, but we see the settlement as equalling
2 roughly 20 percent of the damages that we could conceivably
3 achieve at trial were we to go to trial on a best-case-scenario
4 basis.

5 THE COURT: And do the defendants have a lower damage
6 estimate?

7 MR. PAINE: Our range includes zero.

8 THE COURT: I mean, of the -- I understand that, but
9 if I were trying to mediate this settlement, I would say assume
03:35 10 somehow the plaintiffs have won, how much do you think they
11 would be awarded.

12 MR. PAINE: So there is a common univocal
13 understanding of the total amount of volume of foreign exchange
14 trading that was done during the class period by folks who
15 could be members of the class. So that is a baseline that we
16 have in common and which has been shared, and it's really a
17 matter of assumption whether you think any of that is an amount
18 that was too much. You know, so somewhere -- so it's a pretty
19 nuanced set of assumptions that drive what that conceivably
03:36 20 could be.

21 And I think it's quite fair to say that we probably
22 spent days first understanding the alternative models and then
23 trying to sort out with sophisticated help where we've gotten
24 to. And I think this is really one where the arm's length
25 nature of the negotiations and the supervision of the mediator

1 can give you some comfort that we came to a place that made
2 sense because everybody was motivated to get to a result that
3 made sense.

4 THE COURT: Two things. Am I correct, though, that
5 it's the defendant's position that \$300 million represents more
6 than 20 percent of what would be recovered if the case was
7 tried and the plaintiffs prevailed?

8 MR. PAINE: I'd be happy to address that for you at
9 the final hearing. And my only equivocation is that I just
03:37 10 don't have the numbers firmly in mind.

11 THE COURT: Okay. Can you remind me who the mediator
12 was?

13 MR. PAINE: Jonathan Marks.

14 THE COURT: We discussed this in June. Okay. Thank
15 you.

16 MR. GOLDSMITH: Thank you, Your Honor.

17 THE COURT: Let's see. All right. Well, the
18 memorandum in support of the motion to preliminarily approve
19 the settlement was thoughtful and thorough. My particular
03:38 20 questions have been addressed.

21 I do find that the proposed settlement is
22 sufficiently -- appears to be sufficiently fair and reasonable
23 and adequate to be distributed to the class members who then
24 can opt out or object prior to the final hearing. The
25 settlement has been negotiated over many years in 16 mediation

1 sessions and elsewhere at arm's length by experienced counsel.
2 There's been substantial discovery. I'm told that the
3 plaintiffs received 9 million documents. The Department of
4 Labor and Department of Justice and Securities and Exchange
5 Commission have been negotiating with the defendant as well.
6 And the Department of Labor at least evidently is relying on
7 this settlement to propose settlement to vindicate the
8 interests it represents. It seems to be satisfied with it. So
9 the settlement is presumptively reasonable.

03:39 10 There are other relevant factors that are consistent
11 with this presumption. The defendants vigorously deny
12 violating their legal obligations. The outcome is inherently
13 uncertain if this case continues to be litigated. \$300 million
14 payment is a substantial payment in a case where the defendants
15 allege misconduct resulted. It is alleged in hundreds of
16 millions of dollars in profits annually. Even if it's only 20
17 percent of the upper end of the potential range, it's a
18 substantial payment, the result, as I said, of arm's length
19 negotiation. Segments, different segments of the class are
03:40 20 treated equally within reasonable categories. They're not
21 sub-classes, but the allocation formula seems, at this point,
22 to be reasonable.

23 As I understand it, counsel will seek up to 25
24 percent, roughly \$76 million, of the common fund. The class
25 members will have an opportunity to be heard on the propriety

1 of that. There's a total I think of \$85,000 that might be
2 awarded to and split among the seven plaintiffs for their
3 services in this case. I don't find that that undermines, for
4 present purposes, the fairness of this. So I do preliminarily
5 approve the proposed settlement as fair, reasonable and
6 adequate.

7 With regard to the notice and the dates that need to
8 be inserted, I have a couple of observations, a couple of
9 interests, and then we'll fine-tune the dates. I think I gave
03:41 10 you when you were here in June an October 25 date for the final
11 hearing or something that week. Is that the date?

12 MR. GOLDSMITH: It is, Your Honor, but we wanted to
13 address that date if we could.

14 THE COURT: Here. Let me tell you I'm not going to be
15 here that week. I'm going to be out of the country. I want to
16 propose November 2, but we can talk about this.

17 MR. GOLDSMITH: That's actually perfect.

18 THE COURT: Then I think maybe you were proposing that
19 you would make your filings, your memo in support and the
03:42 20 requests for attorney's fees 35 days before the final hearing,
21 and any objections and opt-outs would require 21 days before
22 the final hearing. I'm concerned that that two weeks may not
23 be enough given the complexity of this, but maybe 45 days would
24 be if we put the hearing day out a little bit. It pretty much
25 comes to that. And then we can keep the date for the opt-outs

1 and objections to 21 days before the hearing. This is
2 tentative. I want to hear from you. And then say 14 days
3 before the hearing the parties would confirm their intent to
4 proceed with the settlement or if there's a sufficient number
5 of opt-outs and the defendants want to withdraw from the
6 settlements, you tell me 14 days in advance, and you would also
7 file supplemental memos on the implications of the objections
8 and the opt-outs, which you can't do 45 days in advance because
9 you won't have them.

03:43 10 So would you like to be heard on that, both sides?

11 MR. GOLDSMITH: Sure. I think I've got everything
12 down. So Your Honor, November 2 is fine for the parties. We
13 had actually spoken about an issue relating to that date before
14 Your Honor took the bench, so I think we can --

15 THE COURT: Can I see the book? Go ahead.

16 MR. PAINE: We're all in agreement that November 2
17 would be good.

18 THE COURT: Okay.

19 MR. GOLDSMITH: With regard to -- so one issue that is
03:44 20 built into the proposed order, and it was actually not in the
21 schedule that was in the memo, on page 8 there is the date to
22 put in a brief that would oppose any objection that would be
23 filed.

24 THE COURT: I didn't see it in the order either. Is
25 it in the order?

1 MR. GOLDSMITH: Yes, sir, it is. I can find that.
2 What we have there -- and Your Honor may want to have more time
3 considering what Your Honor said about complexity. So I think
4 what's in the order is that the date to file a brief responding
5 to any objection would be seven days before a hearing. I
6 suspect Your Honor --

7 THE COURT: I just said I'd prefer 14.

8 MR. GOLDSMITH: Okay.

9 THE COURT: That only gives you a week after you get
03:45 10 the opt-outs and the objections. But will all the objections
11 come in right at the deadline?

12 MR. GOLDSMITH: No, sir. So we'd need to open that up
13 a bit I think.

14 THE COURT: No, but -- what do you mean "open it up"?

15 MR. GOLDSMITH: I think maybe we'd want two weeks to
16 respond.

17 THE COURT: Well, my point is different, if they're
18 not all going to come in at the deadline. Here. I want this
19 to be realistic. You know what the -- you know now what the
03:45 20 arguments are in favor of settlement and the arguments you'll
21 make on your attorney's fees.

22 MR. GOLDSMITH: Right. No, no. The issue, Your
23 Honor, is not our approval papers.

24 THE COURT: If you file approval papers earlier --

25 MR. GOLDSMITH: That's fine.

1 THE COURT: I can, you know, make the -- I mean
2 earlier than 45 days.

3 MR. GOLDSMITH: That's no problem, Your Honor.

4 THE COURT: Then I might make the opt-outs and
5 exclusions 28 days before, and then you would file your reply
6 to the opt-outs and the exclusions 14 days before.

7 MR. GOLDSMITH: That's fine, Your Honor. I just need
8 to make sure -- I don't have all the dates in mind, but the
9 issue that comes to my mind is having enough time between the
03:46 10 mailing of notice to class members and their time to either opt
11 out or object. That's an important -- it's important that that
12 be sufficient.

13 THE COURT: It has to be sufficient. Go ahead. It
14 has to be legally sufficient. It has to be fair.

15 MR. GOLDSMITH: It has to be due-process sufficient.
16 Usually 30 days is a minimum for that.

17 THE COURT: Okay. We didn't build 30 days in here,
18 though.

19 MR. GOLDSMITH: Well, here --

03:47 20 THE COURT: Because you were going to make your
21 filings 35 days before, I think, and they were going to have to
22 opt out 28 -- 21 days before, so they'd only have two weeks.

23 MR. GOLDSMITH: This would be a tad -- this would have
24 been 28 days --

25 THE COURT: What would have been?

1 MR. GOLDSMITH: Under this schedule, Your Honor.

2 THE COURT: This schedule where?

3 MR. GOLDSMITH: I'm sorry. The schedule that we
4 proposed on page 8 of our brief.

5 THE COURT: Page 8 of your brief.

6 Well, let's do this this way. It's my intention to
7 order that you revise the proposed order you gave me in the
8 notice, if I make revisions, by this Wednesday, the day after
9 tomorrow. Is that realistic?

03:48 10 MR. GOLDSMITH: Yes, sir.

11 THE COURT: Okay. So let's work from there. So then
12 you're going to have ten days to make the mailing, right?

13 MR. GOLDSMITH: Yes.

14 THE COURT: So that will be made by August 22.
15 Because Wednesday -- actually, Wednesday is the 10th, so you'll
16 have until the 20th, unless that takes us to a Saturday or
17 something.

18 MR. GOLDSMITH: Okay.

19 MR. HALSTON: It does.

03:48 20 THE COURT: Okay. So then you can have until
21 August --

22 MR. HALSTON: 22nd?

23 THE COURT: 22nd. Two weeks from today. Then you're
24 going to post the summary notice, you say 14 calendar days
25 after the notice date. Is that 14 days after August 22?

1 MR. GOLDSMITH: Yes, Your Honor. It's meant to be two
2 weeks after the notice.

3 THE COURT: All right. So somebody will have to --

4 MR. CHIPLOCK: September 5?

5 MR. HALSTON: September 5. But is that Labor Day?

6 MR. CHIPLOCK: It is Labor Day.

7 THE COURT: Make that September 6. Then what's the
8 earliest you can reasonably file the motion papers and your
9 request for attorney's fees? Here you had it 35 days before,
03:49 10 and I don't think that's enough time.

11 MR. GOLDSMITH: I think, Your Honor, we had a
12 September 20 deadline before.

13 MR. CHIPLOCK: November 2, 35 days before that would
14 be probably the last week of September. We could aim for mid-
15 September.

16 MR. GOLDSMITH: Yeah.

17 THE COURT: Here, make that filing --

18 MR. GOLDSMITH: 15th, does that make sense, Friday?

19 THE COURT: All right.

03:50 20 MR. GOLDSMITH: Sort of doing this on the fly a little
21 bit, Judge.

22 THE COURT: Do you want September 15?

23 MR. GOLDSMITH: All right.

24 THE COURT: Put in there September 15, you make those
25 submissions.

1 MR. HALSTON: Looks like that would be 48 days.

2 THE COURT: Then how about exclusions and opt-outs by
3 October 7? That's a Friday. Your response to the exclusions
4 and opt-outs by October 21. We'll have the hearing on November
5 2. Okay?

6 MR. GOLDSMITH: Yes, sir.

7 THE COURT: November 2 at 2:00 p.m.

8 MR. GOLDSMITH: Your Honor, are you asking us to
9 submit new --

03:51 10 THE COURT: Papers.

11 MR. GOLDSMITH: -- papers on that?

12 THE COURT: Yes, with all these dates put in it by the
13 day after tomorrow, the 10th.

14 MR. GOLDSMITH: So the preliminary approval order with
15 the notice and summary --

16 THE COURT: Right. But now we're going to talk about
17 the notice.

18 MR. GOLDSMITH: Okay.

19 THE COURT: I don't know if I discussed this with you
03:51 20 before, but I think I have this inherent authority anyway, but
21 I want it to be clear. I have the discretion to alter any of
22 these deadlines essentially for cause, and I would like that to
23 be reflected in the notice -- the notices.

24 MR. GOLDSMITH: So Your Honor, you'll find that, in
25 the long form notice, you'll find that on page 3.

1 THE COURT: Hold on just a second. There it is, okay.

2 MR. GOLDSMITH: I confess it may not be in the summary
3 notice, but we can put it in there as well.

4 THE COURT: Please do. Otherwise, somebody may feel
5 they missed a deadline, they were traveling, and now it's too
6 late.

7 MR. GOLDSMITH: Okay.

8 THE COURT: Is there anything else you thought I would
9 ask you? I may have missed something. Go ahead.

03:52 10 MR. GOLDSMITH: I had an idea, Your Honor, about
11 something. In conferring with -- I think there was two things,
12 Your Honor.

13 In conferring with defendants' counsel before Your
14 Honor took the bench, there was something that we wanted to
15 just make sure was brought to your attention, which is that the
16 parties have entered into a supplemental agreement which has
17 not been filed with the Court, but it is referred to in the
18 settlement agreement.

19 THE COURT: Is this how many opt-outs will authorize
03:53 20 the --

21 MR. GOLDSMITH: Yes, sir.

22 THE COURT: -- defendants to withdraw from the
23 settlement? In fact, I think I discern that, I assume that the
24 defendant at least -- or the parties want that to remain
25 confidential, correct?

1 MR. PAINE: Yeah. The general sense is that if it's
2 known, then it's not in the interests of anybody, including the
3 class members, because it gives people the ability to kind of
4 arbitrage the outcome.

5 THE COURT: Right. I dealt with this before. That's
6 reasonable. But I gave you a date, although we didn't mention
7 it, that date 14 days before -- and this needs to go in the
8 order, I'm glad you raised it -- the date, 14 days before
9 November 2, the defendant has to confirm its intent to proceed
03:54 10 with the settlement or tell me that the opt-outs authorize it
11 to withdraw from the settlement and it's withdrawing.

12 MR. PAINE: And it's totally fine. Let me point out
13 that my understanding -- we're going to have a deadline in this
14 agreement that says if you have an opt-out, you've got to get
15 it in by X date. If you decide later on -- something else
16 comes in and you decide you're going to take it late, you have
17 every right to do that, and we would then at that point
18 reconsider what our point of view is in light of that.

19 THE COURT: Is that what the contract provides?

03:55 20 MR. PAINE: Pardon? Basically -- is that what the
21 contract provides?

22 THE COURT: Well, see, I don't have the agreement. I
23 could have you file it under seal. I don't know that I need
24 it. Is there a deadline in your agreement with the plaintiffs
25 for exercising the option to withdraw from the settlement if

1 you have the option?

2 MR. PAINE: There is with respect to that which is
3 before us. However, if it -- you know -- it would not go away.
4 Essentially, my only point is that if there are no further
5 opt-outs after the opt-out date, it's fine for us to plight our
6 troth 14 days before the hearing, assuming that that's
7 consistent with all the other deadlines, certainly at some
8 point so that we don't have a hearing that doesn't make sense.

9 THE COURT: I want to know 14 days before because I
03:56 10 don't want to prepare for the hearing if you're going to
11 withdraw. But I will say, at least from my perspective, if
12 there's some material change after you say you're not
13 withdrawing, as a matter of fairness, I would let you change
14 your view. But what I don't know is what the terms of your
15 agreement with the plaintiff --

16 MR. PAINE: The terms of our agreement would be -- it
17 would be consistent with that.

18 THE COURT: That's okay.

19 MR. PAINE: Great. Thanks.

03:56 20 THE COURT: And when you file the memo -- I would say
21 memos because I would like something from the defendant as
22 well -- you'll tell me, We don't think they would prevail, if
23 that is what you believe. In any event, the damages would not
24 be as high as they estimate; the Department of Labor is
25 depending on this case to vindicate the interests it

1 represents, whatever you'd say. You may have some information,
2 I'm educated to understand, that the plaintiffs don't have.

3 All right. Is there anything else we haven't
4 addressed?

5 MR. GOLDSMITH: Your Honor, just one minor point I
6 wanted to make, which is not absolutely essential to today's
7 hearing. But Your Honor mentioned a couple of times the fee
8 that we're planning to seek. I wanted to mention that the way
9 we've structured it is that it's a percentage of the --

03:58 10 THE COURT: Common fund?

11 MR. GOLDSMITH: I'm sorry, Your Honor?

12 THE COURT: It's a percentage of the common fund?

13 MR. GOLDSMITH: It's a percentage of the common fund
14 but after the expense figure is taken out and after the service
15 award figure is taken out. So it's not 25 percent of the \$300
16 million, which would be \$75 million, but rather it's a bit less
17 because it's 300 million, minus 1.75 million, which is our
18 estimated expense amount, minus 85,000, which is the estimated
19 service award amount, and then you divide that by four. That's
03:58 20 how you get that odd number of 74 million and change.

21 And the reason we did it that way, Your Honor, is I
22 appeared before you a number of years ago in a class action,
23 securities class action called *American Tower*, and we had made
24 a request to have a percentage fee, and Your Honor's approach
25 there was to do it that way. Your Honor's approach there was

1 to take the expenses -- we didn't ask for service awards there,
2 but Your Honor took the expenses off the top of the gross and
3 then awarded a percentage of the remaining amount.

4 THE COURT: Well, actually I thought that what I
5 usually do is count the expenses and the fees together to see
6 whether they total a reasonable -- whether they're reasonable.

7 MR. GOLDSMITH: In this case it would -- in this case,
8 doing it that way also is a way to keep it a little bit more
9 reasonable because I had mentioned a percentage to Your Honor
03:59 10 of approximately 25 percent, so the fee here is a little bit
11 less than 25 percent, and then the fee plus the expenses plus
12 any service awards, if Your Honor awards that, will be a little
13 bit more than 25 percent but not as much more.

14 THE COURT: That actually raises something else that I
15 thought about, because in your memo, when you describe the
16 settlement -- I don't know where it is. But the amount
17 allocated to, say, the ERISA plan or the group trust is before
18 fees, expenses; is that right?

19 MR. GOLDSMITH: The -- yes, the 60 million is 60
04:00 20 million of the \$300 million.

21 THE COURT: And then a pro rata share of the fees and
22 expenses would come from the ERISA plan payment or a
23 proportional share?

24 MR. GOLDSMITH: There is a cap. There's a cap that on
25 the fees -- on the fee that comes out of the ERISA allocation

1 as part of the overall negotiation of the plan of allocation.

2 THE COURT: Is it the same -- if the ERISA plan
3 hypothetically is getting 25 percent of the 300 million and the
4 group trust is getting 50 percent, is the amount of fees paid
5 by the ERISA group half of what the group trusts would pay?

6 MR. GOLDSMITH: No, Your Honor, because with the group
7 trusts, the group trusts kind of -- they sort of slide a little
8 bit because the group trusts have to tell us what proportion of
9 their volume or their assets were governed by ERISA. And to
04:01 10 the extent as opposed to not -- to the extent that they do
11 that, then the ERISA portion of the group trusts will drink, as
12 it were, out of the ERISA allocation. They'll have the right
13 to do that. Then their assets that are not ERISA will not
14 drink out of the ERISA allocation, or if they don't tell us,
15 then we won't know.

16 THE COURT: Let's say ERISA turns out to be
17 one-third -- \$100 million is going for ERISA plans.

18 MR. GOLDSMITH: Well, it won't, Your Honor, because
19 it's a strict -- the 20 percent of the gross will go to the
04:02 20 pure, shall we say, ERISA class members, which is separate from
21 the group trusts. The group trusts are about 55 people that
22 are kind of unicorns that are over here that have to be dealt
23 with separately. And the ERISA plans that we know are ERISA
24 plans are in the ERISA bucket, which is the \$60 million.

25 THE COURT: Is one of these groups required to pay a

1 disproportionate percentage of the fees and expenses, a
2 different and higher percentage of the fees and expenses?

3 MR. GOLDSMITH: Yes, because there's a cap on the
4 amount of the -- so depending on the fee that is awarded,
5 there's a cap on the amount of fee that comes out of the ERISA
6 allocation versus the other two allocations. That was part of
7 the overall negotiation.

8 THE COURT: Where is that explained in the notice?

9 MR. GOLDSMITH: That's in the premium language, in the
04:03 10 plan of allocation, Your Honor, that's at page 11 in the
11 notice. There's language in the text --

12 THE COURT: Hold on just a second.

13 MR. GOLDSMITH: Sure.

14 THE COURT: Where is the language?

15 MR. GOLDSMITH: There's a paragraph on page 11, Your
16 Honor, "The ERISA settlement allocation."

17 THE COURT: Right.

18 MR. GOLDSMITH: Then closer to the end, the last
19 sentence of that paragraph starts, "The ERISA settlement
04:04 20 allocation also was negotiated directly." It mentions a
21 premium per dollar.

22 THE COURT: That's not intelligible to me. How does
23 that -- what does that mean? "The ERISA settlement allocation
24 is negotiated directly between customer counsel, ERISA counsel
25 and representatives of the Department of Labor, and in light of

1 the fiduciary and other claims available under ERISA laws,
2 provides a premium per dollar of indirect FX trading volume for
3 ERISA plans and eligible group trusts in comparison to the
4 allocations to other settlement class members."

5 MR. GOLDSMITH: What it means, Your Honor, is that
6 because ERISA plans have federal statutory claims under ERISA
7 which are fiduciary duty claims and prohibited transaction
8 claims that other types of class members do not have, other
9 class members including public pension funds and mutual funds
04:05 10 and the like do not have to bring, that ERISA plans under the
11 plan of allocation will do better in terms of their settlement
12 payments than other class members. And we believe it's fair
13 for that reason.

14 And there are two mechanisms that create that premium.
15 One is, on a gross level, the 20 percent allocation on a gross
16 level to ERISA plans and the group --

17 THE COURT: 20 percent is more than their percentage
18 of the losses.

19 MR. GOLDSMITH: Because 20 percent, Your Honor, is
04:05 20 more than the total volume --

21 THE COURT: Okay.

22 MR. GOLDSMITH: -- than the proportion that ERISA
23 plans represented the total volume of all the class members, if
24 I said that correctly. That's one.

25 And then two, the fee issue that Your Honor asked

1 about is another mechanism that contributes to that.

2 THE COURT: Well, I want you to spell that out in this
3 this notice more clearly.

4 MR. GOLDSMITH: We're happy to. I would draw your
5 attention also to the footnote on that page, Your Honor, same
6 page.

7 THE COURT: I don't think that does it. It doesn't
8 tell the other groups that the ERISA group is being treated
9 more favorably on fees. Who are these 1,300 customers? Are
04:07 10 any of them individuals?

11 MR. PAINE: No. They're all institutional customers.
12 So basically, the premise of this document is that the money is
13 going to be allocated on the basis of volume, meaning the total
14 amount of volume of foreign currency swapped, expressed in U.S.
15 dollar terms. So we've divided the world basically into three
16 groups, the ERISA group, the mutual fund group and the other
17 group. And as Mr. Goldsmith mentioned, the group trusts are
18 going to participate either in the other group or in the ERISA
19 group, and money is going to follow them over. So everybody is
04:07 20 an institutional investor.

21 THE COURT: And you think, even if I don't understand
22 this, they would?

23 MR. PAINE: I think that the sentence I think clearly
24 expresses that that per-unit volume, the ERISA group is going
25 to do better than the other groups. I think that part is

1 clear.

2 THE COURT: Where is that?

3 MR. PAINE: The sentence that we just read, "provides
4 a premium per dollar of indirect FX trading volume for ERISA
5 plans." When you read those words in context, the first
6 premise is that all of the settlement money is going to be
7 allocated according to volume, and that these guys are getting
8 a premium I think is fairly clear. It also says that --

9 THE COURT: Is there someplace here that explains the
04:08 10 way it was just explained to me why they're getting a premium,
11 because of the unique statutory claim?

12 MR. GOLDSMITH: Well, it does say, Your Honor, "In
13 light of the fiduciary and other claims available under ERISA
14 laws."

15 MR. PAINE: Same sentence, Your Honor.

16 THE COURT: And how does this communicate that they're
17 paying a lower percentage of the attorney's fees?

18 MR. GOLDSMITH: I suppose, Your Honor, it does in the
19 sense that the 10.9 million figure is there and the fee number
04:09 20 is there.

21 THE COURT: But that doesn't tell you what happens to
22 the others. Let's say I give you 15 percent, hypothetically --
23 don't have a heart attack. Let's say I give you 15 percent as
24 your fee.

25 MR. PAINE: That, Your Honor, is addressed. It's

1 addressed in the notice and in the agreement that to the extent
2 you provide a lower percentage than they're asking, then
3 everybody comes down.

4 THE COURT: But not proportionally.

5 MR. KRAVITZ: I can --

6 THE COURT: Can you say your name for the record?

7 MR. KRAVITZ: Yes. I'm Carl Kravitz. I'm one of the
8 ERISA counsel. So to answer the question that you asked
9 directly, if hypothetically you awarded 15 percent, and 10.9
04:10 10 million is less -- is more than 15 percent of the 60 million,
11 then the ERISA fee would come down to 15 percent and be equal
12 to all the others. It's only in the circumstance where you
13 award a fee above the whatever 10.9 divided by 60 is, where
14 there would be some amount of unequalness. Okay? So if you
15 ask the question, Will there be a different fee, the answer is
16 there could be, depending on what fee you award.

17 THE COURT: Well, do you think you could write a
18 sentence that would explain that?

19 MR. KRAVITZ: Yes. I was going to say, in listening
04:11 20 to all of this, and I hope my co-counsel forgive me, but I
21 think we would like to take a look at this and see if we can
22 clarify it so that it satisfies Your Honor and is clearer to
23 the recipients.

24 THE COURT: When you give me the proposed documents on
25 Wednesday, point out where this new language is. Give me a

1 redline version, and give me the disc --

2 MR. KRAVITZ: Yes, Your Honor.

3 THE COURT: -- So if I want to edit it a bit. And if
4 I edit it and you feel I made a mistake and fouled it up, don't
5 be timid about telling me. I hope I won't. But my point is
6 this is complicated. You've been living with it for years.
7 This is going to go to people who are just going to have a
8 couple of weeks to try to digest it. A, it's fair to make sure
9 it's comprehensible. This is more technical than most notices
04:12 10 I approve. However, it's going to sophisticated entities, not
11 to consumers, as I understand it. But nevertheless, I think in
12 fairness it should be clear, and it's in your interests in
13 terms of finality because, again, this is a point at which the
14 adversary system doesn't work. So, you know, you've explained
15 to me reasons why the ERISA group would get more favorable
16 treatment than the others. It just should be clear. And to
17 the extent they're getting more favorable treatment with regard
18 to attorney's fees, it should be stated clearly.

19 MR. KRAVITZ: Okay. We'll do our best.

04:13 20 THE COURT: You can do it. Dare I ask is there
21 anything else?

22 All right. You may have to work to get your 75
23 million or even 50 million. Court is in recess.

24 (Adjourned, 4:13 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Kelly Mortellite, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 9th day of August, 2016.

/s/ Kelly Mortellite

Kelly Mortellite, RMR, CRR

Official Court Reporter

10:33

EX. 112

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

ms

**PROPOSED ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, APPROVING FORM AND MANNER OF NOTICE, AND SETTING
DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT**

WHEREAS, as of July 26, 2016, (i) plaintiffs Arkansas Teacher Retirement System, Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employees Savings and Profit Sharing Plan and James Pehoushek-Stangeland (collectively, "Plaintiffs"), on behalf of themselves and each Settlement Class Member by and through their counsel, and (ii) State Street Bank and Trust Company (the "Settling Defendant" or "SSBT"), by and through its counsel, entered into a Stipulation and Agreement of Settlement (the "Settlement Agreement") in the above-titled actions (the "Class Actions"), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the claims alleged in the Class Actions on the merits and with prejudice (the "Class Settlement"); and

WHEREAS, the Court has reviewed and considered the Settlement Agreement and the accompanying exhibits; and

WHEREAS, the Parties to the Settlement Agreement have consented to the entry of this order; and

WHEREAS, all capitalized terms used in this Order that are not otherwise defined herein have the meanings defined in the Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 11th day of August, 2016 that:

1. The Court has reviewed the Settlement Agreement and preliminarily finds the Class Settlement set forth therein to be fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing described below.

2. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies, for the purposes of the Settlement only, the Settlement Class of: All custody and trust customers of State Street Bank and Trust Company (including customers for

* and discussed the parties at hearing. 2 the matter with an August 8, 2016 mtg

which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT'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 SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive. 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 are any Settlement Class Members who properly exclude themselves by submitting a valid and timely request for exclusion in accordance with the requirements set forth below and in the Notice.

3. The Court finds and concludes that the prerequisites of class action certification under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedures have been satisfied for the Settlement Class defined herein and for the purposes of the Class Settlement only, in that:

- (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members is impracticable;
- (b) there are questions of law and fact common to the Settlement Class Members;
- (c) the claims of Plaintiffs are typical of the Settlement Class's claims;
- (d) Plaintiffs and Counsel for the Settlement Class have fairly and adequately represented and protected the interests of the Settlement Class;

(e) the questions of law and fact common to Settlement Class Members predominate over any individual questions; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering that the claims of Settlement Class Members in the Class Actions are substantially similar and would, if tried, involve substantially identical proofs and may therefore be efficiently litigated and resolved on an aggregate basis as a class action; the amounts of the claims of many of the Settlement Class Members are too small to justify the expense of individual actions; and it does not appear that there is significant interest among Settlement Class Members in individually controlling the litigation of their claims.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Class Settlement only, Plaintiffs are certified as Class Representatives for the Settlement Class. The law firm of Labaton Sucharow LLP is appointed Lead Counsel for the Settlement Class, the law firm of Thornton Law Firm LLP is appointed Liaison Counsel for the Settlement Class, and the law firm of Lief Cabraser Heimann & Bernstein LLP is appointed additional Counsel for the Settlement Class.

5. A hearing (the "Final Approval Hearing") pursuant to Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on November 2, 2016, at 2:00 p.m. for the following purposes:

(a) to determine whether the proposed Class Settlement is fair, reasonable and adequate, and should be approved by the Court;

(b) to determine whether the proposed Final Order and Judgment ("Judgment") as provided under the Settlement Agreement should be entered, and to determine

whether the release by the Settlement Class of the Released Class Claims, as set forth in the Settlement Agreement, should be provided to the Released Defendant Parties;

(c) to determine, for purposes of the Class Settlement only, whether the Settlement Class should be finally certified; whether Plaintiffs should be finally certified as Class Representative for the Settlement Class; whether the law firm of Labaton Sucharow LLP should be finally appointed as Lead Counsel for the Settlement Class; whether the law firm of Thornton Law Firm LLP should be finally appointed as Liaison Counsel for the Settlement Class; and whether the law firm of Lief Cabraser Heimann & Bernstein LLP should be finally appointed as additional Counsel for the Settlement Class.

(d) to determine whether the proposed Plan of Allocation for the proceeds of the Class Settlement is fair and reasonable and should be approved by the Court;

(e) to consider Lead Counsel's application, on behalf of ERISA Counsel and Customer Counsel, for an award of attorneys' fees, Litigation Expenses, and Service Awards to Plaintiffs; and

(f) to rule upon such other matters as the Court may deem appropriate.

6. The Court reserves the right to approve the Class Settlement with or without modification and with or without further notice to the Settlement Class of any kind. The Court further reserves the right to enter the Judgment approving the Class Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and/or expenses. The Court may also adjourn the Final Approval Hearing or modify any of the dates herein for good cause shown and without further notice to members of the Settlement Class.

7. The Court approves the form, substance and requirements of the Notice of Pendency of Class Actions, Proposed Settlement, Settlement Hearing, Plan of Allocation, and

any Motion for Attorneys' Fees, Litigation Expenses, and Service Awards (the "Notice"), substantially in the form annexed hereto as Exhibit 1.

8. The Court approves the retention of A.B. Data, Ltd. as the Claims Administrator. The Claims Administrator shall cause the Notice, substantially in the form annexed hereto, to be mailed, by first-class mail, postage prepaid, on or before August 22, 2016 ("Notice Date"), to all Settlement Class Members who can be identified with reasonable effort. SSBT, to the extent it has not already done so, shall use its best efforts to obtain and provide to Lead Counsel, or the Claims Administrator, information in electronic searchable form containing the names and addresses of Settlement Class Members no later than five (5) business days after entry of this Preliminary Approval Order.

9. The Court approves the form of the Summary Notice of Pendency of Class Actions, Proposed Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys' Fees, Litigation Expenses, and Service Awards ("Publication Notice"), substantially in the form annexed hereto as Exhibit 2, and directs that Lead Counsel shall cause the Publication Notice to be published in *The Wall Street Journal* and be transmitted over *PR Newswire* no later than September 6, 2016.

10. Lead Counsel shall, at or before the Final Approval Hearing, file with the Court proof of mailing of the Notice and publication of the Publication Notice.

11. As set forth in the Notice, Settlement Class Members that are Group Trusts shall submit certifications in compliance with the requirements set forth in the Notice to the Claims Administrator postmarked no later than December 20, 2016. Such deadline may be further extended by Court order or by Lead Counsel in its discretion. Each certification shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first-class or

overnight U.S. mail, postage prepaid) provided such certification is actually received prior to the motion for an order of the Court approving distribution of the Net Class Settlement Fund. Any certification submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice.

12. The form and content of the notice program described herein, and the methods set forth herein of notifying the Settlement Class of the Class Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws and rules, constitute the best notice practicable under the circumstances, and shall constitute due, adequate, and sufficient notice to all persons and entities entitled thereto.

13. Any Settlement Class Member may enter an appearance in the Class Actions, at his, her or its own expense, individually or through counsel of his, her or its own choice. If any Settlement Class Member does not enter an appearance, he, she or it will be represented by Lead Counsel.

14. Settlement Class Members shall be bound by all orders, determinations and judgments in these Class Actions concerning the Class Settlement, whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A putative Settlement Class Member wishing to make such an exclusion request shall mail the request in written form by first-class mail to the address designated in the Notice for such exclusions, such that it is received no later than October 7, 2016. Such request for exclusion must include the following information: (i) the name of the Person that entered into one or more custody or trust agreements with SSBT and is requesting

exclusion; (ii) the Person's address; (iii) the Person's telephone number; (iv) the Person's e-mail address; (v) the approximate date(s) of the agreement(s) referenced in (i) above; (vi) the SSBT entity that was the counterparty to the agreement(s) referenced in (i) above; (vii) a list of all current and former accounts, including both the name and account number of such accounts, that held foreign (non-U.S.) assets and were related to the agreement(s) referenced in (i) above; (viii) a signed statement that the Person wishes to be excluded from the Settlement Class in the Class Actions; and (ix) identification (including by case name, court name, and docket number) of all legal actions and claims (if any) that the Person requesting exclusion has brought against any of the Defendants relating to Indirect FX. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court, provided, however, that a request for exclusion shall not be invalid for failing to include the foregoing (i) - (vii) if the Settling Defendant determines that it has sufficient information to determine that such Person is a Settlement Class Member and provides that information promptly to Lead Counsel.

15. Settlement Class Members requesting exclusion from the Settlement Class shall not be eligible to receive any payment out of the Net Class Settlement Fund, as described in the Settlement Agreement and Notice.

16. The Court will consider any Settlement Class Member's objection to the Class Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees or expenses only if such Settlement Class Member has served by hand or by mail his, her or its written objection and supporting papers, such that they are received on or before October 7, 2016, upon Lead Counsel: Lawrence A. Sucharow, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005 (who will immediately copy all Plaintiffs' Counsel); and Defendant's

Counsel: William H. Paine, Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, MA 02109 and has filed said objections and supporting papers with the Clerk of the Court, United States District Court for the District of Massachusetts, John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210. Any Settlement Class Member who does not make his, her, or its objection in the manner provided for in the Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Class Settlement, to the Plan of Allocation, or to the request for attorneys' fees and expenses, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given. Attendance at the hearing is not necessary, however, persons wishing to be heard orally in opposition to the approval of the Class Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Class Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Final Approval Hearing. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

17. Pending final determination of whether the Class Settlement should be approved, all proceedings in these Class Actions (other than those necessary to effectuate the Settlement) are stayed and Plaintiffs, all Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Class Claims against the Released Defendant Parties.

18. As provided in the Settlement Agreement, prior to the Effective Date, Lead Counsel may pay the Claims Administrator the reasonable fees and costs associated with giving notice to the Settlement Class and the administration of the Class Settlement out of the Class Settlement Fund without further approval from Defendants and without further order of the Court.

19. All papers in support of the Class Settlement, Plan of Allocation, and Lead Counsel's request, on behalf of ERISA Counsel and Customer Counsel, for an award of attorneys' fees and expenses shall be filed with the Court and served on or before September 15, 2016. If reply papers are necessary, they are to be filed with the Court and served no later than October 21, 2016.

20. No later than October 19, 2016, Defendants shall file with the Court and serve a statement reporting whether an option to withdraw from and terminate the Settlement Agreement and Class Settlement has arisen under the terms of the Parties' Supplemental Agreement, and if such option has arisen, reporting Defendants' current intentions with regard thereto. Such statement shall be without prejudice to Defendants' filing with the Court and serving an updated statement if relevant circumstances change.

21. The passage of title and ownership of the Class Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Settlement Agreement is approved. No person who is not a Settlement Class Member or Plaintiffs' Counsel shall have any right to any portion of, or to any distribution of, the Net Class Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Settlement Agreement.

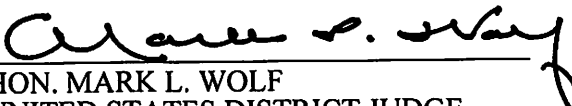
22. All funds held in escrow shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be disbursed pursuant to the Settlement Agreement and/or further order of the Court.

23. Except as otherwise provided in the Settlement Agreement, neither Defendants nor their counsel shall have any responsibility for the Plan of Allocation or any application for attorney's fees or expenses submitted by Lead Counsel, on behalf of ERISA Counsel and Customer Counsel, or Plaintiffs, and such matters shall be considered separately from the fairness, reasonableness and adequacy of the Class Settlement.

24. If the Class Settlement fails to become effective as defined in the Settlement Agreement or is terminated, then, in any such event, the Settlement Agreement, including any amendment(s) thereof, except as expressly provided in the Settlement Agreement, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Parties, and the Parties shall be deemed to have reverted to their respective litigation positions in the Class Actions as of June 29, 2015.

25. The Court retains exclusive jurisdiction over the Class Actions to consider all further matters arising out of or connected with the Class Settlement.

Dated: August 11, 2016


HON. MARK L. WOLF
UNITED STATES DISTRICT JUDGE

EX. 113

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

~~PROPOSED~~ ORDER AND FINAL JUDGMENT

11/2/16

WHEREAS, (i) plaintiffs Arkansas Teacher Retirement System, Arnold Henriquez,
Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies

Employees Savings and Profit Sharing Plan and James Pehoushek-Stangel (collectively “Plaintiffs”), on behalf of themselves and each Settlement Class Member by and through their counsel, and (ii) State Street Bank and Trust Company (the “Settling Defendant” or “SSBT”), by and through its counsel, entered into a Stipulation and Agreement of Settlement, dated as of July 26, 2016 (the “Settlement Agreement”), in the above-captioned cases (the “Class Actions”);

WHEREAS, pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement (the “Preliminary Approval Order”), entered August 11, 2016, the Court scheduled a hearing for November 2, 2016 at 2:00 p.m. to, among other things, determine (i) whether the proposed Class 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 Settlement Agreement, should be entered;

WHEREAS, the Court ordered that the Notice of Pendency of Class Actions, Proposed Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys’ Fees, Litigation Expenses, and Service Awards (the “Notice”), substantially in the form annexed to the Preliminary Approval 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 Preliminary Approval 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 Preliminary Approval Order as Exhibit A-2, be published in the national edition of *The Wall Street Journal* and over *PR Newswire* within fourteen (14) 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 Class Settlement were required to be filed with the Court by no later than October 7, 2016, and mailed to counsel for the Parties such that they were received by no later than October 7, 2016;

WHEREAS, Plaintiffs and Lead Counsel complied with the provisions of the Preliminary Approval Order as to the distribution, mailing, and publication of the Notice and Publication Notice;

WHEREAS, on September 15, 2016, Plaintiffs moved for final approval of the proposed Class Settlement, and the Final Approval Hearing was duly held before this Court on November 2, 2016, at which time all interested Persons were afforded the opportunity to be heard; and

WHEREAS, the Court has duly considered Plaintiffs' motion, the affidavits, declarations, and memoranda of law submitted in support thereof, the Settlement Agreement, all of the submissions and arguments presented with respect to the proposed Class Settlement, and the record in the Class Actions.

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 Settlement Agreement filed with the Court on July 26, 2016; and (ii) the exhibits attached to the Settlement Agreement, including the Notice and Publication Notice, filed with the Court on September 15, 2016.
2. **Definitions.** Any term with initial capitalization that is not defined in this Order and Final Judgment shall have the meaning provided in the Settlement Agreement.

3. **Jurisdiction.** The Court has jurisdiction to enter this Order and Final Judgment. The Court has jurisdiction over the subject matter of the Class Actions and over all parties to the Class Actions, including all Settlement Class Members.

4. **Certification of the Settlement Class.** Solely for the purpose of effectuating the Class Settlement, the Court hereby affirms its determinations in the Preliminary Approval 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 custody and trust customers of State Street Bank and Trust Company (“SSBT”) (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT’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 SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive. 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 from the Settlement Class in accordance with the requirements set forth in the Notice.

5. No requests for exclusion from the Settlement Class were received.

6. **Settlement Class Representatives and Class Counsel.** Solely for purposes of effectuating the Class Settlement, the Court hereby affirms its designations in the Preliminary Approval Order of Plaintiffs as representatives of the Settlement Class, Labaton Sucharow LLP as Lead Counsel for the Settlement Class, Thornton Law Firm LLP as Liaison Counsel for the Settlement Class, and Lieff Cabraser Heimann & Bernstein LLP as additional Counsel for the Settlement Class, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

7. **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 Class Settlement, the effect of the Class Settlement (including the releases therein), and their right to exclude themselves from the Settlement Class or object to any aspect of the Class Settlement (and appear at the Final Approval Hearing), this Order and Final Judgment, the Plan of Allocation, and/or Lead Counsel's motion, on behalf of ERISA Counsel and Customer Counsel, for attorneys' fees, payment of Litigation Expenses, and any Service Awards; (iii) constituted due and sufficient notice of the Class 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), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws and rules.

8. **Objections.** There have been no objections to the Settlement.

9. **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 Class Settlement as set forth in the Settlement Agreement in all respects, and finds that the Class 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 Class Settlement set forth in the Settlement Agreement is the result of arm's-length negotiations between experienced counsel representing

the interests of Plaintiffs, the Settlement Class, and the Defendants. The Class Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

10. Upon the Effective Date, the following actions are each hereby dismissed in their entirety, with prejudice: (a) *Arkansas Teacher Retirement System v. State Street Bank and Trust Company*, No. 11-cv-10230 MLW (D. Mass.); (b) *Arnold Henriquez, et al. v. State Street Bank and Trust Company, et al.*, No. 11-cv-12049 MLW (D. Mass.); and (c) *The Andover Companies Employee Savings and Profit Sharing Plan, et al. v. State Street Bank and Trust Company*, No. 12-cv-11698 MLW (D. Mass.).

11. **Releases.** Upon the Effective Date, the Releasing Plaintiffs, and their respective past, present, and future heirs, executors, administrators, trustees, predecessors, successors, and assigns: (i) shall release and shall be deemed by operation of law and this Order and Final Judgment to have irrevocably, absolutely, and unconditionally fully, finally, and forever waived, released, discharged, and dismissed, with prejudice and on the merits, each and every one of the Released Class Claims against each and every one of the Released Defendant Parties, (ii) shall have and be deemed to have covenanted not to sue, directly or indirectly any Released Defendant Party with respect to any and all of the Released Class Claims; and (iii) shall forever be barred and enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, intervening in, participating in (as a class member or otherwise) (except as a witness compelled by subpoena or court order), or receiving any benefits or other relief, from any action, suit, cause of action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether in the United States or elsewhere, on their own behalf or in a representative capacity, that maintains or prosecutes any or all such Released Class Claims against each and every one of the Released Defendant Parties. All Releasing Plaintiffs, and their respective past,

present, and future heirs, executors, administrators, trustees, predecessors, successors, and assigns, shall be bound by the terms of the releases, covenants not to sue, and injunctions set forth in this Order and Final Judgment whether or not they obtain a recovery from the Class Settlement or seek, or actually receive, a distribution from the Class Settlement.

12. Upon the Effective Date, SSBT, on behalf of itself, the Released Defendant Parties, and each of their respective heirs, executors, administrators, trustees, predecessors, successors, and assigns, shall be deemed by operation of law to have fully, finally, and forever released, waived, discharged, and dismissed, with prejudice and on the merits, each and every one of the Released Prosecution Claims against each and every one of the Released Plaintiff Parties and their respective attorneys, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any or all such Released Prosecution Claims against each and every one of the Released Plaintiff Parties and their respective attorneys.

13. Notwithstanding Paragraphs 10-11 above, nothing in this Order and Final Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Order and Final Judgment, or any action by SSBT relating to insurance coverage.

14. **Rule 11 Finding.** The Court finds and concludes that the 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 Class Actions.

15. **Binding Effect of Order and Final Judgment.** Each Plaintiff and Settlement Class Member, and each of their respective heirs, executors, administrators, trustees,

predecessors, successors, and assigns, 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 Class Settlement Fund, or (iii) objects to the Class Settlement, this Order and Final Judgment, the Plan of Allocation, and/or Lead Counsel's motion, on behalf of ERISA Counsel and Customer Counsel, for attorneys' fees, payment of Litigation Expenses, and any Service Awards.

16. **Use of this Order and Final Judgment.** Except as set forth in the Settlement Agreement and in Paragraph 17 below, this Order and Final Judgment and the Settlement Agreement, whether or not consummated, and any negotiations, proceedings, or agreements relating to the Settlement Agreement, the Class Settlement, and any matters arising in connection with settlement negotiations, proceedings, or agreements, shall not be offered or received against the Parties and their counsel for any purpose, and in particular:

(a) do not constitute, and shall not be offered or received against Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants 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 Class Actions or in any litigation, including but not limited to the Released Class Claims, or of any liability, damages, negligence, fault, or wrongdoing of Defendants;

(b) do not constitute, and shall not be offered or received against Defendants 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 Defendants, or against the 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 Class Actions;

(c) do not constitute, and shall not be offered or received against Defendants, Plaintiffs, or any other member of the Settlement Class, or their respective counsel, 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 Defendants, Plaintiffs, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement;

(d) do not constitute, and shall not be construed against Defendants, Plaintiffs, any other members of the Settlement Class, or their respective counsel as an admission or concession that the consideration to be given hereunder 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, any other Settlement Class Member, or their respective counsel, that any of their claims are without merit or infirm, that a class should not be certified, or that damages recoverable under the complaints filed in the Class Actions would not have exceeded the Class Settlement Amount.

17. The Released Parties may file or refer to the Settlement Agreement and/or this Order and Final Judgment to (i) effectuate the liability protection granted thereunder, including, without limitation, to support injunctive relief, or 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 Settlement Agreement and/or this Order and Final Judgment in any action that

may be brought to enforce the terms of the Settlement Agreement and/or this Order and Final Judgment. All Released Parties submit to the jurisdiction of this Court for purposes of implementing and enforcing the Class Settlement.

18. **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 Class Settlement; (ii) the allowance, disallowance, or adjustment, on equitable grounds, of any Settlement Class Member's right to recover under the Settlement Agreement, and any award or distribution from the Class Settlement Fund; (iii) disposition of the Class Settlement Fund; (iv) the hearing and determination of Lead Counsel's motion, on behalf of ERISA Counsel and Customer Counsel, for attorneys' fees, payment 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 Settlement Agreement, including the injunctions and releases in connection therewith; and (viii) other matters related or ancillary to the foregoing.

19. **Termination.** In the event the Class Settlement is terminated in its entirety or does not become effective in accordance with the terms of the Settlement Agreement, the Settlement Agreement, 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 Class Actions as of June 29, 2015, and, except as otherwise expressly provided, Plaintiffs and the

Defendants shall proceed in all respects as if the Settlement Agreement 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 SSBT.

20. **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.

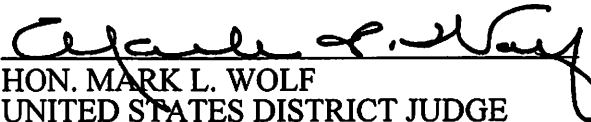
21. **Attorneys' Fees, Litigation Expenses, and/or Service Awards.** A separate order shall be entered regarding Lead Counsel's motion, on behalf of ERISA Counsel and Customer Counsel, for attorneys' fees, payment of Litigation Expenses, and any Service Awards as allowed by the Court. Such order shall not disturb or affect any of the terms of this Order and Final Judgment.

22. **Administration of the Class Settlement.** Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

23. **Consummation of the Class Settlement.** The Parties are hereby directed to consummate the Settlement Agreement and to perform its terms.

24. **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: November 2, 2016


HON. MARK L. WOLF
UNITED STATES DISTRICT JUDGE

EX. 114

EXECUTION COPY

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,)
on behalf of itself and all others similarly situated,) No. 11-cv-10230 MLW
))
Plaintiffs,))
))
v.))
))
STATE STREET BANK AND TRUST COMPANY,)
))
Defendant.))

ARNOLD HENRIQUEZ, MICHAEL T. COHN,)
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,) No. 11-cv-12049 MLW
and those similarly situated,))
))
Plaintiffs,))
))
v.))
))
STATE STREET BANK AND TRUST COMPANY,)
STATE STREET GLOBAL MARKETS, LLC and)
DOES 1-20,))
))
Defendants.))

THE ANDOVER COMPANIES EMPLOYEE SAVINGS)
AND PROFIT SHARING PLAN, on behalf of itself, and) No. 12-cv-11698 MLW
JAMES PEHOUSHEK STANGELAND, and all others)
similarly situated,))
))
Plaintiffs,))
))
v.))
))
STATE STREET BANK AND TRUST COMPANY,)
))
Defendant.))

STIPULATION AND AGREEMENT OF SETTLEMENT

EXECUTION COPY

This Stipulation and Agreement of Settlement, dated as of July 26, 2016 (the “Settlement Agreement” or the “Class Settlement”), is made and entered into by and among (i) the Plaintiffs (defined below), on behalf of themselves and each Settlement Class Member (defined below), by and through their undersigned counsel, and (ii) State Street Bank and Trust Company (the “Settling Defendant” or “SSBT”), by and through its undersigned counsel, and is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure.

The Class Settlement is intended by the Parties (defined below) to fully, finally, and forever compromise, settle, release, resolve, discharge, and dismiss with prejudice the Class Actions (defined below), all Released Class Claims (defined below), and all Released Prosecution Claims (defined below) as against all Released Parties (defined below), upon and subject to the terms and conditions stated in this Settlement Agreement, and Final approval of the Court.

WHEREAS:

A. All terms with initial capitalization used in this Settlement Agreement, and in any exhibits attached hereto and made a part hereof, shall have the meanings ascribed to them in Paragraph 1 below or as otherwise defined herein, except that any term with initial capitalization only defined in an exhibit shall have the meaning provided in that exhibit.

B. On February 10, 2011, Plaintiff Arkansas Teacher Retirement System (“ARTRS”) commenced the ARTRS Action by filing a class action complaint against State Street Corporation, SSBT, and State Street Global Markets, LLC (“SSGM LLC”) in the United States District Court for the District of Massachusetts (the “Court”). The complaint asserted, *inter alia*, deceptive acts and practices in violation of the Massachusetts Consumer Protection Act, Mass.

Gen. L. ch. 93A (“Chapter 93A”) and breaches of the duty of loyalty by SSBT and SSGM LLC to their custodial customers.

C. On April 15, 2011, ARTRS filed an amended class action complaint in the ARTRS Action, asserting class claims under Chapter 93A, adding class claims for breach of duty of trust and negligent misrepresentation under Massachusetts law, and adding an individual claim for breach of contract under Arkansas law.

D. On June 3, 2011, State Street Corporation, SSBT, and SSGM LLC moved to dismiss the amended class action complaint in the ARTRS Action. The motion to dismiss was fully briefed as of January 12, 2012.

E. On November 18, 2011, Plaintiff Arnold Henriquez, on behalf of the Waste Management Retirement Savings Plan and its participants and beneficiaries, filed a class action complaint in the Court against SSBT, SSGM LLC, and unnamed individuals designated as Does 1-20. The complaint asserted claims of engaging in self-interested prohibited transactions under Section 406 of the Employee Retirement Income Security Act of 1974 (“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 under Section 405 of ERISA, 29 U.S.C. § 1105.

F. On February 24, 2012, Plaintiff Henriquez filed an amended class action complaint in the Henriquez Action, adding 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).

G. The complaints in the Class Actions allege generally that defendants charged custody and trust customers of SSBT unfair and excessive rates and spreads in connection with Indirect FX Transactions (defined below) between January 1, 1998 and December 31, 2009.

H. On April 9, 2012, SSBT and SSGM LLC moved to dismiss the amended class action complaint in the Henriquez Action.

I. On May 8, 2012, the Court heard oral argument on defendants' motion to dismiss in the ARTRS Action. By order issued from the bench dated the same day, the Court denied the motion in its entirety with regard to the claims against SSBT, but granted the motion with respect to the claims against State Street Corporation. By agreement of the parties, the claims against SSGM LLC were dismissed without prejudice. The Court also instructed the parties and their counsel to meet to discuss the possibility of settlement and, if not, whether they would agree to engage in mediation.

J. On July 13, 2012, ARTRS and SSBT submitted a Joint Status Report informing the Court that the parties agreed to engage in mediation with a mediator to be agreed upon.

K. By Joint Status Report filed with the Court on August 17, 2012, ARTRS and SSBT informed the Court that they had agreed on a private mediator and that a mediation had been scheduled.

L. On September 12, 2012, Plaintiff Alan Kober (on behalf of The Andover Companies Employees Savings and Profit Sharing Plan) and James Pehoushek-Stangeland (as a participant and beneficiary of The Boeing Company Voluntary Investment Plan) filed an initial complaint against SSBT and SSGM LLC in this Court. The complaint asserted claims for breach of duties of prudence and loyalty under Section 404 of ERISA, 29 U.S.C. § 1104, prohibited transactions under Section 406 of ERISA, 29 U.S.C. § 1106.

M. On October 18, 2012, plaintiffs in the Andover Action filed an amended class action complaint and also filed a Notice of Voluntary Dismissal of defendant SSGM LLC from the action pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

N. On November 16, 2012, the Parties in the Class Actions filed a Stipulation, Joint Motion, and Proposed Order for the Production and Exchange of Confidential Information, which the Court entered on November 20, 2012. Pursuant to the order, the Class Actions were consolidated for pre-trial purposes. Additionally, the order provided that the Parties could engage in formal document discovery until December 1, 2013. The Class Actions were stayed in all other respects until December 1, 2013 and certain motions, including the motion to dismiss in the Henriquez Action, were withdrawn.

O. At the Parties' request, the stay was subsequently extended by the Court to June 1, 2014 and further extended to December 31, 2014. The orders extended the stay of all proceedings other than discovery, while the Parties pursued mediation.

P. Between October 2012 and June 2015, the Parties engaged in sixteen (16) in-person mediation sessions facilitated by Jonathan B. Marks, Esq. of MarksADR, LLC, an experienced, neutral mediator, in Boston, New York City, and Washington, D.C. Several of the mediation sessions were attended by the Executive Director of ARTRS and/or the Chief Legal Officer of State Street Corporation. In addition, the Parties met without the mediator on at least one occasion, conducted several video teleconferences, and had numerous arm's-length discussions among themselves. On October 23 and October 24, 2012, during an in-person mediation session, the Parties agreed on a framework for exchanging formal document discovery, informal material to facilitate the mediation process, and managing the Class Actions.

Q. Pursuant to this agreement, the Parties exchanged more than nine million pages of relevant documents. SSBT also provided a significant amount of data and other information relevant to liability, class certification and damages issues, and Plaintiffs and SSBT each made multiple, detailed presentations during the mediation process concerning such issues.

R. On June 30, 2015, after additional extensive arm's-length negotiations, on multiple occasions, in person and by exchange of proposals, Plaintiffs and SSBT reached an agreement in principle to settle the Class Actions, which was memorialized in a Term Sheet dated September 11, 2015.

S. SSBT anticipates reaching a separate settlement with the United States Securities and Exchange Commission ("SEC") concerning Indirect FX (defined below) (the "SEC Settlement"). The allocation to Registered Investment Companies (defined below) in the Plan of Allocation in the Class Settlement will also satisfy a condition of the SEC Settlement.

T. SSBT has reached a separate settlement with the United States Department of Labor ("DOL") concerning Indirect FX (the "DOL Settlement"). The allocation to ERISA Plans (defined below) in the Plan of Allocation in the Class Settlement will also satisfy a condition of the DOL Settlement.

U. SSBT has reached a separate settlement with the United States Department of Justice ("DOJ") concerning Indirect FX (the "DOJ Settlement").

V. Plaintiffs and Plaintiffs' Counsel believe that the claims asserted in the Class Actions have merit and the evidence developed supports the claims asserted. Plaintiffs and Plaintiffs' Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Class Actions against SSBT through trials and appeals. Plaintiffs and Plaintiffs' Counsel also have taken into account the uncertain outcome and risks in the Class Actions, as well as the difficulties, delays, and risks inherent in any complex action such as the Class Actions. Plaintiffs and Plaintiffs' Counsel also are mindful of the inherent problems of proof of, and the possible defenses to, the claims alleged in the Class Actions. Plaintiffs and Plaintiffs' Counsel believe that the Class Settlement set forth in this Settlement

Agreement confers substantial monetary benefits upon the Settlement Class. Based on their evaluation, Plaintiffs and Plaintiffs' Counsel have determined that the Class Settlement set forth in this Settlement Agreement is in the best interest of Plaintiffs and the other Settlement Class Members.

W. SSBT has denied and continues to deny any fault, liability, or wrongdoing of any kind and that the evidence developed supports in any way the claims asserted. SSBT also has denied and continues to deny each and all of the claims and contentions alleged by Plaintiffs on behalf of the Settlement Class. SSBT further has denied and continues to deny that Plaintiffs or any member of the Settlement Class were harmed or suffered any loss as a result of any of the conduct alleged in the Class Actions.

X. SSBT is entering into the Class Settlement to eliminate the burden, expense, inconvenience, uncertainty, distraction, and risk of further litigation; the length of continued proceedings necessary to defend the Class Action through trial and any appeals; and to avoid continued litigation; therefore it believes that it is desirable that the Class Action and any other current or future potential actions brought by Class Members that relate in any way to the allegations raised by the Plaintiffs be settled upon the terms and conditions set forth herein, in order to avoid the further expense and burden of protracted litigation.

Y. This Settlement Agreement, whether or not consummated, any proceedings relating to any settlement of the Class Actions, or any of the terms of any settlement of the Class Actions, whether or not consummated, shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of SSBT with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in any defense that SSBT has or could have asserted in the Class Actions.

NOW THEREFORE, without any admission or concession whatsoever on the part of Plaintiffs or any Settlement Class Member regarding any lack of merit of the claims in the Class Actions, and without any admission or concession whatsoever on the part of SSBT of any liability or wrongdoing or lack of merit of their defenses in the Class Actions, it is hereby **STIPULATED AND AGREED**, by and among the Parties, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and other conditions set forth herein, in consideration of the benefits flowing to the Parties from the Class Settlement, that the Class Actions, all Released Class Claims, and all Released Prosecution Claims shall be fully, finally, and forever compromised, settled, released, resolved, discharged, and dismissed with prejudice against the Released Parties, upon and subject to the following terms and conditions:

I. DEFINITIONS

1. As used in this Settlement Agreement, the following terms shall have the meanings specified below:

(a) “Alternative Judgment” means a form of final judgment that may be entered by the Court in a form other than the form of the Order and Final Judgment provided for in this Settlement Agreement, and which is acceptable to each Party.

(b) “Andover Action” is the class action styled as *The Andover Companies Employee Savings and Profit Sharing Plan, et al. v. State Street Bank and Trust Company*, No. 12-cv-11698 MLW (D. Mass.).

(c) “ARTRS Action” is the class action styled as *Arkansas Teacher Retirement System v. State Street Bank and Trust Company*, No. 11-cv-10230 MLW (D. Mass.).

(d) “Authorized Claimant” means a Settlement Class Member whose claim for payment from the Settlement is accepted by the Court.

(e) “Claims Administrator” means the firm retained by Lead Counsel on behalf of the Settlement Class and acceptable to SSBT, subject to approval of the Court, to provide all notices approved by the Court to potential Settlement Class Members and to administer the Class Settlement.

(f) “Class Actions” mean the ARTRS Action, the Andover Action, and the Henriquez Action.

(g) “Class Escrow Account” means the separate escrow account designated and agreed upon by Lead Counsel and SSBT at a national banking institution into which the Class Settlement Amount will be deposited for the benefit of the Settlement Class.

(h) “Class Period” means the period from January 2, 1998 through December 31, 2009, inclusive.

(i) “Class Settlement” means this Stipulation and Agreement of Settlement and the settlement contained herein.

(j) “Class Settlement Amount” means Three Hundred Million United States Dollars (\$300,000,000.00), paid by or on behalf of SSBT in connection with this Settlement Agreement.

(k) “Class Settlement Fund” means the Class Settlement Amount, plus any interest earned thereon.

(l) “Compliant Distribution Order” means a Distribution Order providing for, at a minimum, a distribution of funds to Settlement Class Members that are Registered Investment Companies solely in accordance with a Compliant Plan of Allocation within one (1) year of the Judgment or Alternative Judgment becoming Final.

(m) “Compliant Plan of Allocation” means a Plan of Allocation that achieves, and contains sufficient flexibility to permit, among other things, the allocation of the Class Settlement Fund such that (i) the allocation of settlement funds to the ERISA Plans, together with Group Trusts insofar as they are eligible to participate in the ERISA Settlement Allocation (defined below), on a gross basis, shall be no less than Sixty Million Dollars (\$60,000,000.00) (the “ERISA Settlement Allocation”), and (ii) the allocation of settlement funds to Registered Investment Companies, on a gross basis, shall be sufficient to permit on a net basis distribution of the Registered Investment Company Minimum Distribution to Registered Investment Companies.

(n) “Defendants” means State Street Corporation, SSBT, State Street Global Markets, LLC, and Does 1-20.

(o) “Defendants’ Counsel” means the law firm of Wilmer Cutler Pickering Hale and Dorr LLP.

(p) “Direct FX Methods” mean the methods for submitting, processing, aggregating and/or executing foreign exchange transactions in which the counterparty or its investment manager approves the exchange rate, or a spread from a benchmark, before execution of the trade (including StreetFX Methods and methods used with respect to any other method of execution offered by State Street that are not Indirect FX Methods).

(q) “Direct FX Transactions/Trading” means foreign exchange transactions executed with SSBT or SSBT’s subcustodians using Direct FX Methods, including all StreetFX Transactions.

(r) “Distribution Order” means the order or orders entered by the Court authorizing and directing that the Net Class Settlement Fund be distributed to Authorized Claimants.

(s) “DOJ Settlement” means the settlement reached between the DOJ and SSBT concerning Indirect FX.

(t) “DOL Settlement” means the settlement reached between the DOL and SSBT concerning Indirect FX.

(u) “Effective Date” means the latest date when all of the conditions set forth in Paragraph 55 below have occurred.

(v) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

(w) “ERISA Plans” means the employee benefit plans as defined in 29 U.S.C. Section 1002(3) (also referred to as Section 3(3) of ERISA), that are subject to Part 4 of Subtitle B of Title I of ERISA (including master trusts with respect to multiple such plans within the meaning of Department of Labor Regulation Section 2520.103-1(e)), and that were custody or trust customers of SSBT during any part of the Class Period.

(x) “Escrow Accounts” means the Class Escrow Account and the Lead Counsel Escrow Account.

(y) “Escrow Agent” means the national banking institution holding the Escrow Accounts, which shall receive, hold, invest, and disburse the Escrow Accounts, pursuant to the terms of this Settlement Agreement.

(z) “Final,” with respect to a court order, means the later of: (i) if there is an appeal from a court order, the date of final affirmance on appeal and the expiration of the time

for any further judicial review whether by appeal, reconsideration or a petition for a writ of certiorari and, if certiorari is granted, the date of final affirmance of the order following review pursuant to the grant; or (ii) the date of final dismissal of any appeal from the order or the final dismissal of any proceeding on certiorari to review the order; or (iii) the expiration of the time for the filing or noticing of any appeal or petition for certiorari from the order (or, if the date for taking an appeal or seeking review of the order shall be extended beyond this time by order of the issuing court, by operation of law or otherwise, or if such extension is requested, the date of expiration of any extension if any appeal or review is not sought). However, any appeal or proceeding seeking subsequent judicial review pertaining solely to matters that would not prevent immediate distribution to Registered Investment Companies of at least the Registered Investment Company Minimum Distribution or distributions to the ERISA Plans (e.g., an appeal directed only to the amount of attorneys' fees and/or expenses to be paid to Plaintiffs' counsel), shall not in any way delay or affect the time set forth above for the Judgment (or Alternative Judgment) or other order, or otherwise preclude the Judgment (or Alternative Judgment) or other order, from becoming Final.

(aa) "Final Approval Hearing" or "Settlement Hearing" means the hearing set by the Court under Rule 23(e) of the Federal Rules of Civil Procedure to consider final approval of the Class Settlement.

(bb) "Group Trust(s)" means group trusts that are exempt from tax pursuant to Internal Revenue Service Revenue Ruling 81-100, as amended, that were custody or trust customers of SSBT during any part of the Class Period.

(cc) "Henriquez Action" means the action styled as *Henriquez, et al. v. State Street Bank and Trust Company, et al.*, No. 11-cv-12049 MLW (D. Mass.).

(dd) “Indirect FX” means Indirect FX Methods and Indirect FX Transactions/Trading.

(ee) “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 (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.

(ff) “Indirect FX Transactions/Trading” means foreign exchange transactions executed with SSBT 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.

(gg) “Lead Counsel” means the law firm of Labaton Sucharow LLP.

(hh) “Lead Counsel Escrow Account” means the separate escrow account at a national banking institution designated and agreed upon by Lead Counsel and SSBT into which the attorneys’ fees, Litigation Expenses, and Service Awards approved by the Court will be deposited for the benefit of Plaintiffs’ counsel and the Plaintiffs.

(ii) “Liaison Counsel” means Thornton Law Firm LLP.

(jj) “Litigation Expenses” means the reasonable costs and expenses incurred by counsel for Plaintiffs in connection with commencing and prosecuting the Class Actions for which Plaintiffs’ counsel intend to apply to the Court for payment from the Class Settlement Fund.

(kk) “Net Class Settlement Fund” means the Class Settlement Fund less: (i) Taxes and Tax Expenses; (ii) Notice and Administration Expenses; (iii) any attorneys’ fees, Service Awards, and Litigation Expenses awarded by the Court; and (iv) any other fees and expenses approved by the Court.

(ll) “Notice” means the Notice of Pendency of Class Actions, Proposed Class Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys’ Fees, Litigation Expenses, and Service Awards (substantially in the form attached hereto as Exhibit A-1), which is to be sent to members of the Settlement Class.

(mm) “Notice and Administration Expenses” means the costs, fees, and expenses that are incurred in connection with providing notice to the Settlement Class, in connection with the Escrow Accounts, in connection with administering the Class Settlement, and in providing notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

(nn) “Order and Final Judgment” or “Judgment” means the order of final judgment to be entered in the Class Actions, substantially in the form annexed hereto as Exhibit B.

(oo) “Parties” means (i) Plaintiffs on behalf of themselves and each Settlement Class Member and (ii) Settling Defendant SSBT.

(pp) “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.

(qq) “Plaintiffs” means named plaintiffs ARTRS, Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employees Savings and Profit Sharing Plan, and James Pehoushek-Stangeland.

(rr) “Plaintiffs’ Counsel” means Labaton Sucharow LLP, Thornton Law Firm LLP, Lieff Cabraser Heimann & Bernstein, LLP, Keller Rohrback LLP, McTigue Law LLP, and Zuckerman Spaeder LLP.

(ss) “Plan of Allocation” means the proposed plan for allocating the Net Class Settlement Fund to Settlement Class Members, which, subject to approval of the Court, shall be substantially in the form described in the Notice.

(tt) “Preliminary Approval Order” means the order (substantially in the form annexed hereto as Exhibit A) to be entered by the Court, preliminarily approving the Class Settlement, approving dissemination of the Notice and Publication Notice, and scheduling the Final Approval Hearing.

(uu) “Publication Notice” or “Summary Notice” means the notice, substantially in the form annexed hereto as Exhibit A-2, to be published as set forth in the Preliminary Approval Order.

(vv) “Rate Comparisons” means comparison of rates at which foreign exchange transactions were executed with rates of any other foreign exchange transaction or transactions (whether executed by SSBT, a subcustodian, or a party unrelated to SSBT), including comparison of rates of Indirect FX Transactions or Direct FX Transactions with rates of any other Indirect FX Transactions, Direct FX Transactions, indicative rate, market rate or benchmark rate.

(ww) “Registered Investment Company(ies)” means a mutual fund, closed-end fund, unit investment trust or other entity that is registered with the SEC as an investment company under the Investment Company Act.

(xx) “Registered Investment Company Minimum Distribution” means \$92,369,416.51.

(yy) “Released Class Claims” means any and all claims, demands, losses, costs, interest, penalties, fees, attorneys’ fees, expenses, rights, rights of recovery, causes of action, duties, obligations, judgments, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, including Unknown Claims, whether known or unknown, direct, representative, class, individual or indirect, asserted or unasserted, matured or unmatured, accrued or unaccrued, foreseen or unforeseen, disclosed or undisclosed, contingent or fixed or vested, accrued or not accrued, at law or equity, whether arising under federal, state, local, foreign, statutory, common, administrative or any other law, statute, rule or regulation that any Releasing Plaintiff: (i) asserted in the Class Actions; (ii) could have asserted in the Class Actions or any other action or in any forum, that arise from or out of, relate to, or are in connection with the claims, allegations, transactions, alleged or actual prohibited transactions or breaches of duty (including fiduciary duty), facts, events, acts,

disclosures, matters or occurrences, statements, representations or omissions or failures to act involved, described, set forth, or referred to in the complaints filed in the Class Actions or that arise from or out of, relate to, or are in connection with Indirect FX Methods, Indirect FX Transactions/Trading, StreetFX Methods, StreetFX Transactions, or Rate Comparisons; and (iii) asserted or could assert that arise from or out of, relate to, or are in connection with the defense or settlement of the Class Actions, except for claims relating to enforcement of the Settlement.

(zz) “Released Defendant Parties” means SSBT and Defendants; their past, present and future parents, subsidiaries, divisions, and affiliates; the respective past and present officers, directors, trustees, employees, agents, trustees, managers, servants, accountants, auditors, underwriters, financial and investment advisors, consultants, representatives, insurers, co-insurers and reinsurers of each of them; and the heirs, successors and assigns of the foregoing.

(aaa) “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties.

(bbb) “Released Plaintiff Parties” means Plaintiffs and each and every Settlement Class Member and their respective past, present, and future heirs, executors, administrators, trustees, predecessors, successors, and assigns.

(ccc) “Released Prosecution Claims” means 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 in the Class Actions, except for claims relating to interpretation or enforcement of the terms of the Class Settlement.

(ddd) “Releasing Plaintiff(s)” means each and every Plaintiff and each and every Settlement Class Member.

(eee) “SEC Settlement” means the settlement between the SEC and SSBT concerning Indirect FX.

(fff) “Service Awards” refers to the funds awarded out of the Class Settlement Fund, in addition to whatever monies Plaintiffs may receive pursuant to the Plan of Allocation, to compensate Plaintiffs for the effort and time spent by them in connection with the prosecution of the Class Actions, as supported by adequate written documentation of such effort and time.

(ggg) “Settlement Agreement” means this Stipulation and Agreement of Settlement.

(hhh) “Settlement Class” means all custody and trust customers of SSBT (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT’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 SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive. 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 from the Settlement Class in accordance with the requirements set forth in the Notice. 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 Class Actions.

(iii) “Settlement Class Member” means any Person that is a member of the Settlement Class.

(jjj) “Settling Defendant” means SSBT.

(kkk) “SSGM LLC” means State Street Global Markets, LLC.

(lll) “StreetFX Methods” means the methods for submitting, processing, aggregating and/or executing foreign exchange transactions which were or ultimately became known as StreetFX methods.

(mmm) “StreetFX Transactions” means foreign exchange transactions submitted at any time to SSBT using StreetFX Methods.

(nnn) “Taxes” means any taxes due and payable with respect to the income earned by the Class Settlement Fund, including any interest or penalties thereon.

(ooo) “Tax Expenses” means any expenses and costs incurred in connection with the payment of Taxes (including, without limitation, expenses of tax attorneys, accountants, and other advisors and expenses relating to the filing or failure to file all necessary or advisable tax returns).

(ppp) “Unknown Claims” means any and all Released Class Claims, which one or more Releasing Plaintiffs does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any Released Prosecution Claims that SSBT or any other Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if known to him, her, or it might have affected his, her, or its decision(s) with respect to the Class Settlement. With respect to any and all Released Class Claims and Released Prosecution Claims, the Parties stipulate and agree that, upon the Effective Date, Plaintiffs and SSBT shall expressly, and each Releasing

Plaintiff and SSBT shall be deemed to have, and by operation of the Judgment or any Alternative 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, or 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.

Releasing Plaintiffs, SSBT, or the other Released Defendant Parties 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 Class Claims and the Released Prosecution Claims, but Plaintiffs and SSBT shall expressly, fully, finally, and forever settle and release, and each other Releasing Plaintiff and each other Released Defendant Party shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment or any Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Class Claims and Released Prosecution Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The Parties acknowledge, and each other Releasing Plaintiff and Released Defendant Party by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Class Claims and Released Prosecution Claims was separately bargained for and was a key and material element of the Class Settlement.

II. CERTIFICATION OF SETTLEMENT CLASS

2. Solely for purposes of the Class Settlement, the Parties stipulate and agree to: (i) certification of the Settlement Class pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (ii) appointment of Plaintiffs as the representatives for the Settlement Class; and (iii) appointment of Lead Counsel as counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

3. In the event the Class Settlement is terminated, pursuant to the terms of this Settlement Agreement, certification of the Settlement Class shall be nullified and voided, the Class Actions shall proceed as though the Settlement Class had never been certified, and none of the Parties or any other Person shall suggest in the Class Actions that any inference of any kind should be drawn from the Settlement Class proposed in the Class Settlement.

III. RELEASE OF CLAIMS

4. By operation of this Settlement Agreement and the Judgment or Alternative Judgment, as of the Effective Date, the Releasing Plaintiffs, and their respective past, present, and future heirs, executors, administrators, trustees, predecessors, successors, and assigns: (i) shall release and shall be deemed by operation of law and this Settlement Agreement to have irrevocably, absolutely, and unconditionally fully, finally, and forever waived, released, discharged, and dismissed, with prejudice and on the merits, each and every one of the Released Class Claims against each and every one of the Released Defendant Parties, (ii) shall have and be deemed to have covenanted not to sue, directly or indirectly any Released Defendant Party with respect to any and all of the Released Class Claims; and (iii) shall forever be barred and enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, intervening in, participating in (as a class member or otherwise) (except as a witness compelled by subpoena or court order), or receiving any benefits or other relief, from any action, suit, cause of action,

arbitration, claim, demand, or other proceeding in any jurisdiction, whether in the United States or elsewhere, on their own behalf or in a representative capacity, that maintains or prosecutes any or all such Released Class Claims against each and every one of the Released Defendant Parties.

5. All Releasing Plaintiffs, and their respective past, present, and future heirs, executors, administrators, trustees, predecessors, successors, and assigns, shall be bound by the terms of the releases, covenants not to sue, and injunctions set forth in this Settlement Agreement whether or not they obtain a recovery from the Class Settlement or seek, or actually receive, a distribution from the Class Settlement.

6. By operation of the Judgment or Alternative Judgment, as of the Effective Date, SSBT, on behalf of itself, the Released Defendant Parties, and each of their respective heirs, executors, administrators, trustees, predecessors, successors, and assigns, shall be deemed by operation of law to have fully, finally, and forever released, waived, discharged, and dismissed, with prejudice and on the merits, each and every one of the Released Prosecution Claims against each and every one of the Released Plaintiff Parties and their respective attorneys, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any or all such Released Prosecution Claims against each and every one of the Released Plaintiff Parties and their respective attorneys.

7. Notwithstanding any of the foregoing, none of the Parties releases any claims relating to the enforcement of the Class Settlement, and SSBT does not release any claims relating to insurance coverage.

8. The releases and waivers contained in this Section were separately bargained for and are essential elements of this Settlement Agreement and the Class Settlement.

IV. THE SETTLEMENT CONSIDERATION

9. The Class Settlement Amount is to be paid by or on behalf of SSBT. In consideration of the terms of the Class Settlement, SSBT shall cause the Class Settlement Amount to be deposited into the Class Escrow Account no more than ten (10) calendar days after entry of the Preliminary Order by the Court.

10. Any and all direct settlements that SSBT has reached or may in the future reach with Settlement Class Members shall not change the Class Settlement Amount.

11. Within five (5) business days after signing this Settlement Agreement, Lead Counsel shall provide Defendants' Counsel with wiring instructions and a Form W-9 for the Class Settlement Fund, and any other documents reasonably required by the Settling Defendant to process the funding of the Class Settlement Amount.

12. Other than the obligation of SSBT to pay or cause to be paid the Class Settlement Amount into the Class Escrow Account as provided for in Paragraph 9 above or to pay or cause to be paid the amount provided for in Paragraph 14, neither SSBT nor any other Released Defendant Party shall have any obligation to make any other payment to the Settlement Class pursuant to this Settlement Agreement. Any interest earned on the Class Settlement Amount shall be for the benefit of the Settlement Class.

V. USE OF THE SETTLEMENT FUND

13. The Class Settlement Fund shall be used to pay: (i) Taxes and Tax Expenses; (ii) Notice and Administration Expenses; (iii) any attorneys' fees, Litigation Expenses, and Service Awards awarded by the Court; (iv) any other fees, costs, or expenses approved by the Court; and (v) the claims of Authorized Claimants. The Net Class Settlement Fund shall be distributed to Authorized Claimants as provided below and in the Plan of Allocation approved by the Court. All costs and expenses incurred by or on behalf of Plaintiffs and the other members of the

Settlement Class shall be paid from the Class Settlement Fund, as approved by the Court or provided for in this Settlement Agreement. Other than as specified below in Paragraph 14, neither SSBT nor or any other Released Defendant Party shall bear any further or additional responsibility to the Settlement Class or their counsel for any fees, costs or expenses beyond payment of the Class Settlement Amount.

14. After (i) the Judgment or Alternative Judgment becomes Final, (ii) the Court has approved the Plan of Allocation and the order approving the Plan of Allocation becomes Final, and (ii) entry by the Court of a Distribution Order and the Distribution Order becomes Final, the Net Class Settlement Fund will be distributed to Authorized Claimants in accordance with the terms of such Distribution Order and the Plan of Allocation approved by the Court. The Parties and their counsel shall use their best efforts (including by means of causing the distribution to be made in more than one phase, if necessary) to cause at least the Registered Investment Company Minimum Distribution to be distributed to Authorized Claimants who are Registered Investment Companies, pursuant to the Plan of Allocation and consistent with the SEC Settlement, within one (1) year of the date upon which the Judgment or Alternative Judgment becomes Final. If fees, costs, or expenses are necessarily incurred by the Claims Administrator at the request of SSBT in order to expedite the distribution to Registered Investment Companies, they shall be paid or caused to be paid by SSBT and not by the Class Settlement Fund.

15. Except as provided herein or pursuant to orders of the Court, the Net Class Settlement Fund shall remain in the Class Escrow Account prior to distribution. All funds held by the Escrow Agent for the Class Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Settlement Agreement and/or further order

of the Court. The Escrow Agent for the Class Settlement Fund shall invest any funds in the Escrow Accounts in instruments backed by the full faith and credit of the United States Government (or a mutual fund invested solely in such instruments), or deposit some or all of the funds in non-interest-bearing transaction account(s) that are fully insured by the Federal Deposit Insurance Corporation (“FDIC”) in amounts that are up to the limit of FDIC insurance. All risks related to the investments of the Class Settlement Fund shall be borne by the Class Settlement Fund.

16. The Parties agree that the Class Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1, and that Lead Counsel, as administrator of the Class Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Class Settlement Fund. Such returns shall be consistent with this Paragraph and in all events shall reflect that all Taxes on the income earned on the Class Settlement Fund and Tax Expenses shall be paid out of the Class Settlement Fund as provided by Paragraph 17 below. Lead Counsel shall also be solely responsible for causing payment to be made from the Class Settlement Fund of any Taxes and Tax Expenses owed with respect to the Class Settlement Fund. Upon written request, SSBT will provide to Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Class Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this Paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into

existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

17. All Taxes (including any interest or penalties) and Tax Expenses shall be considered to be a cost of administration of the Class Settlement and shall be paid out of the Class Settlement Fund. SSBT and the other Released Defendant Parties shall not have any liability or responsibility for any such Taxes or Tax Expenses. Lead Counsel, or its agents, shall timely and properly file all information and other tax returns necessary or advisable with respect to the Class Settlement Fund and the distributions and payments therefrom, including, without limitation, the tax returns described in Treasury Regulation § 1.468B-2(k), and, to the extent applicable, Treasury Regulation § 1.468B-2(1). Such returns shall be consistent with the terms hereof and in all events shall reflect that all such Taxes (including any interest or penalties) on the income earned by the Class Settlement Fund shall be paid out of the Class Settlement Fund, subject to the limitations set forth in this Paragraph. Lead Counsel, or its agents, shall also timely pay Taxes and Tax Expenses, subject to the' limitations set forth in this Paragraph, out of the Class Settlement Fund; and are authorized to withdraw, without prior order of the Court, from the Class Settlement Fund amounts necessary to pay Taxes and Tax Expenses. The Parties agree to cooperate with each other, and their tax attorneys and accountants, to the extent reasonably necessary to carry out the terms of this Settlement Agreement. SSBT and the Released Defendant Parties shall have no responsibility or liability for the acts or omissions of Lead Counsel or its agents, as described herein.

18. The Class Settlement is not a claims-made settlement. As of the Effective Date, neither SSBT nor any other Person who paid any portion of the funds into the Class Settlement Fund shall have any right to the return of the Class Settlement Fund or any portion thereof

irrespective of the collective amount of losses of Settlement Class Members, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants. Additionally, irrespective of whether the Effective Date has occurred, neither SSBT nor any other Person who paid any portion of the funds into the Class Settlement Fund shall have any right to return from any Settlement Class Members of any portion of the Net Class Settlement Fund that has been actually distributed in accordance with this Settlement Agreement.

VI. ATTORNEYS' FEES AND LITIGATION EXPENSES

19. Lead Counsel, on behalf of Plaintiffs' counsel, may apply to the Court for an award, from the Class Settlement Fund, of attorneys' fees, Litigation Expenses, and Service Awards based upon the Class Settlement Amount, not to exceed \$76,400,000. Attorneys' fees, Litigation Expenses, and Service Awards, as awarded by the Court, shall be paid from the Class Escrow Account to the Lead Counsel Escrow Account immediately upon award by the Court, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Class Settlement or any part thereof. Plaintiffs' Counsel represent that (a) should an appellate court reverse the Judgment or Alternative Judgment by Final non-appealable order, or should the Class Settlement be terminated or canceled pursuant to the terms of this Settlement Agreement, then Plaintiffs' counsel severally shall be obligated to repay any such attorneys' fees and Litigation Expenses received by Plaintiffs' counsel and all such Service Awards received by Plaintiffs, along with interest at the Class Escrow Account rate of interest, to the Lead Counsel Escrow Account, which promptly shall be returned to SSBT in accordance with instructions provided by Defendants' Counsel to Lead Counsel; and (b) should the attorneys' fees and expense awards be reduced by the Court or on appeal by a Final non-appealable order, then Plaintiffs' counsel severally shall be obligated to repay any such attorneys' fees and Litigation Expenses received by Plaintiffs' counsel and all such Service

Awards received by Plaintiffs in excess of those that are ultimately approved by Final non-appealable order, along with interest at the Class Escrow Account rate of interest, to the Lead Counsel Escrow Account, which promptly shall be returned to the Class Escrow Account. Plaintiffs' counsel shall make the appropriate refund or repayment in full no later than fourteen (14) business days after receiving from Defendants' Counsel or from a court of appropriate jurisdiction notice of any such reduction of the award of attorneys' fees, Litigation Expenses, and/or Service Awards by Final non-appealable order or notice of the termination of the Class Settlement. The procedure for and the allowance or disallowance by the Court of any application for an award of attorneys' fees, Litigation Expenses, and/or Service Awards are matters separate and apart from the proposed Class Settlement between the Parties and they are not necessary terms to this Settlement Agreement or conditions of this Settlement Agreement, the Class Settlement, or the releases provided herein. Plaintiffs and Plaintiffs' Counsel may not cancel or terminate the Settlement Agreement based on the Court's ruling or any appellate court's ruling with respect to attorneys' fees, Service Awards, and/or Litigation Expenses. Any appeal relating to an award of attorneys' fees, Service Awards, and/or Litigation Expenses will not affect the finality of the Class Settlement, the Judgment, the Alternative Judgment, or the releases provided herein.

20. The prevailing party in any action to collect any amount due under Paragraph 19 shall be entitled to recover interest and all costs of collection, including reasonable attorneys' fees.

21. Unless otherwise ordered by the Court, and subject to the provisions of the Lead Counsel Escrow Account, Lead Counsel will in good faith promptly distribute any award of attorneys' fees and/or payment of Litigation Expenses among Plaintiffs' counsel. Of the

attorneys' fees awarded by the Court, if any, 9% in the aggregate (the "ERISA Counsel Fee") shall be distributed to counsel for plaintiffs and/or the class in the Andover and Henriquez Actions ("ERISA Counsel"), in full satisfaction of ERISA Counsel's interests in any attorneys' fees awarded by the Court. Of the attorneys' fees awarded by the Court, if any, 91% in the aggregate (the "Customer Counsel Fee") shall be distributed to counsel for plaintiff and/or the class in the ARTRS Action ("Customer Counsel"), in full satisfaction of Customer Counsel's interests in any attorneys' fees awarded by the Court. If Customer Counsel disagree about the amount of the fee to be distributed amongst Customer Counsel by Lead Counsel, they shall mediate their dispute with Jonathan B. Marks, Esq. and, if unsuccessful, present the dispute to the Court for a determination. Settling Defendant and the Released Defendant Parties shall have no responsibility for, and no liability with respect to, the attorneys' fees, Litigation Expenses, and/or Service Awards that the Court may award in the Class Actions or the allocation of the attorneys' fees and/or Litigation Expenses between or among ERISA Counsel and Customer Counsel in connection with the Class Actions or any other Person who may assert some claim thereto.

VII. MINIMUM REQUIREMENTS OF PLAN OF ALLOCATION AND DISTRIBUTION ORDER

22. This Class Settlement is expressly conditioned upon any and all distributions of the Net Class Settlement Fund to Settlement Class Members occurring only pursuant to a Compliant Plan of Allocation and a distribution of funds to Settlement Class Members that are Registered Investment Companies occurring only pursuant to a Compliant Distribution Order. Absent provision by SSBT of an express written waiver specifically referring to and waiving the conditions of this paragraph, under no circumstances shall any distributions of the Net Class Settlement Fund to Settlement Class Members occur other than in accordance with a Compliant

Plan of Allocation and under no circumstances shall any distribution of funds to Settlement Class Members that are Registered Investment Companies occur other than in accordance with a Compliant Distribution Order.

23. If the Plan of Allocation approved by the Court, and which becomes Final, is not a Compliant Plan of Allocation, notwithstanding anything to the contrary in this Settlement Agreement, SSBT shall have the right to terminate this Settlement Agreement in accordance with Section XIV. If the proposed Plan of Allocation submitted to the Court is a Compliant Plan of Allocation, then SSBT shall support the proposed Plan of Allocation and shall not object to it. If the Distribution Order entered by the Court to approve a distribution to Settlement Class Members that are Registered Investment Companies, and which becomes Final, is not a Compliant Distribution Order, notwithstanding anything to the contrary in this Settlement Agreement, SSBT shall have the right to terminate this Settlement Agreement in accordance with Section XIV.

24. Except with respect to the amount of Plaintiffs' counsel's attorneys' fees chargeable to the ERISA Plans, as provided for below, the amount of the Class Settlement Fund allocated to the ERISA Plans and Registered Investment Companies and other Settlement Class Members shall be increased or decreased, as the case may be, by their proportional share (using the allocations set forth in the Plan of Allocation compared to the Class Settlement Amount) of any interest, costs (including Notice and Administration Expenses), Litigation Expenses, Service Awards, Taxes and Tax Expenses, and attorneys' fees of Plaintiffs' counsel, obtained or paid pursuant to permission of the Court. However: (i) the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount; and (ii)

no more than Ten Million Nine Hundred Thousand Dollars (\$10,900,000.00) in attorneys' fees shall be paid out of the ERISA Settlement Allocation.¹

25. Except as provided in this Section VII and Paragraph 33 below, SSBT and the Released Defendant Parties shall have no responsibility or liability whatsoever for allocation of the Class Settlement Fund or Net Class Settlement Fund and SSBT shall not otherwise object to the Plan of Allocation proposed by Plaintiffs.

26. Except as provided in this Section VII, the allocation of the Net Class Settlement Fund among Authorized Claimants is a matter separate and apart from the proposed Class Settlement between the Parties and any decision by the Court concerning provisions of the Plan of Allocation, other than those set forth in this Section VII, shall not affect the validity or finality of the proposed Class Settlement. Plaintiffs and Plaintiffs' Counsel may not cancel or terminate the Class Settlement (or this Settlement Agreement) based on this Court's or any appellate court's ruling with respect to provisions in the Plan of Allocation (other than those instituting the requirements of this Section VII), attorneys' fees, Litigation Expenses, or Service Awards.

27. There shall be no distribution of any of the Class Settlement Fund to any Settlement Class Member until the Plan of Allocation is approved and such order of approval is Final.

VIII. ADMINISTRATION EXPENSES

28. Except as otherwise provided herein, the Class Settlement Fund shall remain in escrow pending: (i) final approval of the Class Settlement by the Court, (ii) the expiration of all rights of appeal of the Judgment or Alternative Judgment; (iii) the Final denial of any and all appeals or objections or collateral attacks or challenges to the Class Settlement; (iv) the order

¹ If the Settlement Class seeks and/or the Court awards attorneys' fees at a rate which would, if applied to the \$60,000,000 ERISA Settlement Allocation, result in a fee of less than \$10,900,000, then such lower rate and resulting fee at that rate shall apply to the ERISA Settlement Allocation.

approving the proposed Plan of Allocation becoming Final; and (v) a Compliant Distribution Order becoming Final.

29. Notwithstanding the fact that the Effective Date has not yet occurred, Lead Counsel may pay from the Class Settlement Fund, without further approval from SSBT or further order of the Court, all reasonable Notice and Administration Expenses actually incurred. Such costs and expenses shall include, without limitation, the actual costs of publication, printing and mailing the Notice to potential members of the Settlement Class, the administrative expenses incurred and fees charged in connection with providing notice and calculating claims, and the fees, if any, related to the Escrow Accounts and the investment of the Class Settlement Fund.

30. In the event the Effective Date for any reason does not occur, Notice and Administration Expenses paid or incurred shall not be returned or repaid to SSBT or any other Person that caused payments to be made into the Class Settlement Fund.

IX. ADMINISTRATION OF THE SETTLEMENT

31. The Claims Administrator, subject to the supervision, direction, and approval of Lead Counsel and the Court, shall administer and calculate the claims due to Settlement Class Members, oversee distribution of the Net Class Settlement Fund, and perform all claims administration procedures necessary or appropriate in connection therewith. Except as otherwise provided herein, Settling Defendant and the Released Defendant Parties shall have no liability, obligation, or responsibility for the Notice, Summary Notice, administration or processing of claims in the Class Settlement, or disbursement of the Net Class Settlement Fund, including without limitation, final determinations as to the amounts of claims, distributions of the Net Class Settlement Fund, or any losses incurred by the Class Settlement Fund or the Claims Administrator. Settling Defendant and the Released Defendant Parties shall not review, contest, or object to any claim.

32. The Claims Administrator shall administer the Class Settlement according to this Settlement Agreement and the Plan of Allocation approved by the Court. The proposed Plan of Allocation is included in the Notice, annexed hereto as Exhibit A-1.

33. Lead Counsel shall be responsible for supervising the administration of the Class Settlement and disbursement of the Net Class Settlement Fund. Settling Defendant and its counsel shall cooperate with and provide the Claims Administrator and Plaintiffs' Counsel with (i) information sufficient to provide notice to the Settlement Class, and (ii) information about the U.S. dollar-equivalent volume of Indirect FX Transactions executed by Settlement Class Members sufficient to allow Plaintiffs' Counsel to develop the proposed Plan of Allocation, to administer the Plan of Allocation, to calculate claims, and to resolve any disputed claims. Settling Defendant and its counsel shall also make their best efforts to respond fully and promptly to inquiries and requests from Plaintiffs' Counsel and/or the Claims Administrator concerning Settling Defendant's FX trading and sales margin data as necessary. Defendants and the Released Defendant Parties, except as otherwise specified herein, shall have no liability, obligation, or responsibility for the administration of the Class Settlement or disbursement of the Net Class Settlement Fund.

34. Each Settlement Class Member, absent exclusion from the Settlement Class, shall be deemed to have submitted to the jurisdiction of the Court with respect to its claim, including, but not limited to, the releases provided for in the Judgment or any Alternative Judgment. No discovery shall be allowed on the merits of the Class Actions or the Class Settlement in connection with the processing of claims.

35. All proceedings with respect to the administration, processing, and determination of claims and the determination of all controversies relating thereto, including disputed questions

of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court, but shall not in any event delay or affect the finality of the Judgment or Alternative Judgment.

X. DISTRIBUTION OF NET CLASS SETTLEMENT FUND

36. Lead Counsel will apply to the Court, with reasonable notice to Settling Defendant, for a Compliant Distribution Order, *inter alia*: (i) approving, at minimum, the Claims Administrator's administrative determinations concerning the claims to be paid to Settlement Class Members that are Registered Investment Companies; (ii) approving payment from the Class Settlement Fund of any outstanding administration fees and expenses associated with the administration of the Class Settlement; and (iii) if the Judgment or Alternative Judgment have become Final and the order approving the proposed Plan of Allocation has become Final, directing, at minimum, payment to Authorized Claimants that are Registered Investment Companies. To the extent necessary, Lead Counsel will also apply to the Court, with reasonable notice to Settling Defendant, for a Distribution Order, *inter alia*: (i) approving the Claims Administrator's administrative determinations concerning other claims to be paid; (ii) approving payment from the Class Settlement Fund of any outstanding administration fees and expenses associated with the administration of the Class Settlement; and (iii) if the Judgment or Alternative Judgment have become Final and the order approving the proposed Plan of Allocation has become Final, directing payment of the Net Class Settlement Fund to Authorized Claimants that are not Registered Investment Companies.

37. The Claims Administrator shall notify, in a timely fashion and in writing, all Settlement Class Members of the amount of their Recognized Claims prior to any motion seeking approval of a distribution to them. The notification shall indicate that a Settlement Class Member has the right to dispute the amount of its Recognized Claim, if the claimant so desires

and complies with the requirements set forth in the notification. If a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the dispute for review by the Court.

38. If subpoenaed by the DOL, prior to the motion for a Distribution Order being made, SSBT and/or the Claims Administrator shall provide the DOL with the names, addresses, and payment amounts of ERISA Plans and eligible Group Trusts that will be receiving distributions pursuant to the motion, as well as actual payment amounts after the distribution is conducted. However, when providing the requested information, SSBT and/or the Claims Administrator shall designate it “Confidential” and request that it be treated as exempt from disclosure under the Freedom of Information Act, or any other applicable regulation or law. The DOL shall protect the information to the extent permitted by law and in accordance with the DOL’s regulations. All communications pursuant to this paragraph to and from the DOL shall also be provided, by the Parties hereto, contemporaneously to Plaintiffs’ Counsel and Defendants’ Counsel, as the case may be.

39. Payment from the Net Class Settlement Fund pursuant to the Distribution Order shall be final and conclusive against any and all Settlement Class Members. All Settlement Class Members shall be bound by all of the terms of this Settlement Agreement and the Class Settlement, including the terms of the Judgment or any Alternative Judgment and the releases provided for therein, and will be permanently barred and enjoined from bringing any action against any and all Released Defendant Parties concerning any and all of the Released Class Claims.

40. If any portion of the Net Class Settlement Fund remains after at least six (6) months following initial distribution, Lead Counsel shall, if feasible and economical after

payment of Notice and Administration Expenses, if any, Taxes and Tax Expenses, redistribute such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion until it is no longer economically feasible to do so. Any balance which still remains in the Net Class Settlement Fund after redistribution(s) and after payment of Notice and Administration Expenses, if any, Taxes and Tax Expenses, shall be contributed to one or more nonsectarian, not-for-profit, 501(c)(3) organizations serving the public interest approved by the Court. The proposed recipients shall be independent of Plaintiffs' Counsel so that Plaintiffs' Counsel do not derive a direct or indirect benefit from the selection of such organization as the recipient of a charitable contribution.

XI. REQUESTS FOR EXCLUSION

41. The Notice shall provide that a request for exclusion from the Settlement Class by a Settlement Class Member shall be provided to the Claims Administrator and shall include the following information: (i) the name of the Person that entered into one or more custody or trust agreements with SSBT and is requesting exclusion; (ii) the Person's address; (iii) the Person's telephone number; (iv) the Person's e-mail address; (v) the approximate date(s) of the agreement(s) referenced in (i) above; (vi) the SSBT entity that was the counterparty to the agreement(s) referenced in (i) above; (vii) a list of all current and former accounts, including both the name and account number of such accounts, that held foreign (non-U.S.) assets and were related to the agreement(s) referenced in (i) above; (viii) a signed statement that the Person wishes to be excluded from the Settlement Class in the Class Actions; and (ix) identification (including by case name, court name, and docket number) of all legal actions and claims (if any) that the Person requesting exclusion has brought against any of the Defendants relating to Indirect FX. A request for exclusion shall not be invalid for failing to include the foregoing (i) - (vii) if the Settling Defendant determines that it has sufficient information to determine that such

Person is a Settlement Class Member and provides that information promptly to Lead Counsel. Unless otherwise ordered by the Court, any Settlement Class Member who does not submit a timely and valid request for exclusion as provided by this Paragraph shall be bound by the Class Settlement. Plaintiffs shall request that the deadline for receiving requests for exclusion be twenty-one (21) calendar days prior to the Final Approval Hearing.

42. The Claims Administrator shall scan and send electronic copies of all requests for exclusion in .pdf format (or such other format as shall be agreed) to Defendants' Counsel and to Plaintiffs' Counsel not more than two (2) business days after the Claims Administrator receives such a request, and in any event at least seven (7) calendar days prior to the Final Approval Hearing. Within two (2) business days of receipt of an exclusion request from the Claims Administrator, Defendants' Counsel shall report to Plaintiffs' Counsel the requester's volume of Indirect FX Transactions conducted during the Class Period. Upon receipt of any invalid requests for exclusion, Lead Counsel shall within two (2) business days request the supplemental information set forth above in Paragraph 41 from Defendants' Counsel. As part of the motion papers in support of the Class Settlement, Lead Counsel will cause a list of all Persons who have requested exclusion from the Settlement Class to be provided to the Court and counsel for the Parties, and shall cause to be certified that all requests for exclusion received by the Claims Administrator have been copied and provided to the Defendants' Counsel.

43. Settlement Class Members who exclude themselves from the Settlement Class shall not be eligible to receive any payment from the Net Class Settlement Fund.

XII. MOTION FOR PRELIMINARY APPROVAL ORDER

44. Lead Counsel shall file the Settlement Agreement with the Court within two (2) business days after its execution. No later than five (5) calendar days after the Settlement Agreement is filed with the Court, Plaintiffs, by and through Lead Counsel, shall move for the

Court's approval of the Preliminary Approval Order, which shall be substantially in the form annexed hereto as Exhibit A. The Preliminary Approval Order, will, *inter alia*, set the date for a Final Approval Hearing and prescribe the method for giving notice of the Class Settlement to the Settlement Class.

45. SSBT shall provide Plaintiffs' Counsel and the Claims Administrator with information, in electronic searchable form, sufficient to provide Notice to the Settlement Class (including readily available known addresses and contact information for Settlement Class Members), within five (5) business days after execution of the Settlement Agreement. SSBT shall also be available to Plaintiffs' Counsel and the Claims Administrator for follow-up inquiries concerning changes of address or Settlement Class Member identity.

46. SSBT shall be responsible for the preparation of notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"), which may at State Street's option be served by the Claims Administrator under the direction of Defendants' Counsel. Nothing in this Settlement Agreement shall prevent SSBT from complying with CAFA.

XIII. MOTION FOR ENTRY OF FINAL JUDGMENT

47. The Class Settlement is expressly conditioned upon, among other things, the entry of a Judgment substantially in the form annexed hereto as Exhibit B or an Alternative Judgment. Plaintiffs, by and through Lead Counsel, shall move for entry of the Judgment, including, among other things, the releases described herein.

XIV. WAIVER OR TERMINATION

48. Plaintiffs or SSBT shall have the right to terminate the Class Settlement in its entirety by providing written notice of their election to do so ("Termination Notice"), through counsel, to counsel for all other Parties hereto, within fourteen (14) calendar days of: (i) the Court's refusal to enter the Preliminary Approval Order in any material respect; (ii) the Court's

refusal to enter the Judgment in any material respect or an Alternative Judgment acceptable to the Parties with respect to the Class Settlement; (iii) the date upon which the Judgment or Alternative Judgment is vacated, modified, or reversed in any material respect by a Final order of the United States Court of Appeals or the Supreme Court of the United States; or (iv) SSBT's failure to fund the Class Settlement Amount. Settling Defendant may also terminate the Class Settlement in its entirety pursuant to Paragraph 23 above and Paragraphs 48 - 50 below. In the event the Class Settlement is terminated, the provisions of Paragraphs 53 - 54 and 56 shall survive termination. For the avoidance of doubt, Plaintiffs shall not have the right to terminate the Class Settlement due to any decision, ruling, or order regarding an application for attorneys' fees, Litigation Expenses, the Plan of Allocation (other than provisions implementing Section VII above), or Service Awards.

49. In addition to the foregoing, SSBT shall have the right to terminate the Class Settlement in the event the Settlement Class Termination Threshold (defined below) has been reached.

(a) Simultaneously herewith, Plaintiffs, by and through Lead Counsel, and SSBT, are executing a confidential Supplemental Agreement Regarding Requests for Exclusion (the "Supplemental Agreement"). The Supplemental Agreement sets forth certain conditions under which SSBT shall have the sole option to withdraw from the Class Settlement and render this Settlement Agreement null and void in the event that requests for exclusion from the Settlement Class exceed certain agreed-upon criteria ("Settlement Class Termination Threshold"). The Parties shall maintain the confidentiality of the Supplemental Agreement as stated therein, unless otherwise required by law or regulation, and the Supplemental Agreement

shall not be filed with the Court, but may be examined *in camera*, if so requested by the Court (unless otherwise ordered by the Court or required by court rule).

(b) In the event of a termination of this Class Settlement pursuant to the Supplemental Agreement, this Settlement Agreement shall become null and void and of no further force and effect, with the exception of the provisions of Paragraphs 53 - 54 and 56 which shall continue to apply.

50. SSBT shall also have the option and right in its sole discretion, prior to the distribution of funds pursuant to a Compliant Distribution Order, to terminate the Class Settlement if: (i) the DOJ Settlement or the DOL Settlement has not become final and effective, and/or (ii) SSBT reasonably believes that the SEC Settlement will not become final and effective. For the avoidance of doubt, SSBT shall have no right to terminate the Class Settlement after the distribution of funds pursuant to a Compliant Distribution Order.

51. If, before the Settlement becomes Final, any Defendant files for protection under the Bankruptcy Code or any similar law or a trustee, receiver, conservator, or other fiduciary is appointed under Bankruptcy, or any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money or any portion thereof to the Class Settlement Fund by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Class Settlement Fund by others, then, at the election of Plaintiffs, the Parties shall jointly move the Court to vacate and set aside the release given and the Judgment or Alternative Judgment entered in favor of that Defendant and that Defendant and Plaintiffs and the members of the Settlement Class shall be restored to their

litigation positions as of June 29, 2015. All releases and the Judgment or Alternative Judgment as to other Defendants shall remain unaffected.

(a) SSBT warrants that, as to the payments made or to be made by or on behalf of it at the time of entering into this Settlement Agreement and at the time of such payments pursuant to the terms above, it was not insolvent, nor will the payment required to be made by or on behalf of it render it insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including but not limited to Sections 101 and 547 thereof. This representation is made by SSBT and not by its counsel.

52. If an option to withdraw from and terminate this Settlement Agreement and Class Settlement arises under any of the Paragraphs 23, 48-50 above, neither SSBT nor Plaintiffs will be required for any reason or under any circumstance to exercise that option.

53. Except as otherwise provided herein, in the event the Class Settlement is terminated in its entirety, the Class Settlement will be without prejudice, and none of its terms shall be effective or enforceable, except as specifically provided herein. Plaintiffs and SSBT shall be deemed to have reverted to their respective status in the Class Actions as of June 29, 2015, and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered. In such event, the fact and terms of the Term Sheet, this Settlement Agreement, or any aspect of the negotiations leading to this Settlement Agreement, shall not be admissible in this or other litigation and shall not be used by Plaintiffs against SSBT or any Released Defendant Party or by SSBT against Plaintiffs or any Released Plaintiff Party in any court filings, depositions, at trial, or otherwise.

54. In the event the Class Settlement is terminated in its entirety, or if the Effective Date is barred from occurring, pursuant to the provisions above, any portion of the Class

Settlement Amount paid by or on behalf of SSBT, including any funds disbursed in payment of attorneys' fees, Service Awards, and/or Litigation Expenses, together with any interest earnings or appreciation thereon, less any Taxes and Tax Expenses paid or due with respect to such income, and less Notice and Administration Expenses actually and reasonably incurred and paid or payable from the Class Settlement Fund, shall be returned to SSBT within fourteen (14) business days after written notification of such event in accordance with instructions provided by Defendants' Counsel to Lead Counsel. At the request of Defendants' Counsel, the Escrow Agent or its designees shall apply for any tax refund owed on the amounts in the Escrow Accounts and pay the proceeds, after any deduction of any fees or expenses incurred in connection with such application(s), of such refund to the Person(s) that made the deposits or as otherwise directed.

XV. EFFECTIVE DATE OF SETTLEMENT

55. The Effective Date of the Class Settlement shall be the first date when all of the following shall have occurred:

- (a) entry of the Preliminary Approval Order;
- (b) the Class Settlement Amount has been paid consistent with Paragraph 9 above;
- (c) approval by the Court of the Class Settlement following notice to the Settlement Class and a hearing in accordance with Rule 23 of the Federal Rules of Civil Procedure;
- (d) entry of the Judgment, substantially in the form annexed hereto as Exhibit B, or entry of any Alternative Judgment;
- (e) the Judgment or any Alternative Judgment has become Final;
- (f) the DOJ Settlement and DOL Settlement are final and effective pursuant to their respective terms;

(g) SSBT has submitted to the SEC an Offer of Settlement, which SSBT will do within two (2) business days of the Judgment or any Alternative Judgement becoming Final; and

(h) an order approving a Compliant Plan of Allocation has been entered and become Final.

XVI. NO ADMISSION OF WRONGDOING

56. Except as provided in Paragraph 57 below, this Settlement Agreement, whether or not consummated, and any negotiations, proceedings, or agreements relating to this Settlement Agreement, the Class Settlement, and any matters arising in connection with settlement negotiations, proceedings, or agreements, shall not be offered or received against the Parties and their counsel for any purpose, and in particular:

(a) do not constitute, and shall not be offered or received against Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants 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 Class Actions or in any litigation, including but not limited to the Released Class Claims, or of any liability, damages, negligence, fault, or wrongdoing of Defendants;

(b) do not constitute, and shall not be offered or received against Defendants 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 Defendants, or against the 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 Class Actions;

(c) do not constitute, and shall not be offered or received against Defendants, Plaintiffs, or any other member of the Settlement Class, or their respective counsel, 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 Defendants, Plaintiffs, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement;

(d) do not constitute, and shall not be construed against Defendants, Plaintiffs, any other members of the Settlement Class, or their respective counsel as an admission or concession that the consideration to be given hereunder 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, any other Settlement Class Member, or their respective counsel, that any of their claims are without merit or infirm, that a class should not be certified, or that damages recoverable under the complaints filed in the Class Actions would not have exceeded the Class Settlement Amount.

57. The Parties may file or refer to this Settlement Agreement, the Judgment or any Alternative Judgment to (i) effectuate the liability protection granted thereunder, including, without limitation, to support injunctive relief, or a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, 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 Parties may file this Settlement Agreement and/or the Judgment or any Alternative Judgment in any action that may be brought to enforce the terms of this Settlement Agreement and/or the

Judgment or any Alternative Judgment. All Parties submit to the jurisdiction of the Court for purpose of implementing and enforcing the Class Settlement.

XVII. MISCELLANEOUS PROVISIONS

58. In accordance with paragraph 16 of the Stipulated Protective Order concerning the disclosure of confidential information filed by the parties on November 16, 2012, within sixty (60) days after the later of the Effective Date or the SEC Settlement becoming final and effective, all documents, material or other information designated as “confidential” supplied by any party and all copies thereof shall, at the election of the receiving party, be returned to counsel for that party or such materials shall be destroyed, with written certification of such destruction to be provided to the party that produced such materials, within sixty (60) days after final conclusion of the Class Action and any appeals therefrom; provided, however, that the parties and their counsel may retain copies of pleadings, discovery responses, court filings, transcripts, exhibits, notes and memoranda and work product embodying Confidential Information.

59. The Parties agree that no Party was or is a “prevailing party” in the Class Actions.

60. The Class Settlement is not subject to confirmatory discovery.

61. All of the exhibits attached to this Settlement Agreement and the Supplemental Agreement are material and integral parts hereof and are fully incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Settlement Agreement and the terms of any exhibit attached hereto, the terms of this Settlement Agreement shall prevail.

62. This Settlement Agreement, along with the Supplemental Agreement, may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by

counsel for all of the Parties (or their successors-in-interest) materially and adversely affected by any such modification, amendment, or waiver.

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

64. The Parties agree that the terms of the Class Settlement were negotiated at arm's-length, in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel. Moreover, the Class Settlement is intended to be a final and complete resolution of the Parties' disputes in the Class Actions. The Parties further agree that each has complied fully with Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense, and settlement of the Class Actions. Accordingly, the Parties agree not to assert any claim under Rule 11, or any similar law, rule, or regulation, that the Class Actions were brought or defended in bad faith or without a reasonable basis.

65. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

66. This Settlement Agreement and its exhibits and the Supplemental Agreement constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its exhibits and the Supplemental Agreement, other than the representations, warranties, and covenants contained and memorialized in such documents.

67. This Settlement Agreement may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature

transmitted via e-mail. All executed counterparts and each of them shall be deemed to be one and the same instrument.

68. The Parties and their respective counsel of record agree that they will use their best efforts to obtain all necessary approvals of the Court required by this Settlement Agreement.

69. Each counsel signing this Settlement Agreement represents that such counsel has authority to sign this Settlement Agreement on behalf of Plaintiffs or SSBT, as the case may be, and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Settlement Agreement to effectuate its terms.

70. By entering into the Class Settlement, Plaintiffs represent and warrant that they have not assigned, hypothecated, conveyed, transferred, or otherwise granted or given any interest in the Released Class Claims, or any of them, to any other Person.

71. By entering into the Class Settlement, the Settling Defendant represents and warrants that it has not assigned, hypothecated, conveyed, transferred, or otherwise granted or given any interest in the Released Prosecution Claims, or any of them, to any other Person.

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

73. If any Party is required to give notice to the other Parties under this Settlement Agreement, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery, e-mail, facsimile, or in person to each of the signatories below.

74. The administration, consummation, and enforcement of the Class Settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Parties

intend that the Court retain jurisdiction for the purpose of, *inter alia*, entering orders, providing for awards of attorneys' fees, Service Awards, and payment of Litigation Expenses, and enforcing the terms of this Settlement Agreement and the Class Settlement.

75. The construction, interpretation, operation, effect, and validity of this Settlement Agreement and all documents necessary to effectuate it shall be governed by the internal laws of the Commonwealth of Massachusetts without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

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

IN WITNESS THEREOF, the Parties hereto have caused this Settlement Agreement to be executed, by their duly authorized attorneys, as of July 26, 2016.

By: 
Lawrence A. Sucharow
LABATON SUCHAROW LLP
140 Broadway
New York, NY 10005
Telephone: (212) 907-0700
lsucharow@labaton.com

For Plaintiff ARTRS and as Interim Lead Counsel for the Proposed Class

By: _____
Daniel P. Chiplock
LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013
Telephone: (212) 355-9500
dchiplock@lchb.com

For Plaintiff ARTRS and as additional Counsel for the Proposed Class

By: _____
Michael P. Thornton
THORNTON LAW FIRM LLP
100 Summer Street, 30th Floor
Boston, MA 02110
Telephone: (617) 720-1333

For Plaintiff ARTRS and as Liaison Counsel for the Proposed Class

By: _____
Lynn Lincoln Sarko
KELLER ROHRBACK LLP
1201 3rd Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900

For Plaintiffs The Andover Companies Employees Savings and Profit Sharing Plan, Alan Kober, and James Pehoushek-Stangeland, and as Counsel for ERISA Plaintiffs

By: _____

Lawrence A. Sucharow
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New York, NY 10005
Telephone: (212) 907-0700
lsucharow@labaton.com

*For Plaintiff ARTRS and as Interim Lead
Counsel for the Proposed Class*

By: _____



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Telephone: (212) 355-9500
dchiplock@lchb.com

*For Plaintiff ARTRS and as additional
Counsel for the Proposed Class*

By: _____

Michael P. Thornton
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Boston, MA 02110
Telephone: (617) 720-1333

*For Plaintiff ARTRS and as Liaison
Counsel for the Proposed Class*

By: _____

Lynn Lincoln Sarko
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Seattle, WA 98101
Telephone: (206) 623-1900

*For Plaintiffs The Andover Companies
Employees Savings and Profit Sharing
Plan, Alan Kober, and James Pehoushek-
Stangeland, and as Counsel for ERISA
Plaintiffs*

By: _____

Lawrence A. Sucharow
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Telephone: (212) 907-0700
lsucharow@labaton.com

*For Plaintiff ARTRS and as Interim Lead
Counsel for the Proposed Class*

By: _____

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New York, NY 10013
Telephone: (212) 355-9500
dchiplock@lchb.com

*For Plaintiff ARTRS and as additional
Counsel for the Proposed Class*

By:  _____

Michael P. Thornton
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100 Summer Street, 30th Floor
Boston, MA 02110
Telephone: (617) 720-1333

*For Plaintiff ARTRS and as Liaison
Counsel for the Proposed Class*

By: _____

Lynn Lincoln Sarko
KELLER ROHRBACK LLP
1201 3rd Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900

*For Plaintiffs The Andover Companies
Employees Savings and Profit Sharing
Plan, Alan Kober, and James Pehoushek-
Stangeland, and as Counsel for ERISA
Plaintiffs*

By: _____

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lsucharow@labaton.com

*For Plaintiff ARTRS and as Interim Lead
Counsel for the Proposed Class*

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New York, NY 10013
Telephone: (212) 355-9500
dchiplock@lchb.com


*For Plaintiff ARTRS and as additional
Counsel for the Proposed Class*

By: _____


Michael P. Thornton
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100 Summer Street, 30th Floor
Boston, MA 02110
Telephone: (617) 720-1333

*For Plaintiff ARTRS and as Liaison
Counsel for the Proposed Class*

By: _____


Lynn Lincoln Sarko
KELLER ROHRBACK LLP
1201 3rd Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900

*For Plaintiffs The Andover Companies
Employees Savings and Profit Sharing
Plan, Alan Kober, and James Pehoushek-
Stangeland, and as Counsel for ERISA
Plaintiffs*

By: 
J. Brian McTigue
MCTIGUE LAW LLP
4530 Wisconsin Avenue, NW
Suite 300
Washington, DC 20016
Telephone: (202) 364-6900

For Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland and as Counsel for ERISA Plaintiffs

By: _____
Carl S. Kravitz
ZUCKERMAN SPAEDER LLP
1800 M Street, NW
Suite 1000
Washington, DC 20036-5807
Telephone: (202) 778-1800

For Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland, and as Counsel for ERISA Plaintiffs

By: _____
William H. Paine
WILMER CUTLER PICKERING HALE
AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000

For State Street Bank and Trust Company

By: _____

J. Brian McTigue
MCTIGUE LAW LLP
4530 Wisconsin Avenue, NW
Suite 300
Washington, DC 20016
Telephone: (202) 364-6900

For Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland and as Counsel for ERISA Plaintiffs

By: Carl S. Kravitz

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1800 M Street, NW
Suite 1000
Washington, DC 20036-5807
Telephone: (202) 778-1800

For Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland, and as Counsel for ERISA Plaintiffs

By: _____

William H. Paine
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AND DORR LLP
60 State Street
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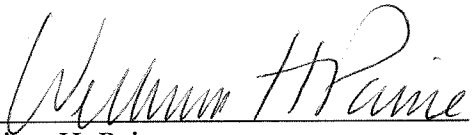
For State Street Bank and Trust Company

By: _____
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4530 Wisconsin Avenue, NW
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Washington, DC 20016
Telephone: (202) 364-6900

For Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland and as Counsel for ERISA Plaintiffs

By: _____
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Suite 1000
Washington, DC 20036-5807
Telephone: (202) 778-1800

For Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland, and as Counsel for ERISA Plaintiffs

By: 
William H. Paine
WILMER CUTLER PICKERING HALE
AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000

For State Street Bank and Trust Company

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,)
 on behalf of itself and all others similarly situated,) No. 11-cv-10230 MLW
)
 Plaintiffs,)
)
 v.)
)
 STATE STREET BANK AND TRUST COMPANY,)
)
 Defendant.)

ARNOLD HENRIQUEZ, MICHAEL T. COHN,)
 WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,) No. 11-cv-12049 MLW
 and those similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 STATE STREET BANK AND TRUST COMPANY,)
 STATE STREET GLOBAL MARKETS, LLC and)
 DOES 1-20,)
)
 Defendants.)

THE ANDOVER COMPANIES EMPLOYEE SAVINGS)
 AND PROFIT SHARING PLAN, on behalf of itself, and) No. 12-cv-11698 MLW
 JAMES PEHOUSHEK STANGELAND, and all others)
 similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 STATE STREET BANK AND TRUST COMPANY,)
)
 Defendant.)

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, APPROVING FORM AND MANNER OF NOTICE, AND SETTING
DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT**

WHEREAS, as of July 26 , 2016, (i) plaintiffs Arkansas Teacher Retirement System, Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employees Savings and Profit Sharing Plan and James Pehoushek-Stangel (collectively, “Plaintiffs”), on behalf of themselves and each Settlement Class Member by and through their counsel, and (ii) State Street Bank and Trust Company (the “Settling Defendant” or “SSBT”), by and through its counsel, entered into a Stipulation and Agreement of Settlement (the “Settlement Agreement”) in the above-titled actions (the “Class Actions”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the claims alleged in the Class Actions on the merits and with prejudice (the “Class Settlement”); and

WHEREAS, the Court has reviewed and considered the Settlement Agreement and the accompanying exhibits; and

WHEREAS, the Parties to the Settlement Agreement have consented to the entry of this order; and

WHEREAS, all capitalized terms used in this Order that are not otherwise defined herein have the meanings defined in the Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY ORDERED, this _____ day of _____, 2016 that:

1. The Court has reviewed the Settlement Agreement and preliminarily finds the Class Settlement set forth therein to be fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing described below.

2. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies, for the purposes of the Settlement only, the Settlement Class of: All

custody and trust customers of State Street Bank and Trust Company (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT'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 SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive. 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 are any Settlement Class Members who properly exclude themselves by submitting a valid and timely request for exclusion in accordance with the requirements set forth below and in the Notice.

3. The Court finds and concludes that the prerequisites of class action certification under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedures have been satisfied for the Settlement Class defined herein and for the purposes of the Class Settlement only, in that:

- (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members is impracticable;
- (b) there are questions of law and fact common to the Settlement Class Members;
- (c) the claims of Plaintiffs are typical of the Settlement Class's claims;
- (d) Plaintiffs and Counsel for the Settlement Class have fairly and adequately represented and protected the interests of the Settlement Class;

(e) the questions of law and fact common to Settlement Class Members predominate over any individual questions; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering that the claims of Settlement Class Members in the Class Actions are substantially similar and would, if tried, involve substantially identical proofs and may therefore be efficiently litigated and resolved on an aggregate basis as a class action; the amounts of the claims of many of the Settlement Class Members are too small to justify the expense of individual actions; and it does not appear that there is significant interest among Settlement Class Members in individually controlling the litigation of their claims.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Class Settlement only, Plaintiffs are certified as Class Representatives for the Settlement Class. The law firm of Labaton Sucharow LLP is appointed Lead Counsel for the Settlement Class, the law firm of Thornton Law Firm LLP is appointed Liaison Counsel for the Settlement Class, and the law firm of Lieff Cabraser Heimann & Bernstein LLP is appointed additional Counsel for the Settlement Class.

5. A hearing (the “Final Approval Hearing”) pursuant to Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on _____, 2016, at __:____ __.m. for the following purposes:

(a) to determine whether the proposed Class Settlement is fair, reasonable and adequate, and should be approved by the Court;

(b) to determine whether the proposed Final Order and Judgment (“Judgment”) as provided under the Settlement Agreement should be entered, and to determine

whether the release by the Settlement Class of the Released Class Claims, as set forth in the Settlement Agreement, should be provided to the Released Defendant Parties;

(c) to determine, for purposes of the Class Settlement only, whether the Settlement Class should be finally certified; whether Plaintiffs should be finally certified as Class Representative for the Settlement Class; whether the law firm of Labaton Sucharow LLP should be finally appointed as Lead Counsel for the Settlement Class; whether the law firm of Thornton Law Firm LLP should be finally appointed as Liaison Counsel for the Settlement Class; and whether the law firm of Lief Cabraser Heimann & Bernstein LLP should be finally appointed as additional Counsel for the Settlement Class.

(d) to determine whether the proposed Plan of Allocation for the proceeds of the Class Settlement is fair and reasonable and should be approved by the Court;

(e) to consider Lead Counsel's application, on behalf of ERISA Counsel and Customer Counsel, for an award of attorneys' fees, Litigation Expenses, and Service Awards to Plaintiffs; and

(f) to rule upon such other matters as the Court may deem appropriate.

6. The Court reserves the right to approve the Class Settlement with or without modification and with or without further notice to the Settlement Class of any kind. The Court further reserves the right to enter the Judgment approving the Class Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and/or expenses. The Court may also adjourn the Final Approval Hearing or modify any of the dates herein for good cause shown and without further notice to members of the Settlement Class.

7. The Court approves the form, substance and requirements of the Notice of Pendency of Class Actions, Proposed Settlement, Settlement Hearing, Plan of Allocation, and

any Motion for Attorneys' Fees, Litigation Expenses, and Service Awards (the "Notice"), substantially in the form annexed hereto as Exhibit 1.

8. The Court approves the retention of A.B. Data, Ltd. as the Claims Administrator. The Claims Administrator shall cause the Notice, substantially in the form annexed hereto, to be mailed, by first-class mail, postage prepaid, on or before ten (10) business days after entry of this Preliminary Approval Order ("Notice Date"), to all Settlement Class Members who can be identified with reasonable effort. SSBT, to the extent it has not already done so, shall use its best efforts to obtain and provide to Lead Counsel, or the Claims Administrator, information in electronic searchable form containing the names and addresses of Settlement Class Members no later than five (5) business days after entry of this Preliminary Approval Order.

9. The Court approves the form of the Summary Notice of Pendency of Class Actions, Proposed Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys' Fees, Litigation Expenses, and Service Awards ("Publication Notice"), substantially in the form annexed hereto as Exhibit 2, and directs that Lead Counsel shall cause the Publication Notice to be published in *The Wall Street Journal* and be transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date.

10. Lead Counsel shall, at or before the Final Approval Hearing, file with the Court proof of mailing of the Notice and publication of the Publication Notice.

11. As set forth in the Notice, Settlement Class Members that are Group Trusts shall submit certifications in compliance with the requirements set forth in the Notice to the Claims Administrator postmarked no later than 120 calendar days after the Notice Date. Such deadline may be further extended by Court order or by Lead Counsel in its discretion. Each certification shall be deemed to have been submitted when postmarked (if properly addressed and mailed by

first-class or overnight U.S. mail, postage prepaid) provided such certification is actually received prior to the motion for an order of the Court approving distribution of the Net Class Settlement Fund. Any certification submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice.

12. The form and content of the notice program described herein, and the methods set forth herein of notifying the Settlement Class of the Class Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws and rules, constitute the best notice practicable under the circumstances, and shall constitute due, adequate, and sufficient notice to all persons and entities entitled thereto.

13. Any Settlement Class Member may enter an appearance in the Class Actions, at his, her or its own expense, individually or through counsel of his, her or its own choice. If any Settlement Class Member does not enter an appearance, he, she or it will be represented by Lead Counsel.

14. Settlement Class Members shall be bound by all orders, determinations and judgments in these Class Actions concerning the Class Settlement, whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A putative Settlement Class Member wishing to make such an exclusion request shall mail the request in written form by first-class mail to the address designated in the Notice for such exclusions, such that it is received no later than twenty-one (21) calendar days prior to the Final Approval Hearing. Such request for exclusion must include the following information: (i) the name of the Person that entered into one or more custody or

trust agreements with SSBT and is requesting exclusion; (ii) the Person's address; (iii) the Person's telephone number; (iv) the Person's e-mail address; (v) the approximate date(s) of the agreement(s) referenced in (i) above; (vi) the SSBT entity that was the counterparty to the agreement(s) referenced in (i) above; (vii) a list of all current and former accounts, including both the name and account number of such accounts, that held foreign (non-U.S.) assets and were related to the agreement(s) referenced in (i) above; (viii) a signed statement that the Person wishes to be excluded from the Settlement Class in the Class Actions; and (ix) identification (including by case name, court name, and docket number) of all legal actions and claims (if any) that the Person requesting exclusion has brought against any of the Defendants relating to Indirect FX. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court, provided, however, that a request for exclusion shall not be invalid for failing to include the foregoing (i) - (vii) if the Settling Defendant determines that it has sufficient information to determine that such Person is a Settlement Class Member and provides that information promptly to Lead Counsel.

15. Settlement Class Members requesting exclusion from the Settlement Class shall not be eligible to receive any payment out of the Net Class Settlement Fund, as described in the Settlement Agreement and Notice.

16. The Court will consider any Settlement Class Member's objection to the Class Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees or expenses only if such Settlement Class Member has served by hand or by mail his, her or its written objection and supporting papers, such that they are received on or before twenty-one (21) calendar days before the Final Approval Hearing, upon Lead Counsel: Lawrence A. Sucharow,

Labaton Sucharow LLP, 140 Broadway, New York, NY 10005 (who will immediately copy all Plaintiffs' Counsel); and Defendant's Counsel: William H. Paine, Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, MA 02109 and has filed said objections and supporting papers with the Clerk of the Court, United States District Court for the District of Massachusetts, John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210. Any Settlement Class Member who does not make his, her, or its objection in the manner provided for in the Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Class Settlement, to the Plan of Allocation, or to the request for attorneys' fees and expenses, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given. Attendance at the hearing is not necessary, however, persons wishing to be heard orally in opposition to the approval of the Class Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Class Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Final Approval Hearing. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

17. Pending final determination of whether the Class Settlement should be approved, all proceedings in these Class Actions (other than those necessary to effectuate the Settlement) are stayed and Plaintiffs, all Settlement Class Members, and each of them, and anyone who acts

or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Class Claims against the Released Defendant Parties.

18. As provided in the Settlement Agreement, prior to the Effective Date, Lead Counsel may pay the Claims Administrator the reasonable fees and costs associated with giving notice to the Settlement Class and the administration of the Class Settlement out of the Class Settlement Fund without further approval from Defendants and without further order of the Court.

19. All papers in support of the Class Settlement, Plan of Allocation, and Lead Counsel's request, on behalf of ERISA Counsel and Customer Counsel, for an award of attorneys' fees and expenses shall be filed with the Court and served on or before thirty-five (35) calendar days prior to the date set herein for the Final Approval Hearing. If reply papers are necessary, they are to be filed with the Court and served no later than seven (7) calendar days prior to the Final Approval Hearing.

20. The passage of title and ownership of the Class Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Settlement Agreement is approved. No person who is not a Settlement Class Member or Plaintiffs' Counsel shall have any right to any portion of, or to any distribution of, the Net Class Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Settlement Agreement.

21. All funds held in escrow shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be disbursed pursuant to the Settlement Agreement and/or further order of the Court.

22. Except as otherwise provided in the Settlement Agreement, neither Defendants nor their counsel shall have any responsibility for the Plan of Allocation or any application for

attorney's fees or expenses submitted by Lead Counsel, on behalf of ERISA Counsel and Customer Counsel, or Plaintiffs, and such matters shall be considered separately from the fairness, reasonableness and adequacy of the Class Settlement.

23. If the Class Settlement fails to become effective as defined in the Settlement Agreement or is terminated, then, in any such event, the Settlement Agreement, including any amendment(s) thereof, except as expressly provided in the Settlement Agreement, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Parties, and the Parties shall be deemed to have reverted to their respective litigation positions in the Class Actions as of June 29, 2015.

24. The Court retains exclusive jurisdiction over the Class Actions to consider all further matters arising out of or connected with the Class Settlement.

Dated: _____, 2016

HON. MARK L. WOLF
UNITED STATES DISTRICT JUDGE

Exhibit A-1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

| | | | |
|-------|---|---|---------------------|
| <hr/> | ARKANSAS TEACHER RETIREMENT SYSTEM, et al. v. STATE STREET BANK AND TRUST COMPANY |) | No. 11-cv-10230 MLW |
| | |) | |
| | ARNOLD HENRIQUEZ, et al. v. STATE STREET BANK AND TRUST COMPANY, et al. |) | No. 11-cv-12049 MLW |
| | |) | |
| | THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, et al. v. STATE STREET BANK AND TRUST COMPANY |) | No. 12-cv-11698 MLW |
| | |) | |
| <hr/> | |) | |

NOTICE OF PENDENCY OF CLASS ACTIONS, PROPOSED CLASS SETTLEMENT, SETTLEMENT HEARING, PLAN OF ALLOCATION, AND ANY MOTION FOR ATTORNEYS’ FEES, LITIGATION EXPENSES, AND SERVICE AWARDS

A U.S. Federal Court authorized this Notice. This is not a solicitation from a lawyer.

You Are Receiving this Notice Because Available Information Indicates that You Are a Member of the Settlement Class Defined Below. If this Is Incorrect, Please Contact the Claims Administrator and Lead Counsel Immediately.

This notice (“Notice”) is being sent to advise you of the pendency of the above-captioned class action lawsuits (collectively, the “Class Actions”) and the proposed settlement of the Class Actions for \$300,000,000 (the “Class Settlement Amount”) on the terms discussed below (the “Class Settlement”).¹ The Class Settlement resolves claims arising from the alleged unfair and deceptive practice of State Street Bank and Trust Company (“SSBT”) of charging custody and trust customers of SSBT excessive rates and spreads in connection with certain foreign exchange transactions known as “Indirect FX Transactions”² during the period from January 2, 1998 through December 31, 2009, inclusive (the “Class Period”), in violation of SSBT’s statutory, contractual, and fiduciary obligations. The Class Actions sought to recover losses on behalf of SSBT’s custodial clients based on this alleged unfair and deceptive practice. If approved, the Class Settlement will resolve all claims asserted in the Class Actions.

¹ All capitalized terms used in this Notice that are not otherwise defined herein have the meanings provided in the Stipulation and Agreement of Settlement, dated as of July 26, 2016 (the “Settlement Agreement”). The Settlement Agreement is available on the website for this Settlement, www.StateStreetIndirectFXClassSettlement.com.

² “Indirect FX Transactions/Trading” means Foreign exchange transactions executed with SSBT 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 whether the rate at which the transaction was executed differed from the rates at which other transactions submitted using Indirect Methods were executed. Settlement Agreement ¶ 1(ff).

The Class Settlement is entered into by and among (i) plaintiffs Arkansas Teacher Retirement System (“ARTRS”), Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employees Savings and Profit Sharing Plan, and James Pehoushek-Stangel (collectively, “Plaintiffs”), on behalf of themselves and each Settlement Class Member, by and through their counsel, and (ii) State Street Bank and Trust Company (the “Settling Defendant” or “SSBT”). Plaintiffs and SSBT are referred to collectively herein as the “Parties.”

The Honorable Mark L. Wolf of the United States District Court for the District of Massachusetts (“Court”) is presiding over the Class Actions. Judge Wolf has provisionally certified the proposed Settlement Class (as defined below) for purposes of settlement only, has directed that this Notice be mailed to members of the Settlement Class, and has scheduled a Final Approval Hearing (“Final Approval Hearing” or “Settlement Hearing”) at which the Court will consider Plaintiffs’ motion for final approval of the Class Settlement and approval of the proposed plan for allocating the settlement proceeds to the Settlement Class (“Plan of Allocation”), and Lead Counsel’s motion, on behalf of ERISA Counsel and Customer Counsel, for an award of attorneys’ fees, payment of Litigation Expenses, and payment of any Service Awards for Plaintiffs. **The Final Approval Hearing will be held on _____, 2016, at _____m. in Courtroom 10 of the John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210.** The Class Settlement will become effective once it reaches its “Effective Date,” which is after the opportunity to appeal the Court’s Judgment has expired or, if there are any appeals, approval of the Class Settlement is upheld; after the Court approves the proposed Plan of Allocation and the order has become Final; and certain other conditions are met.

Additional information regarding the Class Settlement and this Notice may be obtained by contacting the Claims Administrator: *State Street Indirect FX Trading Class Action*, c/o A.B. Data, Ltd., P.O. Box 173000, Milwaukee, WI 53217, 877-240-3540, info@StateStreetIndirectFXClassSettlement.com, www.StateStreetIndirectFXClassSettlement.com; or Lead Counsel: Labaton Sucharow LLP, (888) 219-6877, www.labaton.com, settlementquestions@labaton.com.

DO NOT CALL THE COURT WITH QUESTIONS ABOUT THE CLASS SETTLEMENT.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.

| YOUR LEGAL RIGHTS AND OPTIONS UNDER THE CLASS SETTLEMENT | |
|--|---|
| <p>YOU DO NOT NEED TO TAKE ANY ACTION TO PARTICIPATE IN THE CLASS SETTLEMENT AND RECEIVE A PAYMENT</p> <p>(If you represent a Group Trust,³ see page ___ below.)</p> | <p>If the Class Settlement is approved and you are a member of the Settlement Class, you do not need to take any action to receive a payment. You will be bound by the settlement, unless you take steps to exclude yourself as explained below, and you cannot bring or be part of any other lawsuit or arbitration against Defendants or any of the other Released Defendant Parties based on any Released Class Claim.</p> <p>Your portion of the Net Class Settlement Fund will be calculated</p> |

³ “Group Trusts” are group trusts that are exempt from tax pursuant to Internal Revenue Service Revenue Ruling 81-100, as amended, that were custody or trust customers of SSBT during any part of the Class Period. See Settlement Agreement ¶ 1(bb).

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| | <p>as part of the administration of the Class Settlement. An explanation of the manner in which payments to Settlement Class Members will be determined is set forth in the Plan of Allocation, below. However, Group Trusts, which may include plans or assets governed by ERISA, need to provide certain information so that their recovery can be properly determined. SSBT has agreed to undertake reasonable efforts to provide the information necessary to determine each Settlement Class Member’s portion of the Net Class Settlement Fund. See the Plan of Allocation in the answer to Question 7 below for important information.</p> |
| <p>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION (WHICH MUST BE RECEIVED NO LATER THAN _____, 2016)</p> | <p>If you do not wish to be a member of the Settlement Class, you <i>must</i> exclude yourself (as described below in Question 10). If you exclude yourself, you <i>will not</i> receive any payment from the Class Settlement. You cannot bring or be part of any other lawsuit or arbitration against Defendants or any of the other Released Defendant Parties based on any Released Class Claim unless you exclude yourself from the Settlement Class.</p> |
| <p>OBJECT TO THE CLASS SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION (WHICH MUST BE RECEIVED NO LATER THAN _____, 2016)</p> | <p>If you wish to object to any part of the Class Settlement, the Plan of Allocation, or the requests for attorneys’ fees, Litigation Expenses, and/or Service Awards, and do not exclude yourself from the Settlement Class, you can write to the Court and counsel and explain what you do not agree with.</p> |
| <p>ATTEND THE FINAL APPROVAL HEARING (_____, 2016 AT _____ .m.)</p> | <p>If you have submitted a written objection to the Court and counsel and notice to appear, as explained below, you may (but do not have to) attend the hearing and speak to the Court about your objection.</p> |

Please note: The Court has the authority to change any of the above deadlines, for good cause shown.

SUMMARY OF THE CLASS SETTLEMENT

As described in more detail below, and in the complaints filed with the Court, the Class Actions allege that Plaintiffs (or the plans they represent) and/or their investment managers entered into agreements authorizing Defendants to engage in Indirect FX Transactions with their custodial accounts under certain circumstances. Plaintiffs alleged that SSBT priced Indirect FX Transactions in a manner advantageous to Defendants and disadvantageous to Plaintiffs, near or outside the high and low of the daily range of interbank rates, contrary to SSBT’s contractual obligations and representations and Defendants’ fiduciary and statutory responsibilities. Copies of the operative complaints in the Class Actions are available at www.StateStreetIndirectFXClassSettlement.com.

Pursuant to the Settlement Agreement, a Class Settlement Fund consisting of \$300 million in cash, plus any accrued interest, has been established, in exchange for the Settlement Class’s release of the Released Class Claims (defined below). Payment by or on behalf of SSBT of the \$300 million Class Settlement Amount, and

the allocations discussed below in the Plan of Allocation, will also satisfy conditions in two separate settlements with federal government agencies.⁴ SSBT anticipates reaching a settlement with the U.S. Securities and Exchange Commission (“SEC”) concerning Indirect FX that relates to Settlement Class Members that are Registered Investment Companies (the “SEC Settlement”).⁵ SSBT has also reached a settlement with the U.S. Department of Labor (“DOL”) concerning Indirect FX that relates to Settlement Class Members that are ERISA Plans (the “DOL Settlement”).⁶

Based on information provided by SSBT, the average gross recovery for a class member from the Class Settlement is approximately \$200,000 before the deduction of Court-approved fees and expenses. A Settlement Class Member’s actual “Recognized Claim” will be calculated in accordance with the Plan of Allocation, explained below, and will depend on, among other things, the Settlement Class Member’s volume of Indirect FX Transactions, and whether or not the Settlement Class Member is an ERISA Plan, a Group Trust, a Registered Investment Company, or none of these. A Settlement Class Member’s payment will be a portion of the Net Class Settlement Fund, which consists of the Class Settlement Fund, less fees and expenses associated with providing notice to the Settlement Class and administering the Class Settlement (“Notice and Administration Expenses”), Taxes and Tax Expenses, Court-approved attorneys’ fees, Litigation Expenses, and any Service Awards to Plaintiffs for the effort and time spent by them in connection with the prosecution of the Class Actions. (See Questions 6 and 7 below for details about the Plan of Allocation).

The Settlement Class is defined as follows:

All custody and trust customers of SSBT (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT’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 SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive.

Please Note: There are exceptions to being included in the Settlement Class. A description of those Persons excluded by definition from the Settlement Class is provided below in Question 5.

As with any litigation, the Parties face an uncertain outcome if the Class Actions do not settle and litigation continues. Absent the Class Settlement, orders and appeals on class certification, summary judgment and a trial could result in a judgment or verdict greater or less than the recovery under the Class Settlement, or no recovery at all. Throughout the Class Actions, the Plaintiffs and Defendants have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the Plaintiffs were to prevail at trial. Defendants, among other things: (1) have denied the material allegations of the complaints; (2) have

⁴ SSBT has separately reached a settlement with the U.S. Department of Justice (“DOJ”) concerning Indirect FX (the “DOJ Settlement”). The DOJ Settlement requires SSBT to pay money to the federal government.

⁵ “Registered Investment Company(ies)” means a mutual fund, closed-end fund, unit investment trust or other entity that is registered with the SEC as an investment company under the Investment Company Act. Settlement Agreement ¶ 1(w).

⁶ “ERISA Plans” means the employee benefit plans as defined in 29 U.S.C. § 1002(3) (also referred to as Section 3(3) of ERISA), that are subject to Part 4 of Subtitle B of Title I of ERISA (including master trusts with respect to multiple such plans within the meaning of Department of Labor Regulation § 2520.103-1(e)), and that were custody or trust customers of SSBT during any part of the Class Period. Settlement Agreement ¶ 1(w).

denied any wrongdoing or liability whatsoever; (3) have contested the propriety of class certification; (4) believe that they acted at all times reasonably and prudently, in full compliance with their contractual obligations, and in accordance with applicable law; and (5) would assert certain other defenses if this Class Settlement is not consummated. SSBT is entering into the Class Settlement solely to avoid the cost, disruption, and uncertainty of continued litigation. The Parties have taken into account the uncertainty and risks inherent in these litigations, particularly their complex natures, and have concluded that it is desirable that the Class Actions be fully and finally settled on the terms and conditions set forth in the Class Settlement.

Lead Counsel, on behalf of ERISA Counsel and Customer Counsel, will apply to the Court for an order awarding attorneys' fees in an amount not to exceed \$74,541,250⁷ and payment of Litigation Expenses in an amount not to exceed \$1,750,000.00, plus interest earned on these amounts. Plaintiffs will share in the allocation of the money paid to members of the Settlement Class on the same basis and to the same extent as all other members of the Settlement Class, except that, in addition thereto, Plaintiffs may apply to the Court for Service Awards of up to \$85,000.00 in the aggregate. Any Service Awards granted to Plaintiffs by the Court will be payable from the Class Settlement Fund, and will compensate Plaintiffs for their effort and time spent in connection with the prosecution of the Class Actions.

BASIC INFORMATION

1. Why did I receive this Notice?

You received this Notice because records provided by SSBT indicate that during the Class Period you were a domestic custody customer of SSBT that executed one or more Indirect FX Transactions during the Class Period. The Court has directed that this Notice be sent to you. If the Court approves the Class Settlement, and it becomes effective, the Released Defendant Parties and Released Plaintiff Parties will be released from all Released Class Claims and Released Prosecution Claims, respectively, as explained below. In exchange, the Net Class Settlement Fund will be distributed to Settlement Class Members according to the Court-approved Plan of Allocation.

This Notice explains the Class Actions, the Class Settlement, your legal rights, what benefits are available, who is eligible for them, and how you will receive your portion of the Net Class Settlement Fund. The Final Approval Hearing will be held on _____, 2016 at _____.m., before the Hon. Mark L. Wolf in the United States District Court for the District of Massachusetts, John Joseph Moakley United States Courthouse, Courtroom 10, 1 Courthouse Way, Boston, Massachusetts 02210, to determine:

- whether the Class Settlement should be approved as fair, reasonable, and adequate;
- whether the complaints should be dismissed with prejudice pursuant to the terms of the Class Settlement;
- whether the proposed Plan of Allocation for the proceeds of the Class Settlement should be approved; and

⁷ No more than \$10,900,000.00 of the attorneys' fees will be paid out of the allocation of the Class Settlement Fund to class members that are ERISA Plans or eligible Group Trusts, as explained below in the Plan of Allocation.

- whether the applications for attorneys' fees, payment of Litigation Expenses, and payment of Service Awards to Plaintiffs should be approved.

The issuance of this Notice is not an expression of the Court's opinion of the merits of any claim in the Class Actions, and the Court has not decided whether to approve the Class Settlement. If the Court approves the Class Settlement, payment to Settlement Class Members will be made after all related appeals, if any, are favorably resolved and the regulatory settlements have become final. Please be patient.

2. What are the Class Actions about? What has happened so far?

The Class Actions were commenced in 2011 and 2012 by the filing of three class action complaints. In the Class Actions, Plaintiffs allege, among other things, that Defendants charged custody and trust customers of SSBT excessive rates and spreads in connection with Indirect FX Transactions between January 2, 1998 and December 31, 2009. Plaintiffs allege that by employing this unfair and deceptive practice, Defendants earned higher spreads on Indirect FX Transactions than they should have. Further, Plaintiffs allege that Defendants failed to disclose this pricing and that this nondisclosure constituted a breach of an alleged fiduciary duty, a violation of various state unfair and deceptive trade practice statutes, and, with respect to the ERISA Funds, violations of ERISA, 29 U.S.C. § 1106 for engaging in self-interested prohibited transactions, violations of ERISA, 29 U.S.C. § 1104 for breaching duties of prudence and loyalty, and violations of ERISA, and causing the plans to engage in party in interest prohibited transactions in violation of ERISA, 29 U.S.C. § 1105 for breaches of co-fiduciary obligations.

Defendants have denied Plaintiffs' allegations. If the Class Actions were to continue, Defendants would raise numerous defenses to liability, including without limitation:

- Defendants acted in accordance with the custody and trust and Indirect FX agreements and did not breach them.
- Defendants either did not owe fiduciary duties or did not breach fiduciary duties owed to certain Settlement Class Members based on state law and the plain language of the agreements that governed Defendants' custodial obligations.
- Defendants made no actionable misrepresentations or omissions, and did not violate any state unfair and deceptive trade practices statutes.
- All of the FX transactions executed with ERISA customers satisfy statutory or regulatory exemptions for FX transactions.
- Plaintiffs and the Settlement Class knew, or should have known, that Defendants were engaged in the Indirect FX pricing practice alleged in the Complaints.
- Plaintiffs and the Settlement Class were not damaged by Defendants' conduct and received the benefit of the bargain for the services that were provided.

On June 3, 2011, Defendants State Street Corporation, SSBT, and SSGM LLC moved to dismiss the amended class action complaint in the ARTRS Action. The motion to dismiss was fully briefed as of February 28, 2012. On April 9, 2012, SSBT and SSGM LLC moved to dismiss the amended class action complaint in the Henriquez Action.

On May 8, 2012, the Court heard oral argument on Defendants' motion to dismiss the ARTRS Action. By order issued from the bench dated the same day, the Court denied the motion in its entirety with regard to the claims against SSBT, but granted the motion with respect to the claims against State Street Corporation. By agreement of the parties, the claims against SSGM LLC were dismissed without prejudice.

On November 16, 2012, the Parties in the Class Actions filed a Stipulation, Joint Motion, and Proposed Order for the Production and Exchange of Confidential Information, which the Court entered on November 20, 2012. Pursuant to the order, the Class Actions were consolidated for pre-trial purposes. Additionally, the order provided that the Parties could engage in formal document discovery until December 1, 2013. The Class Actions were stayed in all other respects until December 1, 2013 and certain motions were withdrawn. At the Parties' request, the stay of proceedings, other than discovery, was subsequently extended by orders of the Court, while the Parties pursued mediation.

The Class Settlement is the product of protracted, arm's-length negotiations between Plaintiffs' Counsel and Defendants' Counsel, facilitated by a nationally recognized mediator with substantial experience mediating complex litigations of this type. Between October 2012 and June 2015, the Parties engaged in sixteen (16) in-person mediation sessions in Boston, New York City, and Washington, D.C. In addition, the Parties met without the mediator and had numerous arm's-length discussions among themselves.

Pursuant to agreements concerning the exchange of formal document discovery, informal material to facilitate the mediation process, and managing the Class Actions, the Parties exchanged more than nine million pages of relevant documents. SSBT also provided a significant amount of data and other information relevant to liability, class certification and damages issues, and Plaintiffs and SSBT each made multiple, detailed presentations (including a presentation by an accounting expert) during the mediation process concerning such issues.

On June 30, 2015, Plaintiffs and SSBT reached an agreement-in-principle to settle the Class Actions, which was memorialized in a term sheet on September 11, 2015, and the Settlement Agreement, dated July 26, 2016.

3. Why is this case a class action?

In a class action, one or more individuals or entities, referred to as "Plaintiffs," sue on behalf of others who have similar claims. All of the Persons on whose behalf Plaintiffs in the Class Actions are suing are members of the "class" referred to in this Notice, and are "Settlement Class Members" or "members of the Settlement Class." Bringing a case as a class action allows the adjudication of many similar claims that might be economically too small to bring individually. One court resolves the issues for all class members, except for those who exclude themselves from the class. The Court will decide whether to finally certify the Settlement Class at the Final Approval Hearing.

4. How do I know whether I am part of the Settlement Class?

The Court has provisionally certified the following Settlement Class:

All custody and trust customers of SSBT (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT'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 SSBT and/or its

subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive.

The “Settlement Class” does not include: 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. For the avoidance of doubt, the Parties have agreed that this definition of the “Settlement Class” is intended to supersede the class definitions in the complaints in the Class Actions.

The “Settlement Class” also does not include any Person who submits a timely and valid request for exclusion meeting the requirements in this Notice (see Question 10 below).

If you are not sure whether you are included, you can ask for assistance. You can call 877-240-3540 or visit www.StateStreetIndirectFXClassSettlement.com for more information.

5. Why is there a Class Settlement?

The Court did not finally decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. Plaintiffs and Plaintiffs’ Counsel believe that the claims asserted in the Class Actions have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue the claims through trial and appeals, as well as the difficulties in establishing liability. They have considered the uncertain outcome and the risk of any litigation, especially in complex lawsuits like this one, as well as the unique risks here. Defendants have raised a number of arguments and defenses (which they would raise at summary judgment and trial) that could limit or result in the dismissal of the claims and a reduction in any recovery. In the absence of a Settlement, the Parties would present factual and expert testimony on such issues, and there is considerable risk that the Court or jury would resolve the inevitable “battle of the experts” against Plaintiffs and the Settlement Class.

As stated above, the Class Settlement is the product of extensive arm’s-length negotiations between Plaintiffs’ Counsel and Defendants’ Counsel, all of whom are very experienced with respect to complex litigation of this type. The Class Settlement provides substantial benefits now as compared to the risk that a similar or smaller recovery would be achieved after trial and appeals, years in the future, or that no recovery would be achieved at all. In light of the amount of the Class Settlement and the immediate recovery to the Settlement Class, Plaintiffs and Plaintiffs’ Counsel believe that the proposed Class Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class.

6. What does the Class Settlement provide?

In exchange for the Class Settlement and the release of the Released Class Claims (defined below) against the Released Defendant Parties (defined below), SSBT agreed to create a \$300,000,000 cash fund. The \$300,000,000, plus any interest that accrues on this amount, will be distributed to the Settlement Class after costs, expenses and fees are deducted, as described herein. The Class Settlement provides for cash payments to Settlement Class Members who do not exclude themselves from the Settlement Class, as explained in the Plan of Allocation in Question __ below.

The description of the Class Settlement in this Notice is only a summary. The complete terms are set forth in the Settlement Agreement (including its exhibits), which may be obtained at the Class Settlement website, www.StateStreetIndirectFXClassSettlement.com, or Lead Counsel's website, www.labaton.com.

7. What am I giving up to get a payment and by staying in the Settlement Class?

Unless you exclude yourself, you will stay in the Settlement Class, which means that upon the "Effective Date" of the Class Settlement, you will release all "Released Class Claims" (as defined below) against the "Released Defendant Parties" (as defined below) and be subject to a covenant not to sue and a permanent injunction against prosecuting Released Class Claims against Released Defendant Parties.

"Released Class Claims" means any and all claims, demands, losses, costs, interest, penalties, fees, attorneys' fees, expenses, rights, rights of recovery, causes of action, duties, obligations, judgments, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, including Unknown Claims, whether known or unknown, direct, representative, class, individual or indirect, asserted or unasserted, matured or unmatured, accrued or unaccrued, foreseen or unforeseen, disclosed or undisclosed, contingent or fixed or vested, accrued or not accrued, at law or equity, whether arising under federal, state, local, foreign, statutory, common, administrative or any other law, statute, rule or regulation that any Releasing Plaintiff: (i) asserted in the Class Actions; (ii) could have asserted in the Class Actions or any other action or in any forum, that arise from or out of, relate to, or are in connection with the claims, allegations, transactions, alleged or actual prohibited transactions or breaches of duty (including fiduciary duty), facts, events, acts, disclosures, matters or occurrences, statements, representations or omissions or failures to act involved, described, set forth, or referred to in the complaints filed in the Class Actions or that arise from or out of, relate to, or are in connection with Indirect FX Methods, Indirect FX Transactions/Trading, StreetFX Methods, StreetFX Transactions, or Rate Comparisons; and (iii) asserted or could assert that arise from or out of, relate to, or are in connection with the defense or settlement of the Class Actions, except for claims relating to enforcement of the Settlement.

"Released Defendant Parties" means SSBT and Defendants; their past, present and future parents, subsidiaries, divisions, and affiliates; the respective past and present officers, directors, trustees, employees, agents, trustees, managers, servants, accountants, auditors, underwriters, financial and investment advisors, consultants, representatives, insurers, co-insurers and reinsurers of each of them; and the heirs, successors and assigns of the foregoing.

"Unknown Claims" means any and all Released Class Claims, which one or more Releasing Plaintiffs does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any Released Prosecution Claims that SSBT or any other Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if known to him, her, or it might have affected his, her, or its decision(s) with respect to the Class Settlement. With respect to any and all Released Class Claims and Released Prosecution Claims, the Parties stipulate and agree that, upon the Effective Date, Plaintiffs and SSBT shall expressly, and each Releasing Plaintiff and SSBT shall be deemed to have, and by operation of the Judgment or any Alternative 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, or 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.

Releasing Plaintiffs, SSBT, or the other Released Defendant Parties 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 Class Claims and the Released Prosecution Claims, but Plaintiffs and SSBT shall expressly, fully, finally, and forever settle and release, and each other Releasing Plaintiff and each other Released Defendant Party shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment or any Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Class Claims and Released Prosecution Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The Parties acknowledge, and each other Releasing Plaintiff and Released Defendant Party by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Class Claims and Released Prosecution Claims was separately bargained for and was a key and material element of the Class Settlement.

The “Effective Date” will occur when, among other things, an Order by the Court approving the Class Settlement becomes Final and is not subject to appeal and when an Order by the Court approving the proposed Plan of Allocation becomes Final and is not subject to appeal, as set out more fully in the Settlement Agreement on file with the Court and available at www.StateStreetIndirectFXClassSettlement.com or www.labaton.com.

If you remain a member of the Settlement Class, all of the Court’s orders about the Class Settlement in the Class Actions will apply to you and legally bind you.

7. What will be my share of the Net Class Settlement Fund? How can I get my portion of the recovery?

At the Final Approval Hearing, Lead Counsel will request the Court approve the Plan of Allocation set forth below. The Plan of Allocation describes the manner by which the Net Class Settlement Fund will be allocated among Settlement Class Members. Assuming you do not exclude yourself from the Settlement Class pursuant to Question ___ below, you do not need to take any further action to receive your portion of the recovery. However, as explained on page ___ below, if you represent a Group Trust, you must provide a certification in order to receive a portion of the ERISA Settlement Allocation, rather than a portion of the balance of the Net Class Settlement Fund.

You are not responsible for calculating the amount you may be entitled to receive under the Class Settlement. This calculation will be done by the Claims Administrator as part of the implementation of the Class Settlement, and will be based on reasonably available information obtained from SSBT. You will be notified of your calculated recovery after the Class Settlement is approved and prior to Lead Counsel’s motion to the Court requesting approval of a distribution of the Class Settlement proceeds.

PLAN OF ALLOCATION

This Plan of Allocation describes steps that the Claims Administrator will take in order to allocate funds in connection with the Class Settlement, including determining distribution amounts. The Court may approve this Plan of Allocation or modify it without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the settlement website at: www.StateStreetIndirectFXClassSettlement.com and at www.labaton.com. Distributions in the manner set forth herein will be deemed conclusive against all

claimants. Each Settlement Class Member is deemed to have submitted to the jurisdiction of the United States District Court for the District of Massachusetts with respect to his, her, or its recovery from the Class Settlement.

Distributions to Authorized Claimants will be based on Recognized Claims (defined below). It is important to understand that the Recognized Claims under this Plan of Allocation are not provable damages but rather are amounts derived from a fair and reasonable methodology (described below) to evaluate each Settlement Class Member's relative stake in the Class Settlement.

The defined terms used herein relate to this Plan of Allocation, and not necessarily to other agreements executed by SSBT or its affiliates with third parties, including governmental agencies, in connection with the Class Settlement. Capitalized terms that are not otherwise defined herein have the same meaning as set forth in the Settlement Agreement.

A. THE ALLOCATION OF SETTLEMENT PROCEEDS

The Net Class Settlement Fund, which shall consist of Three Hundred Million U.S. Dollars (\$300,000,000), plus any accrued interest, minus all costs and expenses incurred with respect to the fund, including Taxes and Tax Expenses, Notice and Administration Expenses, attorneys' fees, Litigation Expenses, and Service Awards paid from the Class Settlement Fund with the permission of the Court, will be distributed to eligible Settlement Class Members.

After approval by the Court of the Class Settlement, the Class Settlement Fund shall be allocated as set forth below for the benefit of Settlement Class Members.

The ERISA Settlement Allocation (which shall be the source of distributions to ERISA Plans and certain Group Trusts, as set forth below) shall be at least Sixty Million Dollars (\$60,000,000) of the Class Settlement Fund (twenty percent of the Class Settlement Fund), plus twenty percent (20%) of any interest accrued on the Class Settlement Fund, minus twenty percent (20%) of any Taxes and Tax Expenses, Notice and Administration Expenses, Service Awards, and Litigation Expenses, and minus attorneys' fees, if awarded by the Court, in an amount not to exceed Ten Million Nine Hundred Thousand Dollars (\$10,900,000).⁸ The ERISA Settlement Allocation was negotiated directly between Customer Counsel, ERISA Counsel, and representatives of the DOL and, in light of the fiduciary and other claims available under ERISA laws, provides a premium per dollar of Indirect FX Trading Volume for ERISA Plans and eligible Group Trusts in comparison to the allocations to other Settlement Class Members.

The balance of the Class Settlement Fund will be allocated in proportion to the Indirect FX Trading Volume of class members that are not ERISA Plans or eligible Group Trusts (as explained below), specifically to class members that are Registered Investment Companies ("RICs") and class members that are non-ERISA public pension funds, private entities, and other customers ("Public and Other").

After allocation of the ERISA Settlement Allocation, based on information supplied by SSBT, the "RIC Settlement Allocation" will be approximately \$142,000,000, on a gross basis before the addition of a proportional amount of any accrued interest and the deduction of proportional attorneys' fees, Litigation Expenses, Service Awards, Notice and Administration Expenses, Taxes and Tax Expenses, and the "Public and

⁸ If the Settlement Class seeks and/or the Court awards attorneys' fees at a rate which would, if applied to the \$60,000,000 ERISA Settlement Allocation, result in a fee of less than \$10,900,000, then such lower rate and resulting fee at that rate shall apply to the ERISA Settlement Allocation.

Other Settlement Allocation” will be approximately \$98,000,000, on a gross basis before interest and the deductions above. These allocations will be adjusted to the extent Indirect FX Trading Volume of Group Trusts is applied to the ERISA Settlement Allocation, as described below.

The Parties have relied on Indirect FX Trading Volume information provided by State Street to develop this Plan of Allocation. The ERISA Settlement Allocation and payment of the Registered Investment Company Minimum Distribution are essential conditions of the Class Settlement, which may be terminated by the Settling Defendant if the minimum allocations set forth in this Plan are not made. The amount of the ERISA Settlement Allocation has been set based on the Indirect FX Trading Volume information provided, including information concerning the total amount of Indirect FX Trading Volume executed during the Class Period by ERISA Plans and Group Trusts. As part of the settlement administration process described below, the Claims Administrator will request information from Group Trusts concerning their ERISA Volume (explained below) during the Class Period.

In light of the fact that the amount of ERISA assets within Group Trusts is currently undetermined, the Parties, with input from the DOL, have agreed that the Plan of Allocation will be modified in the event that the total amount of Group Trusts’ ERISA Volume is in excess of 2/3 of the total amount of Group Trusts’ Indirect FX Trading Volume, as reported by State Street on July 25, 2016. In that event, the Claims Administrator will use the Indirect FX Trading Volume equal to such excess volume to calculate the net payment amount that would be due with respect to such volume if paid from the Public and Other Settlement Allocation, and will transfer half of that amount to the ERISA Settlement Allocation from each of the RIC Settlement Allocation and the Public and Other Settlement Allocation. (Accordingly, no such modification will be made if actual Group Trusts’ ERISA Volume is 2/3 or less of the reported Group Trusts’ Indirect FX Trading Volume.)

In the event that the actual total percentage of Indirect FX Trading Volume executed by ERISA Plans and Group Trust exceeds 15.25% of the overall Indirect FX Trading Volume for the Settlement as reported on July 25, 2016, the Claims Administrator will provide notice of the total such percentage to Plaintiffs’ Counsel, State Street, and the DOL, and Plaintiffs’ Counsel may apply to the Court for modification of this Plan of Allocation, without further notice to the Settlement Class. If the DOL wishes to be heard by the Court on a modification of the Plan of Allocation for this reason, regardless of whether Plaintiffs’ Counsel seeks modification, neither State Street nor Plaintiffs’ Counsel will object to the DOL’s standing to do so.

B. ALLOCATION AMONG SETTLEMENT CLASS MEMBERS

For each Settlement Class Member, the Claims Administrator shall determine that Settlement Class Member’s Indirect FX Trading Volume(s) (in U.S. Dollars) during the Class Period, calculate that Settlement Class Member’s Recognized Claim, and use those calculations to distribute the Settlement Allocations as set forth herein.

To facilitate this procedure, SSBT has provided the Claims Administrator with: (i) the total Indirect FX Trading Volume (in U.S. Dollars) for each Settlement Class Member during the Class Period; (ii) information concerning whether each Settlement Class Member was an ERISA Plan during the Class Period; (iii) information concerning whether each Settlement Class Member was a Registered Investment Company during the Class Period; and (iv) information concerning whether each Settlement Class Member was a group trust that is exempt from tax pursuant to Internal Revenue Service Revenue Ruling 81-100 (“Group Trust”) during the Class Period.

1. Determination of Indirect FX Trading Volumes

The Claims Administrator shall divide each Settlement Class Member's total Indirect FX Trading Volume (in U.S. Dollars) during the Class Period into three parts: (i) Registered Investment Company Indirect FX Trading Volume (in U.S. Dollars) during the Class Period ("RIC Volume"); (ii) ERISA Plan Indirect FX Trading Volume (in U.S. Dollars) during the Class Period ("ERISA Volume"); and (iii) their remaining Indirect FX Trading Volume (in U.S. Dollars) during the Class Period ("Public and Other Volume"). The division shall be determined as follows.

a) Registered Investment Company Settlement Class Members

For each Settlement Class Member that, based on the records supplied by SSBT, was a Registered Investment Company during the Class Period, the RIC Volume shall equal that Settlement Class Member's total Indirect FX Trading Volume during the Class Period. The Settlement Class Member's ERISA Volume and Public and Other Volume shall be zero.

b) ERISA Plan Settlement Class Members

For each Settlement Class Member that, based on the records supplied by SSBT, was solely an ERISA Plan (not including Group Trusts) during the Class Period, the ERISA Volume shall equal that Settlement Class Member's total Indirect FX Trading Volume during the Class Period. The Settlement Class Member's RIC Volume and Public and Other Volume shall be zero.

c) Group Trust Settlement Class Members

SSBT has notified Plaintiffs' Counsel that fifty-five (55) Settlement Class Members represent Group Trusts. For each such Settlement Class Member identified as a Group Trust, ***a letter concerning the Settlement Class Member's identification as a Group Trust accompanies this Notice.*** The Indirect FX Trading Volume during the Class Period (in U.S. Dollars) for Settlement Class Members that are Group Trusts will be categorized pursuant to the following requirements in this subsection.

Each Group Trust shall provide the Claims Administrator with a certification that reports the average proportion of the Group Trust's SSBT custodied assets that were held by an ERISA Plan or Plans during the Class Period and/or the average volume of Indirect FX Trades made by the ERISA Plan(s) during the Class Period, and identifies by name each ERISA Plan within the Group Trust. If a Group Trust does not have the foregoing information for each year of the Class Period, but has a reasonable belief that ERISA assets were held by the Group Trust during those years, the years for which data is available should be reported and the results will be averaged by applying the average proportion of the years with known ERISA assets and/or Indirect FX Trading Volume to the years with unknown ERISA assets and/or Indirect FX Trading Volume.

The certification must be signed by a plan fiduciary or administrator and state that he, she, or it certifies that the information contained within the certification is accurate based on reasonably available information. The certification must be mailed or delivered so that it is **postmarked or received no later than _____, 2016**, to:

State Street Indirect FX Trading Class Action
Claims Administrator
c/o A.B. Data, Ltd.
P.O. Box 173000
Milwaukee, WI 53217

Upon request from the Claims Administrator, a Group Trust must promptly provide sufficient information to explain and confirm the certification in order to remain eligible for a share of the ERISA Settlement Allocation as set forth herein.

Using the information provided through the certification process, a Group Trust's ERISA Volume shall 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 that were held by the ERISA Plan(s) in a particular Group Trust. Any Indirect FX Trading Volume of a Group Trust that is not categorized by the Claims Administrator as ERISA Volume shall be categorized as Public and Other Volume. In all instances, the RIC Volume of a Settlement Class Member that is a Group Trust shall be zero.

If a Group Trust does not provide a certification by _____, 2016, it shall be treated for purposes of an allocation as if it held no ERISA Plan assets and it shall not be entitled to a recovery from the ERISA Settlement Allocation. Instead, its Public and Other Volume shall equal that Settlement Class Member's total Indirect FX Trading Volume during the Class Period. In that instance, the Settlement Class Member's RIC Volume and ERISA Volume shall be zero.

However, in instances where a Group Trust is known by the Parties to have ERISA assets based on previous consultations with the U.S. Department of Labor, but a certification is not submitted or the Group Trust does not provide a certification by _____, 2016, then the trust's ERISA Volume may be calculated utilizing a methodology at Plaintiffs' Counsel's discretion based on discussions with the U.S. Department of Labor or with the Group Trust in response to any informal inquiry from the Claims Administrator or Plaintiffs' Counsel.

Group Trust Settlement Class Members who claim and receive distributions from the ERISA Settlement Allocation must distribute the ERISA Settlement Allocation only to the ERISA Plans identified in the certification submitted to the Claims Administrator and in the same proportion as set forth in the certification. Such distributions are subject to confirmation by the U.S. Department of Labor and/or Plaintiffs' Counsel.

d) Public and Other Settlement Class Members

For each Settlement Class Member that, based on the records supplied by SSBT, was not an ERISA Plan, Group Trust, or Registered Investment Company during the Class Period, the Public and Other Volume shall equal that Settlement Class Member's total Indirect FX Trading Volume during the Class Period. The Settlement Class Member's ERISA Volume and RIC Volume shall be zero.

2. Methodology for Calculation of Recognized Claims

After calculating the ERISA Volume, RIC Volume, and Public and Other Volume for each Settlement Class Member, the Claims Administrator will sum the ERISA Volumes for the Settlement Class in order to derive the classwide ERISA Volume, will sum the RIC Volume for the Settlement Class, in order to derive the classwide RIC Volume, and will sum the Public and Other Volume for the Settlement Class, in order to derive the classwide Public and Other Volume.

A Settlement Class Member's ERISA Recognized Claim equals that class member's ERISA Volume, divided by the classwide ERISA Volume, multiplied by the amount of the ERISA Settlement Allocation. The result of these calculations will be that a Settlement Class Member having no ERISA Volume will have an ERISA Recognized Claim of zero.

A Settlement Class Member's RIC Recognized Claim equals that class member's RIC Volume, divided by the classwide RIC Volume, multiplied by the amount of the RIC Settlement Allocation. The result of these

calculations will be that a Settlement Class Member having no RIC Volume will have a RIC Recognized Claim of zero.

A Settlement Class Member's Public and Other Recognized Claim equals that class member's Public and Other Volume, divided by the classwide Public and Other Volume, multiplied by the amount of the Public and Other Settlement Allocation. The result of these calculations will be that a Settlement Class Member having no Public and Other Volume will have a Public and Other Recognized Claim of zero.

Settlement Class Members shall receive distributions from the ERISA Settlement Allocation on a *pro rata* basis based on their ERISA Recognized Claim amounts, distributions from the RIC Settlement Allocation on a *pro rata* basis based on their RIC Recognized Claim amounts, and distributions from the Public and Other Settlement Allocation on a *pro rata* basis based on their Public and Other Recognized Claim amounts.

A Settlement Class Member's total Recognized Claim equals the sum of that Settlement Class member's ERISA Recognized Claim, RIC Recognized Claim, and/or Public and Other Recognized Claim.

C. Distribution of Net Class Settlement Fund

Prior to the Effective Date, the Net Class Settlement Fund shall remain in an interest-bearing escrow account, except as otherwise provided in the Settlement Agreement. After the Class Settlement reaches its Effective Date, distributions to eligible Settlement Class Members will be made after Settlement Class Members have been notified of their ERISA Recognized Claim, RIC Recognized Claim, and Public and Other Recognized Claim amounts, and the Court has approved the Claims Administrator's determinations.

The Parties will use best efforts to seek Court approval to authorize an initial distribution of the Net Class Settlement Fund, including the RIC Settlement Allocation, within one year following the Effective Date of the Class Settlement. If a judgment is entered in the Class Action approving the Class Settlement, but an appeal is taken relating solely to approval of the requested attorneys' fees, Litigation Expenses, and/or Service Awards, Plaintiffs' Counsel will, subject to Court approval, proceed with an initial distribution of the Net Class Settlement Fund, including the RIC Settlement Allocation.

The Net Class Settlement Fund will be allocated among Class Members whose pro-rated distributions would be \$10.00 or greater, given the fees and expenses associated with printing and mailing payments. If the prorated distribution to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

Defendants, their counsel, and all other Released Defendant Parties will have no liability whatsoever for the investment of the Class Settlement Fund, the distribution, or the payment of any claim consistent with the Settlement Agreement and the Court-approved Plan of Allocation. Plaintiffs and Plaintiffs' Counsel likewise will have no liability for their reasonable efforts to execute, administer, and distribute funds consistent with the Settlement Agreement and the Court-approved Plan of Allocation.

After initial distribution(s) of the Net Class Settlement Fund, if there is any balance remaining (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of prior distribution of the Net Class Settlement Fund, Lead Counsel shall, if feasible and economical, redistribute such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion until it is no longer economically feasible to do so. Any balance that still remains in the Net Class Settlement Fund after redistribution(s) that is not feasible or economical to reallocate, after payment of Notice and

Administration Expenses, Taxes and Tax Expenses, and any other fees and costs approved by the Court, shall be contributed to one or more nonsectarian, not-for-profit, 501(c)(3) organizations serving the public interest approved by the Court.

9. When will I receive a payment?

Payment is conditioned on several matters, including the Court's approval of the Class Settlement (and the Judgment becoming Final), approval of the proposed Plan of Allocation (and that order becoming Final), approval of a distribution, and the DOL, and DOJ Settlements becoming final according to their terms. (They do not require court approval.) It is anticipated that at least a partial distribution will be made within one year of _____. However, a full distribution could take more than a year. Interest accrued on the Class Settlement Fund will be included in the amount allocated and paid to Settlement Class Members.

The Class Settlement may be terminated on several grounds, including if the Court does not approve the Class Settlement or the proposed Plan of Allocation. If the Class Settlement is terminated, there will be no distribution and the Class Actions will proceed as if the Class Settlement had not been reached.

10. Can I exclude myself from the Settlement Class?

If you do not want a payment from this Class Settlement, but you want to keep any right you may have to sue or continue to sue the Defendants and other Released Defendant Parties on your own about the Released Class Claims, then you must take steps to exclude yourself from the Settlement Class. This is called "opting out" of the class. Please note: SSBT may withdraw from and terminate the Class Settlement if Settlement Class Members who have a certain amount of Indirect FX Transactions exclude themselves from the Settlement Class, or a certain number of Settlement Class Members request exclusion.

To exclude yourself from the Settlement Class, you must send a signed letter by mail stating that you request to be "excluded from the Settlement Class in the *State Street Indirect FX Trading Class Action*, No. 11-CV-10230 (D. Mass.)." Your letter must include the following information: (i) the name of the Person that entered into one or more custody or trust agreements with SSBT and is requesting exclusion; (ii) the Person's address; (iii) the Person's telephone number; (iv) the Person's e-mail address; (v) the approximate date(s) of the agreement(s) referenced in (i) above; (vi) the SSBT entity that was the counterparty to the agreement(s) referenced in (i) above; (vii) a list of all current and former accounts, including both the name and account number of such accounts, that held foreign (non-U.S.) assets and were related to the agreement(s) referenced in (i) above; and (viii) identification (including by case name, court name, and docket number) of all legal actions and claims (if any) that the Person requesting exclusion has brought against any of the Defendants relating to Indirect FX.

You must mail your exclusion request so that it is **received no later than** _____, **2016**, to:

State Street Indirect FX Trading Class Action
Claims Administrator
c/o A.B. Data, Ltd.
P.O. Box 173000
Milwaukee, WI 53217

You cannot exclude yourself by telephone or by e-mail. Your exclusion request must comply with these requirements in order to be valid, provided, however, that a request for exclusion shall not be invalid for failing to include the foregoing (i) - (vii) if SSBT determines it has sufficient information to determine that such Person is a Settlement Class Member and provides that information promptly to Lead Counsel.

If you request to be excluded in accordance with these requirements, you will not get any payment from the Net Class Settlement Fund, and you cannot object to the Class Settlement. However, you will not be legally bound by anything that happens in the Class Actions, and you may be able to sue Defendants and the other Released Defendant Parties in the future.

11. Do I have a lawyer in this case? How will the lawyers be paid?

Labaton Sucharow LLP has been appointed Lead Counsel for the Settlement Class. Lead Counsel, on behalf of ERISA Counsel and Customer Counsel, will apply to the Court for an award of attorneys' fees and payment of Litigation Expenses incurred during the prosecution and resolution of the Class Actions. The application for attorneys' fees will not exceed \$74,541,250 (plus any accrued interest), which represents 25% of the \$300,000,000 Class Settlement Fund, after first deducting Court-awarded Litigation Expenses (that will not exceed \$1,750,000.00) and Court-awarded Service Awards for the seven Plaintiffs (that will not exceed \$85,000.00 in the aggregate). You will not be charged directly by Plaintiffs' counsel. However, if you want to be represented by your own lawyer, you may hire one at your own expense.

The written applications for attorneys' fees, Litigation Expenses, and Service Awards of Plaintiffs will be filed with the Court by _____, 2016, and the Court will consider these applications at the Final Approval Hearing. A copy of the applications will be available at www.StateStreetIndirectFXClassSettlement.com and www.labaton.com or by requesting a copy from Lead Counsel.

To date, none of the Plaintiffs' attorneys have received any payment for their services in prosecuting the Class Actions on behalf of the Settlement Class, nor have counsel been paid for their substantial expenses incurred in connection with litigating the Class Actions. The fee requested by Lead Counsel, on behalf of ERISA Counsel and Customer Counsel, would compensate counsel for their efforts in achieving the Class Settlement for the benefit of the Settlement Class and for their risk in undertaking this representation on a contingency basis. The Court will determine the actual amounts of any awards.

By following the procedures described in the answer to Question 13 below, you can tell the Court if you do not agree with the fees and expenses the attorneys and Plaintiffs intend to seek.

OBJECTIONS

13. How do I tell the Court if I do not like the Class Settlement, the Plan of Allocation, or something about the requests for attorneys' fees and expenses?

Any Settlement Class Member may appear at the Final Approval Hearing and explain why it thinks the Class Settlement should not be approved as fair, reasonable and adequate, why a judgment should not be entered, why the proposed Plan of Allocation should not be approved, why the attorneys' fees and expenses of Plaintiffs' counsel should not be awarded, in whole or in part, or why Plaintiffs should not be awarded Service Awards, in whole or in part. However, no Settlement Class Member shall be heard or entitled to contest these matters unless such Settlement Class Member has filed a written objection with the Court and served it on counsel.

To object, you must send a written statement saying that you object to the Class Settlement, the Plan of Allocation, the attorneys’ fee request, expenses, and/or the Service Awards in *State Street Indirect FX Trading Class Action*, No. 11-CV-10230 (D. Mass.). Be sure to include your name, address, telephone number, e-mail address, signature, and a full explanation of all reasons why you object. You must also include the following information in order to confirm your membership in the Settlement Class: (i) the name of the Person that entered into one or more custody or trust agreements with SSBT and is objecting; (ii) the approximate date(s) of the agreement(s) referenced in (i) above; (iii) the SSBT entity that was the counterparty to the agreement(s) referenced in (i) above; (iv) a list of all current and former accounts, including both the name and account number of such accounts, that held foreign (non-U.S.) assets and were related to the agreement(s) referenced in (i) above.

If you cannot provide any of the information required under (i) - (iv), you may still object if you provide a written statement certifying that have undertaken best efforts to provide the missing information and your membership in the Settlement Class can otherwise be confirmed by the Parties.

Your written objection must be filed with the Court, and received by counsel listed below by no later than _____, 2016:

File with the Clerk of the Court:

Clerk of the Court
 United States District Court for the District of Massachusetts
 John Joseph Moakley United States Courthouse
 1 Courthouse Way
 Boston, Massachusetts 02210

Serve copies of all such papers by mail to each of the following:

| Lead Counsel | Defendants’ Counsel |
|--|--|
| Lawrence A. Sucharow, Esq. Labaton Sucharow LLP 140 Broadway New York, NY 10005 | William H. Paine, Esq. Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 |

Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Class Settlement and the applications for attorneys’ fees, Litigation Expenses, and any Service Awards.

THE COURT’S FINAL APPROVAL HEARING

14. When and where will the Court decide whether to approve the Class Settlement?

The Court will hold a Final Approval Hearing at _____.m. on _____, 2016, before the Hon. Mark L. Wolf, at the United States District Court for the District of Massachusetts, John Joseph Moakley United States Courthouse, Courtroom 10, 1 Courthouse Way, Boston, Massachusetts 02210.

At the hearing, the Court will consider whether the Class Settlement is fair, reasonable and adequate. The Court will also consider any motions for attorneys' fees, expenses of Plaintiffs and Plaintiffs' Counsel, and Service Awards for Plaintiffs, as well as for approval of the proposed Plan of Allocation. If there are timely and valid objections, the Court will consider them. We do not know how long decisions on the motions will take.

15. Do I have to come to the hearing?

Lead Counsel will answer any questions that the Court may have about the Class Settlement and related relief at the Final Approval Hearing. You are not required to attend but are welcome to come at your own expense. If you send an objection, you do not have to come to Court to discuss it. As long as you filed your written objection on time, it will be before the Court when the Court considers whether to approve the Class Settlement, the Plan of Allocation, and/or the fee and expense requests. You may also have your own lawyer attend the Final Approval Hearing at your expense, but such attendance is not mandatory.

16. May I speak at the hearing?

If you are a Settlement Class Member and you have filed a timely objection, if you wish to speak, present evidence or present testimony at the Final Approval Hearing, you must state in your objection your intention to appear, and must identify any witnesses you intend to call or evidence you intend to present.

The Final Approval Hearing may be rescheduled by the Court without further notice to the Settlement Class. If you wish to attend the Final Approval Hearing, you should confirm the date and time with Lead Counsel.

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing and the Class Settlement is approved, you will be bound by the terms of the Class Settlement, will be deemed to have released all Released Class Claims against all of the Released Defendant Parties, and will receive your *pro rata* payment as described in Questions 6 and 7 above.

GETTING MORE INFORMATION

18. How do I get more information?

This Notice summarizes the proposed Class Settlement. Full details of the Class Settlement are set forth in the Settlement Agreement. Copies of the Settlement Agreement, as well as other litigation and settlement-related documents, may also be viewed at www.StateStreetIndirectFXClassSettlement.com and www.labaton.com.

You may also contact Lead Counsel at the contact information listed above, or the Claims Administrator toll-free at 877-240-3540.

Dated: _____, 2016

BY ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MASSACHUSETTS

Exhibit A-2

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

| | | |
|--|---|---------------------|
| <i>ARKANSAS TEACHER RETIREMENT SYSTEM, et al. v. STATE STREET BANK AND TRUST COMPANY</i> |) | No. 11-cv-10230 MLW |
| |) | |
| |) | |
| <i>ARNOLD HENRIQUEZ, et al. v. STATE STREET BANK AND TRUST COMPANY, et al.</i> |) | No. 11-cv-12049 MLW |
| |) | |
| |) | |
| <i>THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, et al. v. STATE STREET BANK AND TRUST COMPANY</i> |) | No. 12-cv-11698 MLW |
| |) | |
| |) | |

SUMMARY NOTICE OF PENDENCY OF CLASS ACTIONS, PROPOSED SETTLEMENT, SETTLEMENT HEARING, PLAN OF ALLOCATION, AND ANY MOTION FOR ATTORNEYS’ FEES, LITIGATION EXPENSES, AND SERVICE AWARDS

TO: ALL CUSTODY AND TRUST CUSTOMERS OF STATE STREET BANK AND TRUST COMPANY (“SSBT”) (INCLUDING CUSTOMERS FOR WHICH SSBT SERVED AS DIRECTED TRUSTEE, ERISA PLANS, AND GROUP TRUSTS), REFLECTED IN SSBT’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 SSBT AND/OR ITS SUBCUSTODIANS DURING THE PERIOD FROM JANUARY 2, 1998 THROUGH DECEMBER 31, 2009, INCLUSIVE (THE “SETTLEMENT CLASS”)

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Massachusetts, that Plaintiffs Arkansas Teacher Retirement System, Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employees Savings and Profit Sharing Plan, and James Pehoushek-Stangel (collectively, “Plaintiffs”), on behalf of themselves and each Settlement Class Member, by and through their counsel, and State Street Bank and Trust Company have reached a proposed settlement of the above-captioned actions (the “Class

Actions”) in the amount of \$300,000,000 in cash (the “Class Settlement Amount”) that, if approved by the Court, will resolve the Class Actions in their entirety (the “Class Settlement”).

A hearing will be held before the Honorable Mark L. Wolf of the United States District Court for the District of Massachusetts, Eastern Division in Courtroom 10 of the John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210 at __:___ .m. on _____, 2016 to, among other things, determine whether: (1) the proposed Class Settlement should be approved by the Court as fair, reasonable, and adequate; (2) the Class Actions should be dismissed with prejudice as set forth in the Stipulation and Agreement of Settlement, dated as of July 26, 2016; (3) the proposed Plan of Allocation for distribution of the Class Settlement Amount, and any accrued interest, less Court-awarded attorneys’ fees, Litigation Expenses, Service Awards, Notice and Administration Expenses, Taxes, Tax Expenses and any other costs, fees, or expenses approved by the Court (the “Net Class Settlement Fund”) should be approved as fair and reasonable; and (4) Lead Counsel’s application, on behalf of ERISA Counsel and Customer Counsel, for an award of attorneys’ fees and payment of Litigation Expenses and Service Awards should be approved. The Court may change the date and/or time of the Final Approval Hearing without providing another notice. You do NOT need to attend the hearing in order to receive a distribution from the Net Class Settlement Fund.

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO SHARE IN THE NET CLASS SETTLEMENT FUND. If you have not yet received the full mailed Notice of Pendency of Class Actions, Proposed Class Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys’ Fees, Litigation

Expenses, and Service Awards (the “Notice”), you may obtain a copy by contacting the Claims Administrator or visiting the settlement website:

State Street Indirect FX Trading Class Action
Claims Administrator
c/o A.B. Data, Ltd.
P.O. Box 173000
Milwaukee, WI 53217
877-240-3540
www.StateStreetIndirectFXClassSettlement.com
info@StateStreetIndirectFXClassSettlement.com

Inquiries may also be made to Lead Counsel:

LABATON SUCHAROW LLP
Lawrence A. Sucharow, Esq.
140 Broadway
New York, NY 10005
Tel: (888) 219-6877
www.labaton.com
settlementquestions@labaton.com

Settlement Class Members do not need to submit a claim form in order to be eligible to share in the distribution of the Net Class Settlement Fund. Your recovery will be calculated by the Claims Administrator as part of the implementation of the Class Settlement, and will be based on information obtained from SSBT. However, as explained in the Notice, if you represent a Group Trust, you must provide a certification *postmarked or received on or before* _____, **2016** in order to receive a portion of the ERISA Settlement Allocation, rather than a portion of the balance of the Net Class Settlement Fund.

To exclude yourself from the Settlement Class, you must submit a written request for exclusion in accordance with the instructions in the Notice such that it is *received on or before* _____, **2016**. If you are a Settlement Class Member and do not exclude yourself from the Settlement Class, you will be bound by all judgments and orders entered in the Class Actions.

Any objection to the proposed Class Settlement, Plan of Allocation, and/or application for attorneys' fees and payment of Litigation Expenses and/or Service Awards must be filed with the Court in accordance with the instructions in the Notice such that it is *received on or before* _____, **2016**. If you submit an objection, you have the right, but are not required, to attend the Final Approval Hearing; if you wish to speak at the Final Approval Hearing, you must include in your written objection a statement that you intend to appear and speak at the Final Approval Hearing.

PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS REGARDING THIS NOTICE.

Dated: _____, 2016

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Exhibit B

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

| | | |
|--|---|---------------------|
| ARKANSAS TEACHER RETIREMENT SYSTEM, |) | |
| on behalf of itself and all others similarly situated, |) | No. 11-cv-10230 MLW |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE STREET BANK AND TRUST COMPANY, |) | |
| |) | |
| Defendant. |) | |

| | | |
|---|---|---------------------|
| ARNOLD HENRIQUEZ, MICHAEL T. COHN, |) | |
| WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, |) | No. 11-cv-12049 MLW |
| and those similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE STREET BANK AND TRUST COMPANY, |) | |
| STATE STREET GLOBAL MARKETS, LLC and |) | |
| DOES 1-20, |) | |
| |) | |
| Defendants. |) | |

| | | |
|---|---|---------------------|
| THE ANDOVER COMPANIES EMPLOYEE SAVINGS |) | |
| AND PROFIT SHARING PLAN, on behalf of itself, and |) | No. 12-cv-11698 MLW |
| JAMES PEHOUSHEK STANGELAND, and all others |) | |
| similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE STREET BANK AND TRUST COMPANY, |) | |
| |) | |
| Defendant. |) | |

[PROPOSED] ORDER AND FINAL JUDGMENT

WHEREAS, (i) plaintiffs Arkansas Teacher Retirement System, Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies

Employees Savings and Profit Sharing Plan and James Pehoushek-Stangel (collectively “Plaintiffs”), on behalf of themselves and each Settlement Class Member by and through their counsel, and (ii) State Street Bank and Trust Company (the “Settling Defendant” or “SSBT”), by and through its counsel, entered into a Stipulation and Agreement of Settlement, dated as of _____, 2016 (the “Settlement Agreement”), in the above-captioned cases (the “Class Actions”);

WHEREAS, pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement (the “Preliminary Approval Order”), entered _____, 2016, the Court scheduled a hearing for _____, 2016 at _____ .m. to, among other things, determine (i) whether the proposed Class 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 Settlement Agreement, should be entered;

WHEREAS, the Court ordered that the Notice of Pendency of Class Actions, Proposed Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys’ Fees, Litigation Expenses, and Service Awards (the “Notice”), substantially in the form annexed to the Preliminary Approval 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 Preliminary Approval 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 Preliminary Approval Order as Exhibit A-2, be published in the national edition of *The Wall Street Journal* and over *PR Newswire* within fourteen (14) 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 Class Settlement were required to be filed with the Court by no later than _____, 2016, and mailed to counsel for the Parties such that they were received by no later than _____, 2016;

WHEREAS, Plaintiffs and Lead Counsel complied with the provisions of the Preliminary Approval Order as to the distribution, mailing, and publication of the Notice and Publication Notice;

WHEREAS, on _____, 2016, Plaintiffs moved for final approval of the proposed Class Settlement, and the Final Approval Hearing was duly held before this Court on _____, 2016, at which time all interested Persons were afforded the opportunity to be heard; and

WHEREAS, the Court has duly considered Plaintiffs' motion, the affidavits, declarations, and memoranda of law submitted in support thereof, the Settlement Agreement, all of the submissions and arguments presented with respect to the proposed Class Settlement, and the record in the Class Actions.

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 Settlement Agreement filed with the Court on _____, 2016; and (ii) the exhibits attached to the Settlement Agreement, including the Notice and Publication Notice, filed with the Court on _____, 2016.

2. **Definitions.** Any term with initial capitalization that is not defined in this Order and Final Judgment shall have the meaning provided in the Settlement Agreement.

3. **Jurisdiction.** The Court has jurisdiction to enter this Order and Final Judgment. The Court has jurisdiction over the subject matter of the Class Actions and over all parties to the Class Actions, including all Settlement Class Members.

4. **Certification of the Settlement Class.** Solely for the purpose of effectuating the Class Settlement, the Court hereby affirms its determinations in the Preliminary Approval 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 custody and trust customers of State Street Bank and Trust Company (“SSBT”) (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT’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 SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive. 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 from the Settlement Class in accordance with the requirements set forth in the Notice.

5. **Settlement Class Representatives and Class Counsel.** Solely for purposes of effectuating the Class Settlement, the Court hereby affirms its designations in the Preliminary Approval Order of Plaintiffs as representatives of the Settlement Class, Labaton Sucharow LLP as Lead Counsel for the Settlement Class, Thornton Law Firm LLP as Liaison Counsel for the Settlement Class, and Lief Cabraser Heimann & Bernstein LLP as additional Counsel for the Settlement Class, 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 Class Settlement, the effect of the Class Settlement (including the releases therein), and their right to exclude themselves from the Settlement Class or object to any aspect of the Class Settlement (and appear at the Final Approval Hearing), this Order and Final Judgment, the Plan of Allocation, and/or Lead Counsel's motion, on behalf of ERISA Counsel and Customer Counsel, for attorneys' fees, payment of Litigation Expenses, and any Service Awards; (iii) constituted due and sufficient notice of the Class 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), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws and rules.

7. **Objections.** [The Court has considered each of the objections to the Class Settlement submitted pursuant to Rule 23(e)(5) of the Federal Rules of Civil Procedure. The Court finds and concludes that each of the objections is without merit, and they are hereby overruled.]

8. **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 Class Settlement as set forth in the Settlement Agreement in all respects, and finds that the Class 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 Class Settlement set forth in the Settlement Agreement is the result of arm's-length negotiations between experienced counsel representing the interests of Plaintiffs, the Settlement Class, and the Defendants. The Class Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

9. Upon the Effective Date, the following actions are each hereby dismissed in their entirety, with prejudice: (a) *Arkansas Teacher Retirement System v. State Street Bank and Trust Company*, No. 11-cv-10230 MLW (D. Mass.); (b) *Arnold Henriquez, et al. v. State Street Bank and Trust Company, et al.*, No. 11-cv-12049 MLW (D. Mass.); and (c) *The Andover Companies Employee Savings and Profit Sharing Plan, et al. v. State Street Bank and Trust Company*, No. 12-cv-11698 MLW (D. Mass.).

10. **Releases.** Upon the Effective Date, the Releasing Plaintiffs, and their respective past, present, and future heirs, executors, administrators, trustees, predecessors, successors, and assigns: (i) shall release and shall be deemed by operation of law and this Order and Final Judgment to have irrevocably, absolutely, and unconditionally fully, finally, and forever waived, released, discharged, and dismissed, with prejudice and on the merits, each and every one of the Released Class Claims against each and every one of the Released Defendant Parties, (ii) shall have and be deemed to have covenanted not to sue, directly or indirectly any Released Defendant Party with respect to any and all of the Released Class Claims; and (iii) shall forever be barred and enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, intervening in, participating in (as a class member or otherwise) (except as a witness compelled by subpoena or court order), or receiving any benefits or other relief, from any action, suit, cause of action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether in the United States or elsewhere, on their own behalf or in a representative

capacity, that maintains or prosecutes any or all such Released Class Claims against each and every one of the Released Defendant Parties. All Releasing Plaintiffs, and their respective past, present, and future heirs, executors, administrators, trustees, predecessors, successors, and assigns, shall be bound by the terms of the releases, covenants not to sue, and injunctions set forth in this Order and Final Judgment whether or not they obtain a recovery from the Class Settlement or seek, or actually receive, a distribution from the Class Settlement.

11. Upon the Effective Date, SSBT, on behalf of itself, the Released Defendant Parties, and each of their respective heirs, executors, administrators, trustees, predecessors, successors, and assigns, shall be deemed by operation of law to have fully, finally, and forever released, waived, discharged, and dismissed, with prejudice and on the merits, each and every one of the Released Prosecution Claims against each and every one of the Released Plaintiff Parties and their respective attorneys, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any or all such Released Prosecution Claims against each and every one of the Released Plaintiff Parties and their respective attorneys.

12. Notwithstanding Paragraphs 10-11 above, nothing in this Order and Final Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Order and Final Judgment, or any action by SSBT relating to insurance coverage.

13. 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 Class Claim against any Released Defendant Party. If any such Person commences, prosecutes, or asserts any Released

Class Claim against any Released Defendant Party, nothing in this Order and Final Judgment shall prevent the Released Defendant Parties from asserting any claim of any kind against such Person, including any Released Prosecution Claim, or from seeking contribution or indemnity from any Person, other than any Released Plaintiff Party, with respect to the claim of the Person who is excluded from the Settlement Class pursuant to a timely and valid request for exclusion.

14. **Rule 11 Finding.** The Court finds and concludes that the 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 Class Actions.

15. **Binding Effect of Order and Final Judgment.** Each Plaintiff and Settlement Class Member, and each of their respective heirs, executors, administrators, trustees, predecessors, successors, and assigns, 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 Class Settlement Fund, or (iii) objects to the Class Settlement, this Order and Final Judgment, the Plan of Allocation, and/or Lead Counsel's motion, on behalf of ERISA Counsel and Customer Counsel, for attorneys' fees, payment 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 Settlement Agreement or this Order and Final Judgment.

16. **Use of this Order and Final Judgment.** Except as set forth in the Settlement Agreement and in Paragraph 17 below, this Order and Final Judgment and the Settlement Agreement, whether or not consummated, and any negotiations, proceedings, or agreements

relating to the Settlement Agreement, the Class Settlement, and any matters arising in connection with settlement negotiations, proceedings, or agreements, shall not be offered or received against the Parties and their counsel for any purpose, and in particular:

(a) do not constitute, and shall not be offered or received against Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants 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 Class Actions or in any litigation, including but not limited to the Released Class Claims, or of any liability, damages, negligence, fault, or wrongdoing of Defendants;

(b) do not constitute, and shall not be offered or received against Defendants 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 Defendants, or against the 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 Class Actions;

(c) do not constitute, and shall not be offered or received against Defendants, Plaintiffs, or any other member of the Settlement Class, or their respective counsel, 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 Defendants, Plaintiffs, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement;

(d) do not constitute, and shall not be construed against Defendants, Plaintiffs, any other members of the Settlement Class, or their respective counsel as an admission or

concession that the consideration to be given hereunder 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, any other Settlement Class Member, or their respective counsel, that any of their claims are without merit or infirm, that a class should not be certified, or that damages recoverable under the complaints filed in the Class Actions would not have exceeded the Class Settlement Amount.

17. The Released Parties may file or refer to the Settlement Agreement and/or this Order and Final Judgment to (i) effectuate the liability protection granted thereunder, including, without limitation, to support injunctive relief, or 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 Settlement Agreement and/or this Order and Final Judgment in any action that may be brought to enforce the terms of the Settlement Agreement and/or this Order and Final Judgment. All Released Parties submit to the jurisdiction of this Court for purposes of implementing and enforcing the Class Settlement.

18. **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 Class Settlement; (ii) the allowance, disallowance, or adjustment, on equitable grounds, of any Settlement Class Member's right to recover under the Settlement Agreement, and any award or distribution from the Class Settlement Fund; (iii) disposition of the Class Settlement Fund; (iv) the hearing and determination of Lead Counsel's motion, on behalf

of ERISA Counsel and Customer Counsel, for attorneys' fees, payment 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 Settlement Agreement, including the injunctions and releases in connection therewith; and (viii) other matters related or ancillary to the foregoing.

19. **Termination.** In the event the Class Settlement is terminated in its entirety or does not become effective in accordance with the terms of the Settlement Agreement, the Settlement Agreement, 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 Class Actions as of June 29, 2015, and, except as otherwise expressly provided, Plaintiffs and the Defendants shall proceed in all respects as if the Settlement Agreement 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 SSBT.

20. **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.

21. **Attorneys' Fees, Litigation Expenses, and/or Service Awards.** A separate order shall be entered regarding Lead Counsel's motion, on behalf of ERISA Counsel and

Customer Counsel, for attorneys' fees, payment 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.

22. **Administration of the Class Settlement.** Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

23. **Consummation of the Class Settlement.** The Parties are hereby directed to consummate the Settlement Agreement and to perform its terms.

24. **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: _____, 2016 _____
HON. MARK L. WOLF
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Certificate of Service

I certify that on July 26, 2016, I caused the foregoing Stipulation and Agreement of Settlement, with exhibits, to be filed through the ECF system in the above-captioned actions, and accordingly to be served electronically upon all registered participants identified on the Notices of Electronic Filing.

/s/ David J. Goldsmith
David J. Goldsmith

EX. 115

Nicole Zeiss

1

Volume: 1

Pages: 1-171

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 NICOLE M. ZEISS

September 14, 2017, 9:10 a.m.-1:13 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

Jones & Fuller Reporting
617-451-8900 603-669-7922

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[REDACTED]

Page 20

[REDACTED]

Page 19

1 (Noise interruption.)
2 A. We -- we can't really check them for
3 accuracy per se because the information is known to
4 the individual firm, but we would review it for, you
5 know, consistency, overall reasonableness or
6 questions -- do we have questions about them.
7 Q. Okay. It's fair to say this is an
8 interactive --
9 A. Yes.
10 Q. -- process that you're engaged in?
11 A. Yes.
12 Q. Now let me get back to the Damon Chargois
13 relationship with the firm.
14 Could you describe for us your
15 understanding of Labaton's relationship, including
16 any financial relationship, with Chargois?
17 A. So I -- you know, in my role as settlement
18 counsel, I don't have any kind of direct knowledge
19 of the relationship with him, but my general
20 understanding is that he and his firm have worked
21 with us to develop relationships with clients in
22 different cases.
23 Q. Okay. Let me just give you -- I'm sorry,
24 that's the wrong.

Page 21

[REDACTED]

Page 22

[REDACTED]

Page 24

[REDACTED]

Page 23

[REDACTED]

Page 25

1 A. I don't oversee that.
2 Q. Fair enough. Thank you.
3 A. I mean in our settlement funds there are --
4 you know, obviously a settlement fund can only be
5 used to pay the notice, the expenses --
6 Q. Yes.
7 A. -- and the awarded fees.
8 Q. We'll talk about State Street in just a
9 little bit.
10 To the extent that you're familiar with
11 it, Nicole, what were the --
12 **TELECON VOICE MESSAGE:** The following
13 participant has entered the conference: John
14 Toothman.
15 Q. To the extent you're familiar with it, what
16 were the terms as you knew them of the relationship
17 between Damon Chargois or Chargois & Herron and
18 Labaton as far as, you know, percentages of recovery
19 or things of that nature?
20 Were you familiar with that?
21 A. No.
22 **MR. WOLOSZ:** Sorry. When you say
23 "were," at what time?
24 Q. During the course of your dealings with the

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1 State Street case, when you came into that, were you
2 familiar based on these previous cases with a
3 standard percentage that was to go to Chargois?
4 **A. No.**
5 Q. Okay. Are you familiar with one now?
6 **A. No.**
7 Q. All right. You mentioned the HCC case and
8 that you met Damon Chargois when you attended a
9 hearing on that?
10 **A. Yes.**
11 Q. Was that the preliminary approval hearing
12 you testified to previously?
13 **A. I -- it was definitely the final approval**
14 **hearing. I'm not sure I had to go to Houston twice.**
15 **Preliminary approval might have been on the**
16 **telephone.**
17 Q. Okay.
18 **A. So I only distinctly remember one hearing in**
19 **Houston.**
20 Q. Okay. And this is the first time you had
21 met Chargois?
22 **A. Yes.**
23 Q. And is it fair to say that he wasn't what
24 you were expecting?

Page 28

[REDACTED]

Page 27

[REDACTED]

Page 29

[REDACTED]

Page 42

[REDACTED]

Page 44

[REDACTED]

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1 **THE SPECIAL MASTER:** Well, Saxena White,
2 Webster or Goldman Scariato [sic]?
3 **THE WITNESS:** Definitely not Goldman
4 Scarlato. They're of counsel to us.
5 **THE SPECIAL MASTER:** Okay.
6 **THE WITNESS:** So maybe Saxena White or
7 Webster.
8 **THE SPECIAL MASTER:** And they would have
9 filed a lodestar petition?
10 **THE WITNESS:** Yes.
11 **THE SPECIAL MASTER:** If they did work on
12 the case as local counsel?
13 **THE WITNESS:** Yes.
14 **THE SPECIAL MASTER:** Do you recall --
15 going up to that first e-mail, Jon Gardner is
16 telling Cindy Ng and you these allocations stay the
17 same, except we need to pay \$200,000 to Damon
18 Chargois as a referral.
19 Do you know how that \$200,000 figure was
20 arrived at?
21 **THE WITNESS:** I don't know.
22 Q. Do you know if --
23 **THE SPECIAL MASTER:** Did somebody just
24 decide -- or maybe Jonathan Gardner just told you.

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[REDACTED]

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[REDACTED]

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1 that is, you know, what's going on there?
2 **A. Sure.**
3 Q. What formed the basis for that discussion?
4 **A. Sure. Some -- the -- so the settlement fund**
5 **was governed by escrow agreements, and it required**
6 **written letters for disbursements, and those letters**
7 **had to be signed by two members of the executive**
8 **committee.**
9 **So just the logistics of deducting money**
10 **just take time. You got to write the letter. You**
11 **got to find people. I was trying to get**
12 **clarification about when Damon communicated with**
13 **Eric, you know, please wire me the money if he would**
14 **-- if it's the case that he would be expecting**
15 **payment within 24 hours. It's faster if we already**
16 **have the money in our IOLA, and then it can just be**
17 **wired from us to him.**
18 **Um, if it's the case that Damon would**
19 **say, um, you know, please pay me, I don't need it in**
20 **24 hours, like just please process the payment, and**
21 **we had a couple days, then his money could stay in**
22 **the settlement fund. And he could wait while that**
23 **letter-writing process happens.**
24 **So it's just -- I was trying to get**

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[REDACTED]

Page 121

[REDACTED]

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1 **A. Who it is fluctuates depending on who's**
2 **traveling a lot, if somebody, you know, litigated**
3 **the case, they might want to be a signer.**
4 **Like Larry, you know, litigated State**
5 **Street so it made sense to have him sign --**
6 **THE SPECIAL MASTER:** To authorize
7 payment out of the settlement fund does it have to
8 be a lawyer who had responsibility in the case?
9 **THE WITNESS:** No. It just needs to be
10 an executive committee member Um, but, you know,
11 the bank when you're asking for fees, it wants to
12 see the actual fee order. Um -- yeah.
13 **THE SPECIAL MASTER:** Where was this
14 escrow fund? Was it being held by Citibank?
15 **THE WITNESS:** Yeah, Citibank.
16 **THE SPECIAL MASTER:** Is that an account
17 owned by the firm itself for settlement funds?
18 **THE WITNESS:** No. It's a discrete --
19 it's a discrete fund in the name of -- I don't know
20 whether it's State Street -- by settlement that has
21 its own TIN number.
22 **THE SPECIAL MASTER:** Ah. Is that
23 established by Labaton, or is it established by
24 State Street? At the direction of the Court?

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█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

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█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

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1 **THE WITNESS:** Yes.
2 **THE SPECIAL MASTER:** And that escrow
3 account was CitiGroup or Citibank?
4 **THE WITNESS:** Yeah, and here Citibank is
5 the escrow agent.
6 **THE SPECIAL MASTER:** Okay. Was there
7 another escrow account -- a sub-escrow account for
8 the fees?
9 **THE WITNESS:** Yes. So there's the class
10 settlement account where the 300 million was
11 deposited, and then a lead counsel escrow fund was
12 set up --
13 **THE SPECIAL MASTER:** Also with Citibank?
14 **THE WITNESS:** Also with Citibank. Yeah,
15 and that's...
16 **THE SPECIAL MASTER:** So out of the big
17 escrow account, the 300 million, did the fees for
18 counsel flow into that second escrow account?
19 **THE WITNESS:** Yes. Once the fee order
20 was entered, they were transferrable into the lead
21 counsel escrow account where they sat until the
22 settlement was effective, and the fee order was
23 final.
24 And then we --

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1 **THE SPECIAL MASTER:** So it went into the
2 second account before the fee order was approved?
3 **THE WITNESS:** No. It went into the
4 second account when the fee order was entered.
5 **THE SPECIAL MASTER:** Ah, I'm sorry.
6 Okay.
7 **THE WITNESS:** And then -- but money
8 could not be taken out until that order was final,
9 and the settlement was effective. Does that make
10 sense?
11 **THE SPECIAL MASTER:** Okay. And then
12 from there where did that money go?
13 **THE WITNESS:** So in early December we
14 wrote a bank letter instructing the bank to disperse
15 the fees and expenses and service awards.
16 So Lief's fees and expenses went to
17 Lief. Thornton's fees and expenses went to
18 Thornton. I mean McTigue Law's fees and expenses
19 went to McTigue Law. Lief -- I'm sorry. Keller
20 Rohrbach was on there. I think Carl Kravitz's firm
21 -- I don't think it went through McTigue Law.
22 Labaton received its fees and expenses
23 including the amounts that later went to Damon
24 Chargois and also the service awards. And then we

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[Redacted text block]

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[Redacted text block]

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[Redacted text block]

3 Q. Of [Redacted]

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1 A.B. Data approximately 90,000 from the big class
2 account for notice and administration expenses.
3 Q. Okay.
4 A. LBS 041839 looks like a Labaton Sucharow,
5 LLP bank account statement.
6 Q. Everything's redacted except for one item in
7 the middle.
8 A. Right. So it looks like a deduction on
9 December 19th. Based on the amount, I think that's
10 the payment to Goldman Scarlato from the Labaton
11 fees.
12 Q. Okay.
13 A. LBS 041840 is a Citibank account statement
14 from Labaton Sucharow, LLP IOLA account. It shows
15 -- it shows a series of -- well, it shows a fund
16 transfer on December 8 of 34 million wire -- oh, so
17 that's a receipt to Labaton of I think our fees and
18 expenses pursuant to the instruction letter to the
19 bank.
20 Q. Okay.
21 A. The 12/9 withdrawal four million -- I think
22 that's the payment to Damon Chargois.
23 Q. Okay.
24 A. And then there are a series of checks, and

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[REDACTED]

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1 THE WITNESS: Yes.
2 THE SPECIAL MASTER: -- what we've been
3 referring to as the fee account?
4 THE WITNESS: Right.
5 THE SPECIAL MASTER: I missed the date
6 on it.
7 MR. SINNOTT: December 9th. \$4,102,549
8 dollars.
9 A. So then LBS 041882 would be the January
10 statement, and it shouldn't show much of any
11 activity. It looks like there was 21 cents left.
12 Q. Okay.
13 (Pause.)
14 Q. It appears to remain at 21 cents for the
15 conclusion of the -- or to the 31 July ending
16 period.
17 And those correspondence after those
18 statements --
19 A. Sure.
20 Q. -- Nicole, what do these reflect?
21 A. So we have LBS 041970 which is a letter from
22 Christopher Keller to Citibank dated December 8,
23 2016. And this is the bank instruction letter we've
24 been discussing showing the wire of 34 million

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[REDACTED]

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1 approximately Labaton, the 18.5 million to
2 Thornton Law, the 15 point roughly 4 million to
3 Lieff, the 2.8 million to Keller Rohrback, the 2.5
4 million to McTigue Law and the 2.5 to Zuckerman
5 Spaeder.
6 Q. Okay.
7 A. Then we have LBS 041972 which is a letter
8 from Christopher Keller and Lawrence Sucharow dated
9 December 8, 2016 instructing the bank to withdraw
10 \$660.
11 This might have been interest that
12 wasn't originally taken on the other amounts.
13 Q. All right.
14 A. So it was kind of cleanup.
15 Then LBS 041973 is a Labaton Sucharow
16 check to Arkansas Teachers in the amount of \$25,000
17 which was a service award.
18 Q. Okay.
19 A. LBS 041974 is a Labaton Sucharow, LLP check
20 for \$10,000 to Arnold Henriquez which would be a
21 service award. LBS 041975 is a Labaton Sucharow,
22 LLP check in the amount of \$10,000 to Michael Collen
23 -- that was a service award -- Cohn. Sorry.
24 THE SPECIAL MASTER: These are the four

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[REDACTED]

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1 **THE SPECIAL MASTER:** Oh, I see. They're
2 of counsel to you?
3 **THE WITNESS:** Yeah.
4 **THE SPECIAL MASTER:** Not local counsel.
5 Of counsel to you.
6 **THE WITNESS:** Yeah, so they were on our
7 lodestar.
8 **MR. SINNOTT:** Great. Thank you, Nicole.
9 Attorney Kelly, I see where your eyes
10 were closed. Would you like her to go through that
11 again?
12 **MR. KELLY:** Focusing closely.
13 **MR. SINNOTT:** We can have her do it one
14 more time.
15 **MR. KELLY:** Just briefly --
16 **MR. SINNOTT:** No, I'm not opening up the
17 questions just yet but...
18 **MR. KELLY:** Oh, oh, oh.
19 **MR. SINNOTT:** If there is a timely
20 question though and you'd like to ask, you don't
21 have any objection, do you?
22 **THE SPECIAL MASTER:** No.
23 **MR. SINNOTT:** Okay. Is there something
24 you wanted to ask, or are you --

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1 confirmation of being credited the original 300
2 million on September 2, 2016.
3 Q. Okay.
4 A. LBS 041982 is a December 8, 2016 letter from
5 Labaton Sucharow to Victoria Lopez of Citibank
6 asking Citibank to process a wire transfer from the
7 Labaton Sucharow, LLP IOLA to Damon J. Chargois in
8 the amount of approximately 4 million.
9 LBS 041983 is a December 19, 2016
10 Labaton letter to Citi -- well, CitiGroup asking it
11 to process a wire transfer from Labaton Sucharow,
12 LLP account to Goldman Scarlato & Penny in the
13 amount of approximately \$363,000.
14 **THE SPECIAL MASTER:** What was the date
15 there?
16 **MR. SINNOTT:** December 19, 2016.
17 **THE SPECIAL MASTER:** Again who was
18 Goldman Scarlato & Penny?
19 **THE WITNESS:** They're of counsel to our
20 firm, and they did work on the case.
21 **THE SPECIAL MASTER:** Did they put a fee
22 petition in?
23 **THE WITNESS:** They're in -- they're
24 actually of counsel to us. So they're in our --

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[REDACTED]

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1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
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 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED].

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1 percent recovery fee they got, correct?
 2 **A. Correct.**
 3 **MR. KELLY:** Nothing further.
 4 **THE SPECIAL MASTER:** Do you know what
 5 the FX volume was on the case as between the
 6 customer class?
 7 Do you know of your own knowledge
 8 through discovery or some other substantive
 9 knowledge, or is that what you were told?
 10 **THE WITNESS:** WilmerHale produced the
 11 volume to us in connection with developing the plan
 12 of allocation.
 13 **THE SPECIAL MASTER:** When?
 14 **THE WITNESS:** When? Two -- 2016? I
 15 don't remember. There were a couple.
 16 **MR. SINNOTT:** Did you learn about a
 17 subsequent revision --
 18 **THE SPECIAL MASTER:** -- in which the
 19 allocation of FX trading that we've been told was
 20 higher than 9 or 10 percent?
 21 **THE WITNESS:** There were a lot of
 22 questions about it, and they did another review.
 23 But I think it ultimately ended up around 9 percent.
 24 **MR. SINNOTT:** All right. If that's your

Page 163

1 **BY MR. KELLY:**
 2 Q. And I'd like you to just tell me if this is
 3 what it says. Evan Hoffman writes you a question:
 4 "Nicole, are we using historical billing rates or
 5 current rates for calculating Iodestar? The
 6 language in your fee sample seems to indicate we're
 7 using current rates. Just want to make sure.
 8 Thanks."
 9 And then you respond "current."
 10 That's what it says, right?
 11 **A. Correct.**
 12 Q. And this was an e-mail approximately one
 13 week before the fee declaration -- the fee
 14 submission was to the Court, right?
 15 **A. Right.**
 16 Q. All right. And a separate issue. To the
 17 extent you know, there's been some suggestion in
 18 these proceedings that the ERISA counsel somehow got
 19 a raw deal.
 20 But are you aware that the ERISA FX
 21 volume percentage was approximately 9 percent in
 22 this case?
 23 **A. That sounds right.**
 24 Q. And that's certainly less than the 10

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1 memory, yeah, okay. Justin, anything? Mike?
 2 **MR. STOCKER:** No.
 3 **MR. KELLY:** Nothing further.
 4 **MR. SINNOTT:** Anyone on the phone have a
 5 question for Nicole?
 6 (No response.)
 7 **MS. KEEVERS PALMER:** This is Kim. I
 8 have no questions.
 9 **MR. SINNOTT:** Thank you, Kim. How about
 10 Emily?
 11 **MS. HARLAN:** No questions.
 12 **MR. SINNOTT:** All right. Steve?
 13 **MR. FINEMAN:** No, no questions for me.
 14 **MR. SINNOTT:** Okay. Brian?
 15 **MR. McTIGUE:** Brian McTigue will have
 16 questions.
 17 **MR. SINNOTT:** Okay, Brian. Why don't
 18 you go ahead.
 19 **CROSS-EXAMINATION**
 20 **BY MR. McTIGUE:**
 21
 22 Q. Nicole, I think you've testified that you
 23 were responsible for assembling and documenting the
 24 settlement in this matter, right?

EX. 116



Private Bank



Summary of Accounts

Statement Period 01 Sep 2016 — 30 Sep 2016

ACCOUNT OVERVIEW

Reference Currency: USD

This statement has been prepared for

**State Street Indirect FX Trading Class Action
Settlement Fund Class Escrow**

| | | LAST PERIOD | THIS PERIOD | Page |
|---------------------------|----------------|------------------|-----------------------|--------|
| | Account Number | Total Value USD* | Total Value USD | Number |
| Investments ¹ | | | | |
| Preferred Custody Account | Redacted 7768 | 0.00 | 300,076,402.21 | 5 |
| Total Investments | | 0.00 | 300,076,402.21 | |
| TOTAL ASSETS | | 0.00 | 300,076,402.21 | |

For your convenience this statement's summary section may include account and balance information of accounts for which this is not the official statement. This is the official statement for only the Citibank, N.A. accounts and transactions detailed beyond the summary section of this document. For any account reflected in the summary portion only, please consult the separate official statement applicable to such account for an official record of such account. Please see the notes at the end of this document for additional important information and disclosures.

¹ Investment products are not insured by FDIC or any government agency, are not obligations of or guaranteed by the bank or any Citigroup entity, and are subject to investment risks, including the possible loss of principal.

* Total Value = Market Value + Accrued Interest + Accrued Dividend



Private Bank



Statement of Accounts

Statement Period 01 Sep 2016 — 30 Sep 2016

STATEMENT OVERVIEW — CASH

Reference Currency: USD

| INVESTABLE CASH BY ACCOUNT | | |
|--|--------------|-----------------------|
| | Account Type | Market Value USD |
| Preferred Custody Account - Redacted 7768 | Investment | 300,072,928.56 |
| Total Cash and Short-Term Investments | | 300,072,928.56 |

| DISTRIBUTION OF CASH BY CURRENCY | | | |
|----------------------------------|-------------|-------------------------------|-----------------------|
| Currency | % of Total | Market Value Nominal Currency | Market Value USD |
| USD | 100% | — | 300,072,928.56 |
| Total | 100% | | 300,072,928.56 |

| BANKING INTEREST INCOME AND EXPENSE | | |
|-------------------------------------|-------------|--------------|
| | This Period | Year to Date |
| INCOME | | |
| Total Interest Income | — | — |
| EXPENSE | | |
| Total Interest Expense | — | — |

| INVESTMENT ACCOUNT INTEREST, DIVIDENDS AND DISTRIBUTIONS | | |
|--|-------------|--------------|
| | This Period | Year to Date |
| Interest | — | — |
| Dividends | — | — |
| Distributions | — | — |
| Total Investment Income | — | — |

Please see the Notice page for important information.

The above-referenced accounts are with Citibank N A

Portfolio diversification is an important element to consider when making investment decisions. Academic studies and real-world experience have shown that asset allocation is the key factor in long-term investment performance. By choosing a diversified mix of stocks, bonds and other asset classes, investors may create the portfolios that best match their financial goals and tolerance for risk. Concentrated positions entail greater risks than a diversified portfolio. A concentrated position may be defined as the significant presence of a single security, securities of a single issuer or a certain class of security in an investor's portfolio. No single formula or percentage of a particular security or class of securities suits all investors. If you wish to discuss portfolio diversification in further detail, please contact your Private Banker.

00176/00178/02782

State Street Indirect FX Trading Class Action Settlement Fund Class Escrow

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000179 CIPNSRN3 001586 000000

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

LBS041685



Preferred Custody Account — **Redacted** 7768

Custody Officer: JOHN HOWARD-217 212-783-7109

Statement Period 01 Sep 2016 — 30 Sep 2016

Private Bank



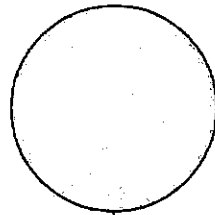
ACCOUNT SUMMARY

Reference Currency: USD

ACTIVITY SUMMARY

| | TOTAL ACTIVITY | | PRINCIPAL ACTIVITY | | INCOME ACTIVITY | |
|---------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------|--------------|
| | This Period | Year to Date | This Period | Year to Date | This Period | Year to Date |
| Beginning Market Value | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Deposits to Account | 300,000,000.00 | 300,000,000.00 | 300,000,000.00 | 300,000,000.00 | — | — |
| Withdrawals from Account | — | — | — | — | — | — |
| Securities Transferred In | — | — | — | — | — | — |
| Securities Transferred Out | — | — | — | — | — | — |
| Dividends, Interest and Distributions | — | — | — | — | — | — |
| Market Change | 72,928.56 | 72,928.56 | 72,928.56 | 72,928.56 | 0.00 | 0.00 |
| Other Income or Expense | — | — | — | — | — | — |
| Ending Market Value | 300,072,928.56 | 300,072,928.56 | 300,072,928.56 | 300,072,928.56 | 0.00 | 0.00 |
| Accruals | 3,473.65 | 3,473.65 | 3,473.65 | 3,473.65 | 0.00 | 0.00 |
| Market Value with Accruals | 300,076,402.21 | 300,076,402.21 | 300,076,402.21 | 300,076,402.21 | 0.00 | 0.00 |

ASSET ALLOCATION TABLE SHOWN ON NEXT PAGE



Cash
100.00%
Values less than 1% not graphed.

Please notify your banker if you would like to impose or change any reasonable restrictions on the management of your account, or if there have been any changes in your financial situation, investment objectives, requested restrictions or other instructions which might affect the services to be provided to you or the manner in which your investments should be invested.

Private Bank

Preferred Custody Account — **Redacted** 7768

Custody Officer: JOHN HOWARD-217 212-783-7109

Statement Period 01 Sep 2016 — 30 Sep 2016



ACCOUNT SUMMARY

Reference Currency: USD

ASSET ALLOCATION & UNREALIZED GAIN/(LOSS)

| Asset Class | Total Value Last Period | Change | Total Value This Period | % of Total Account | Cost | Unrealized Gain/(Loss) | Estimated Annual Income | Accrued Interest/Dividend |
|--------------------------------------|-------------------------|-----------------------|-------------------------|--------------------|-----------------------|------------------------|-------------------------|---------------------------|
| Cash | — | 300,076,402.21 | 300,076,402.21 | 100.00% | 300,000,000.00 | 72,928.56 | 875.89 | 3,473.65 |
| Investment Cash and Cash Equivalents | — | 300,076,402.21 | 300,076,402.21 | 100.00% | 300,000,000.00 | 72,928.56 | 875.89 | 3,473.65 |
| Total Assets | — | 300,076,402.21 | 300,076,402.21 | 100% | 300,000,000.00 | 72,928.56 | 875.89 | 3,473.65 |

Total Value = Market Value + Accrued Interest + Accrued Dividend

Portfolio diversification is an important element to consider when making investment decisions. Academic studies and real-world experience have shown that asset allocation is the key factor in long-term investment performance. By choosing a diversified mix of stocks, bonds and other asset classes, investors may create the portfolios that best match their financial goals and tolerance for risk. Concentrated positions entail greater risks than a diversified portfolio. A concentrated position may be defined as the significant presence of a single security, securities of a single issuer or a certain class of security in an investor's portfolio. No single formula or percentage of a particular security or class of securities suits all investors. If you wish to discuss portfolio diversification in further detail, please contact your Private Banker.



Private Bank



Preferred Custody Account — **Redacted**, 768

Custody Officer: JOHN HOWARD-217 212-783-7109

Statement Period 01 Sep 2016 — 30 Sep 2016

ACCOUNT SUMMARY

Reference Currency: USD

ASSET ALLOCATION - PRINCIPAL AND INCOME

| | TOTAL | | PRINCIPAL | | INCOME | |
|----------------|-----------------------|--|-----------------------|---------------------------|--------------|---------------------------|
| | Total Value | | Market Value | Accrued Interest/Dividend | Market Value | Accrued Interest/Dividend |
| Cash | 300,076,402.21 | | 300,072,928.56 | 3,473.65 | 0.00 | 0.00 |
| Fixed Income | — | | — | — | — | — |
| Equities | — | | — | — | — | — |
| Hedge Funds | — | | — | — | — | — |
| Private Equity | — | | — | — | — | — |
| Real Estate | — | | — | — | — | — |
| Commodities | — | | — | — | — | — |
| Other Assets | — | | — | — | — | — |
| Total | 300,076,402.21 | | 300,072,928.56 | 3,473.65 | 0.00 | 0.00 |

Total Value = Market Value + Accrued Interest + Accrued Dividend

CASH ACTIVITY - PRINCIPAL AND INCOME

| | TOTAL ACTIVITY | | PRINCIPAL ACTIVITY | | INCOME ACTIVITY | |
|------------------------------|-------------------|-------------------|--------------------|-------------------|-----------------|--------------|
| | This Period | Year to Date | This Period | Year to Date | This Period | Year to Date |
| Opening Cash Balance | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Cash Deposits | 300,000,000.00 | 300,000,000.00 | 300,000,000.00 | 300,000,000.00 | — | — |
| Cash Withdrawals | — | — | — | — | — | — |
| Assets Purchased | (299,513,393.69) | (299,513,393.69) | (299,513,393.69) | (299,513,393.69) | — | — |
| Assets Sold | — | — | — | — | — | — |
| Income Received | — | — | — | — | — | — |
| Taxes / Fees / Miscellaneous | — | — | — | — | — | — |
| Closing Cash Balance | 486,606.31 | 486,606.31 | 486,606.31 | 486,606.31 | 0.00 | 0.00 |

Private Bank

Preferred Custody Account — Redacted 7768

Statement Period 01 Sep 2016 — 30 Sep 2016



INVESTMENT POSITIONS — PRINCIPAL

Reference Currency: USD

CASH 100% SORTED BY LIQUIDITY

| Description | Quantity | Average/ Unit Cost | Adjusted Cost | Market Price As of Date | Market Value | Accrued Interest | Total Value | Unrealized Gain/(Loss) | Est. Annual Income |
|--|-------------|-----------------------|-----------------------|----------------------------|-----------------------|-------------------------|-----------------------|-------------------------------|---------------------------|
| Investment Cash and Cash Equivalents (USD) | | | | | | | | | |
| USD | 0 | — | 0.00 | — | 0.00 | 0.00 | 0.00 | — | 0.00 |
| WESTERN AST IS US TR RES-INS Rate .002% CUSIP 52470G841 Yield .18% | 486,606.31 | 100 | 486,606.31 | 1 | 486,606.31 | 3,473.65 | 490,079.96 | 0.00 | 875.89 |
| U S TREASURY BILL MAT 02MAR17 Rate 0% CUSIP 912796JEO | 223,416,000 | 99.8202 | 223,014,217.60 | 99.848 30SEP16 | 223,076,407.68 | 0.00 | 223,076,407.68 | 62,190.08 | 0.00 |
| U S TREASURY BILL MAT 03NOV16 Rate 0% CUSIP 912796JS9 | 76,523,000 | 99.9689 | 76,499,176.09 | 99.9829 30SEP16 | 76,509,914.57 | 0.00 | 76,509,914.57 | 10,738.48 | 0.00 |
| Total Cash | | | 300,000,000.00 | | 300,072,928.56 | 3,473.65 | 300,076,402.21 | 72,928.56 | 875.89 |
| | | | Adjusted Cost | | Market Value | Accrued Interest | Total Value | Unrealized Gain/(Loss) | Est. Annual Income |
| TOTAL INVESTMENT POSITIONS — PRINCIPAL | | | 300,000,000.00 | | 300,072,928.56 | 3,473.65 | 300,076,402.21 | 72,928.56 | 875.89 |



Private Bank



Preferred Custody Account — **Redacted** 7768

Statement Period 01 Sep 2016 — 30 Sep 2016

INVESTMENT POSITIONS — INCOME

Reference Currency: USD

CASH 0.00% SORTED BY LIQUIDITY

| Description | Quantity | Average/ Unit Cost | Adjusted Cost | Market Price As of Date | Market Value | Accrued Interest | Total Value | Unrealized Gain/(Loss) | Est. Annual Income |
|---|----------|-----------------------|---------------|----------------------------|--------------|---------------------|-------------|------------------------|-----------------------|
| Investment Cash and Cash Equivalents (USD) | | | | | | | | | |
| USD | 0 | — | 0.00 | — | 0.00 | 0.00 | 0.00 | — | 0.00 |
| Total Cash | | | 0.00 | | 0.00 | 0.00 | 0.00 | — | 0.00 |

| | Adjusted Cost | Market Value | Accrued Interest | Total Value | Unrealized Gain/(Loss) | Est. Annual Income |
|--|---------------|--------------|---------------------|-------------|------------------------|-----------------------|
| TOTAL INVESTMENT POSITIONS — INCOME | 0.00 | 0.00 | 0.00 | 0.00 | — | 0.00 |

| | Adjusted Cost | Market Value | Accrued Interest | Total Value | Unrealized Gain/(Loss) | Est. Annual Income |
|--|-----------------------|-----------------------|---------------------|-----------------------|------------------------|-----------------------|
| TOTAL INVESTMENT POSITIONS - PRINCIPAL AND INCOME | 300,000,000.00 | 300,072,928.56 | 3,473.65 | 300,076,402.21 | 72,928.56 | 875.89 |

Multiple in reference to an Acquisition Date, indicates that there is more than one acquisition date for a position.

Original Cost is the amount paid for an investment excluding any accrued interest. Original Cost represents positions' par amount times the acquisition price. It remains constant over the life of an investment.

Adjusted Cost is the Original Cost of acquisition plus or minus any accretion or amortization amounts. Accretion and amortization calculations adjust the Original Cost basis over the life of the investment to the expected redemption amount or face value.

Private Bank

Preferred Custody Account — Redacted 7768

Custody Officer: JOHN HOWARD-217 212-783-7109

Statement Period 01 Sep 2016 — 30 Sep 2016



ACTIVITY DETAILS

| Trade Date | Settlement Date | Transaction Type | Description | Principal | Income | End of Day Balance |
|------------------------|-----------------|------------------|---|-----------------|--------|--------------------|
| US Dollar (USD) | | | | | | |
| 02 Sep 2016 | | | Opening Balance - Cash | 0.00 | 0.00 | 0.00 |
| 02 Sep 2016 | 02 Sep 2016 | Cash Deposit | CASH RECEIPT INCOMING WIRE DDA TRANSFER BANK STATE STREET BANK AND TRUST COMPANY B/O STATE STREET BANK AND TRUST COMPANY BANK STATE STREET BANK B/O STATE STREET BANK AND TRUST COMPANY | 300,000,000.00 | 0.00 | 300,000,000.00 |
| 07 Sep 2016 | 08 Sep 2016 | Asset Purchased | PURCHASED 26523000.00 PAR VALUE OF U S TREAS BILLS 11/03/16 NET COST 26,514,742.59 26523000.00 PAR VALUE AT 99.968867 USD STATE (PROV.) TAX COST 26,514,742.59 TRADE DATE 09/07/2016 PURCHASED THROUGH CITIGROUP GLOBAL MARKETS INC. 62881 | (26,514,742.59) | 0.00 | |
| 07 Sep 2016 | 08 Sep 2016 | Asset Purchased | PURCHASED 50000000.00 PAR VALUE OF U S TREAS BILLS 11/03/16 NET COST 49,984,433.50 50000000.00 PAR VALUE AT 99.968867 USD STATE (PROV.) TAX COST 49,984,433.50 TRADE DATE 09/07/2016 PURCHASED THROUGH CITIGROUP GLOBAL MARKETS INC. 62881 | (49,984,433.50) | 0.00 | |



Preferred Custody Account — **Redacted** 768

Custody Officer: JOHN HOWARD-217 212-783-7109

Statement Period 01 Sep 2016 — 30 Sep 2016

Private Bank



ACTIVITY DETAILS

| Trade Date | Settlement Date | Transaction Type | Description | Principal | Income | End of Day Balance |
|-------------|-----------------|------------------|---|-----------------|--------|--------------------|
| 07 Sep 2016 | 08 Sep 2016 | Asset Purchased | PURCHASED 50000000.00 PAR VALUE OF United States Treas Bills 03/02/17 NET COST 49,910,082.00 50000000.00 PAR VALUE AT 99.820164 USD STATE (PROV.) TAX COST 49,910,082.00 TRADE DATE 09/07/2016 PURCHASED THROUGH CITIGROUP GLOBAL MARKETS INC. 62881 | (49,910,082.00) | 0.00 | |
| 07 Sep 2016 | 08 Sep 2016 | Asset Purchased | PURCHASED 50000000.00 PAR VALUE OF United States Treas Bills 03/02/17 NET COST 49,910,082.00 50000000.00 PAR VALUE AT 99.820164 USD STATE (PROV.) TAX COST 49,910,082.00 TRADE DATE 09/07/2016 PURCHASED THROUGH CITIGROUP GLOBAL MARKETS INC. 62881 | (49,910,082.00) | 0.00 | |
| 07 Sep 2016 | 08 Sep 2016 | Asset Purchased | PURCHASED 50000000.00 PAR VALUE OF United States Treas Bills 03/02/17 NET COST 49,910,082.00 50000000.00 PAR VALUE AT 99.820164 USD STATE (PROV.) TAX COST 49,910,082.00 TRADE DATE 09/07/2016 PURCHASED THROUGH CITIGROUP GLOBAL MARKETS INC. 62881 | (49,910,082.00) | 0.00 | |

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State Street Indirect FX Trading Class Action Settlement Fund Class Escrow Account Citibank, N.A., Escrow Agent

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000179 CIPNSRN3 001590 000000

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

LBS041693

Private Bank

Preferred Custody Account — **Redacted** 7768

Custody Officer: JOHN HOWARD-217 212-783-7109

Statement Period 01 Sep 2016 — 30 Sep 2016



ACTIVITY DETAILS

| Trade Date | Settlement Date | Transaction Type | Description | Principal | Income | End of Day Balance |
|-------------|-----------------|------------------|---|-----------------|--------|--------------------|
| 07 Sep 2016 | 08 Sep 2016 | Asset Purchased | PURCHASED 50000000.00 PAR VALUE OF United States Treas Bills 03/02/17 NET COST 49,910,082.00 50000000.00 PAR VALUE AT 99.820164 USD STATE (PROV.) TAX COST 49,910,082.00 TRADE DATE 09/07/2016 PURCHASED THROUGH CITIGROUP GLOBAL MARKETS INC. 62881 | (49,910,082.00) | 0.00 | |
| 07 Sep 2016 | 08 Sep 2016 | Asset Purchased | PURCHASED 23416000.00 PAR VALUE OF United States Treas Bills 03/02/17 NET COST 23,373,889.60 23416000.00 PAR VALUE AT 99.820164 USD STATE (PROV.) TAX COST 23,373,889.60 TRADE DATE 09/07/2016 PURCHASED THROUGH CITIGROUP GLOBAL MARKETS INC. 62881 | (23,373,889.60) | 0.00 | 486,606.31 |
| 30 Sep 2016 | | | Closing Balance - Cash | 486,606.31 | 0.00 | 486,606.31 |



Private Bank



Statement of Accounts

Statement Period 01 Sep 2016 — 30 Sep 2016

NOTES

"Citi Private Bank" is a business of Citigroup Inc. ("Citigroup"), which provides its clients access to a broad array of products and services available through bank and non-bank affiliates of Citigroup. Citi and Citi with Arc Design are trademarks and service marks of Citigroup Inc. and its affiliates and are used and registered throughout the world. Not all products and services are provided by all affiliates or are available at all locations. All credit products are subject to credit approval. Neither Citigroup nor any of its affiliates offers tax or legal advice. In the U.S., brokerage products and services are provided by Citigroup Global Markets Inc. ("CGMI"), Member SIPC. CGMI and Citibank, N.A. are affiliated companies under the common control of Citigroup. Outside the U.S., brokerage services will be provided by other Citigroup affiliates. Investment management services (including portfolio management) are available through CGMI, Citibank, N.A. and other affiliated advisory businesses. In Canada, Citi Private Bank is a division of Citibank Canada, a Schedule II Canadian chartered bank. Certain investment products are made available through Citibank Canada Investment Funds Limited ("CCIFL"), a wholly owned subsidiary of Citibank Canada. Investment Products are subject to investment risk, including possible loss of principal amount invested. Investment Products are not insured by the CDIC, FDIC or depositary insurance regime of any jurisdiction and are not guaranteed by Citigroup or any affiliate thereof. CCIFL is not currently a member, and does not intend to become a member of the Mutual Fund Dealers Association of Canada (MFDA); consequently, clients of CCIFL will not have available to them investor protection benefits that would otherwise derive from membership of CCIFL in the MFDA, including coverage under any investor protection plan for clients of members of the MFDA.

Cash Balances : If you have elected to have available cash balances held in or swept to an interest or non-interest bearing deposit account held in a U.S. branch of Citibank, N.A., such balances are FDIC insured up to applicable limits.

Investment products are not insured by the FDIC or any other governmental agency, are not guaranteed by, are not deposits or other obligations of Citibank, N.A. or any other Citigroup affiliate, and are subject to investment risks, including the possible loss of the principal amount invested. Only cash deposit balances held in a U.S. branch of Citibank, N.A. are covered by FDIC deposit insurance; no other asset categories, including securities and money market mutual funds, are covered by FDIC deposit insurance.

Investment Advice : We or another Citigroup Inc. subsidiary or affiliate or a director, officer or employee of any such company, may from time to time have a position in, or underwrite or deal in, one or more of the securities on which we have provided investment advice. Citibank investment decisions are not based on material non-public information.

Note that for non-investment advisory accounts where Citi may recommend transactions to you and may execute solicited and unsolicited transactions within the account, Citi is not obliged to provide periodic portfolio reviews and periodic portfolio reviews will not be provided unless required by local laws or regulations.

Pricing : Prices taken from outside services are believed accurate and are intended as a guide in determining portfolio value. However, prices for some securities are not readily available due to light or inactive trading. Prices for Alternative Investments are deemed to be current, however, they are dependent on the timing of the valuations by the respective funds.

Over-the-counter foreign exchange and derivative transactions and their estimated values : The values provided represent estimates which have been derived from proprietary models and assumptions Citibank believes to be reasonable, as well as financial information from sources Citibank believes to be reliable but have not been independently verified. Valuations based upon other models or assumptions, or calculated as of another date and time may yield significantly different results. The estimated values provided in a client's statement may not represent the actual price at which any transaction may be executed. These estimates are being provided to the client as a courtesy without compensation to Citibank, N.A., for information purposes only, and not for the benefit or use of any third-party. Citibank, N.A. and its affiliates expressly disclaim any responsibility or liability regarding the accuracy, reliability or completeness of these estimated values or their use by a client.

Investments : (i) are not deposits or obligations of Citibank, N.A. or any other insured depository institution, (ii) are not insured by the Federal Deposit Insurance Corporation or any federal government agency and (iii) are subject to investment risks, including possible loss of the principal amount invested.

Products shown on this summary report may be held at Citibank, N.A. ("Citibank"), Citigroup Global Markets Inc. ("CGMI") or other Citibank affiliates (collectively, "Citi"), either in the client's or Citi nominee's name. Original cost is the total amount paid to purchase a security, including any transaction charges related to the purchase. Some examples of transaction charges can include the following: brokerage fees/commissions, placement fees, and stamp duties.

Tax Reporting : Please do not use this statement for tax reporting purposes. If applicable, a separate tax statement will be sent to you after year end.

Non-U.S. Investment Funds : Funds purchased by a client outside the U.S. have been included for statement purposes only.

Collateralized Debt Obligation notes : There is no established secondary market for Collateralized Debt Obligation notes ("CDOs"). The market value of each issue of CDOs on a client's statement represents estimates as to the general value of the CDO, as of the date(s) indicated. (The market value for newly-issued CDOs, prior to the availability of estimated values, represents the initial purchase price, which may not represent the actual value of the CDO.) The actual market value of the CDOs can only be determined when a transaction is executed in the market. Neither the estimated market value for any CDO nor the assumptions reflected therein represent levels at which actual transactions may occur or have occurred or at which Citigroup, its affiliates, or any party, may be willing to enter into any transaction. Valuations provided in a client's statement are not bids and do not represent an offer to enter into any transaction or a commitment by Citibank to enter into any transaction.

Important Notices Regarding Auction Rate Securities : **Current Price and Current Value** : Although "Current Price" and "Current Value" for all Auction Rate Securities (ARS) are shown at par (100) on your statement, these securities may ultimately be valued or traded below par. The ARS market continues to experience significant supply and demand imbalances, resulting in failed auctions and lack of liquidity for many ARS. There is currently no publicly-traded market or price for ARS that are experiencing failed auctions. The "Current Price" shown for such ARS does not represent any actual offer to purchase them at par.

CONTINUED

State Street Indirect FX Trading Class Action Settlement Fund Class Escrow

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000179 CIPNSRN3 001591 000000

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

LBS041695

Private Bank



Statement of Accounts

Statement Period 01 Sep 2016 — 30 Sep 2016

NOTES CONTINUED

"Current Price" and "Current Value" are subject to change at any time, without notice, and may be affected by a variety of factors, including but not limited to, continuation of or changes in supply and demand imbalances, development of a secondary market or other pricing or valuation sources, and issuer actions such as redemptions or participation in auctions. Information about Citigroup Global Markets Inc.'s auction practices and procedures is available at

www.smithbarney.com/products_services/ixed_income/au ction_rate_securities/. Your Relationship Manager is also available to answer any questions you may have.

Partial Redemptions of Auction Rate Securities: In the event that an ARS issuer redeems a portion, but not all, of the outstanding ARS in any series, the redemption will be allocated to clients' holdings at Morgan Stanley Smith Barney via an automated, impartial, random lottery process. A description of this process is available at www.smithbarney.com/products_services/ixed_income/au ction_rate_securities/. Your Relationship Manager is also available to answer any questions you may have.

Shares Held Elsewhere (SHE): Other than alternative investments that were offered or sold to you by Citi Private Bank, investments designated as "Held Elsewhere" and any valuations related thereto have been included at a client's request, based solely on information provided by the client, for information purposes only and are intended only for the client's use. These investments are not held through any Citigroup account, and Citibank has not independently verified their existence or the related valuations. Neither Citigroup nor its affiliates assume any responsibility for information contained herein with respect to these investments.

For information regarding alternative investments offered or sold to you by Citi Private Bank designated as "Held Elsewhere", see "Disclosures Regarding Alternative Investments" below.

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Securities are reported on a trade-date basis as reflected in the Settled Transactions section of the statement.

However, prior to March 01, 2010 certain securities were reported on a settlement-date basis and reflected in a Pending Settlements section of the statement. Please note that historical balances appearing in statements dated prior to March 01, 2010 will reflect a settlement-date accounting methodology.

Money Sweep Instrument Accruals: If your cash balance is fully liquidated at the end of a statement cycle, any pending accrued interest may not be available for viewing until it is actually paid out in the subsequent month. Please discuss any questions with your Banker.

Error Resolution Notice: In Case of Errors or Questions About Electronic Transfers, a client may (1) telephone his/her Private Bank Account Representative, (2) contact the Customer Service Center at 1-800-870-1073, or (3) write to Citicorp Data Systems Inc. P.O. Box 769004, San Antonio, TX 78245-9989. For Investment Accounts, a client may (1) telephone his/her Account Representative or (2) write to Citibank, N.A., Sort 1407, 1 Court Square, Floor 22, Long Island City, NY 11120, USA. In either case, you should call or write as soon as possible, if you think your statement or record is wrong or if you need more information about a transfer listed on the statement or record. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared. (1) Tell us your name and account number (if any). (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information. (3) Tell us the dollar amount of the suspected error. If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days. We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question.

For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error. We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation. Should you have any questions about your statement, please contact your Account Representative. The following special procedures apply to errors or questions about international wire transfers or international Citibank Global Transfers to a recipient located in a foreign country on or after October 28, 2013: Telephone us at 800-870-1073 or write to us at Citibank Client Services, P.O. Box 769014, San Antonio, TX, 78245-9989. We must hear from you within 180 days of the date we indicated to you that the funds would be made available to the recipient of that transfer. At the time you contact us, we may ask for the following information: 1) your name, address and account number; 2) the name of the person receiving the funds, and if you know it, his or her telephone number and/or address; 3) the dollar amount of the transfer; 4) the Senders Reference Number for the transfer (from the Receipt, if available); and 5) a description of the error or why you need additional information. We may also ask you to select a choice of remedy (credit to your account in an amount necessary to resolve the error or alternatively, a resend of the transfer in an amount necessary to resolve the error for those cases where bank error is found). We will determine whether an error has occurred within 90 days after you contact us. If we determine that an error has occurred, we will promptly correct that error in accordance with the error resolution procedures under the Electronic Fund Transfer Act and federal Regulation E or in accordance with the laws of the state where your account is located as may be applicable. See your Client Manual for details.

CONTINUED

State Street Indirect FX Trading Class Action Settlement Fund Class Escrow

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Private Bank



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In case of errors or questions about anything other than Electronic Transfers, you may telephone your Account Representative or contact our Client Services Center at 1-800-870-1073. To protect your rights, you should reconfirm all oral communications in writing to Please include your account number in any written communication to the Client Services Center.

Financial Coding Guidelines:

Regulations require that we periodically confirm client net worth and income information. This information appears on the Investment Objective Suitability Confirmation letter in coded format to ensure confidentiality. As you will periodically receive this letter, please refer back to this section to translate the coded information as follows: C=1, D=2, E=3, F=4, G=5, H=6, I=7, J=8, K=9, L=0, M=thousand, N=million, O=billion. For example, "\$750,000,000" would be coded to appear in the letter as I-G-L-N.

Disclosure Regarding Alternative Investments
Investments in alternative assets (e.g., hedge funds, private equity) are speculative, not suitable for all clients, and intended for experienced and sophisticated investors who are willing to bear the high economic risks of the investment, which can include: loss of all or a substantial portion of the capital invested due to leveraging, short-selling or other speculative investment practices; lack of liquidity in that there may be no secondary market for the Portfolio and none expected to develop; volatility of returns; restrictions on transferring shares/interests in the Portfolio; absence of information regarding valuations and pricing; lack of diversification and concentration of risk due to a single manager delays in tax reporting; less regulation and higher fees than mutual funds; and advisor risk.

Information regarding alternative investments is provided as a service to you and is for informational purposes only. Alternative investments generally lack liquidity in that there may be no secondary market for the investment. The value and prices assigned to alternative investments are based on available information typically received from the funds or other sources outside the Citi Private Bank. These values and prices are subject to change, may not be realized upon the sale or ultimate disposition of the investment and may not reflect more recent market volatility. Citi Private Bank is not responsible for any information or valuation received from other sources, including the fund manager and custodian.

The values and prices assigned to alternative investments are as of the date listed below, which generally reflects the most recent information received prior to this statement's closing date. This statement may contain values and prices as of dates that are inconsistent with your other holdings, due to delays in the availability of the valuation information for alternative investments. Some positions may not represent interests in a fund, but rather redemption proceeds withheld by a fund issuer pending final valuations that are not subject to the investment performance of the fund and may or may not accrue interest for the withholding period. Final valuations and prices will be determined by the fund.

If your investment is held in "nominee name", the nominee is the owner of record on the books and records of the issuer. The issuer will only recognize the nominee as the owner of the investment for all purposes including, but not limited to, communications, capital calls and distributions. Citi Private Bank is not required to take any action with respect to your investment unless valid instructions are received from you in a timely manner and no liability can be accepted for any losses that may arise as a result of your failure to provide such instructions or the failure of your nominee or any other Citi entity to take such actions, if your instructions are not timely received by the nominee.

Important Information Regarding Notifications of Transactions

Rating information provided on the face hereof is based upon good faith inquiry of selected sources, but we are not responsible for the appropriateness or correctness of a rating. Securities for which a rating from a nationally recognized statistical rating organization is not available are noted within this document as "NA".

To the extent relevant, transactions executed by Citibank, N.A., Citicorp Trust Delaware, N.A. or Citicorp Trust South Dakota, as applicable, ("Citi") are only executed on an agency basis. Please note, however, that in connection with an over-the-counter (OTC) derivatives transaction, Citibank, N.A. will serve as a direct counterparty to the transaction pursuant to the terms of an ISDA master agreement with the client. When providing the services related to the transactions included herein, Citi acts in one or more of the following capacities: (i) as an investment manager (non-discretionary or discretionary), (ii) in the fiduciary capacity of a trustee, (iii) in the fiduciary capacity of an executor/personal representative of a decedent's estate, and/or (iv) in the non-fiduciary capacity of a custodian. Please refer to the account opening documents for the relevant account for more information with respect to the capacity in which Citi acts with respect to a particular transaction.

The time of the execution of transactions will be provided within a reasonable time upon written request. If transactions contained herein involve a debt security that is an asset backed security including a municipal collateralized mortgage obligation, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to repayment, then the actual yield of such security may vary according to the rate at which the underlying receivables or other financial assets are prepaid. Information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life and the prepayment assumptions of underlying yield) will be furnished upon your written request.

If any transaction is in a debt security subject to redemption before maturity, the security may be redeemed in whole or in part before maturity. The redemption could affect the yield represented. Additional information will be provided upon request.

If Citibank, N.A. or an affiliate has acted as principal in a transaction included herein, the price of the relevant security, instrument or investment may include a mark-up or mark-down. Affiliates of Citibank, N.A. which may act as principal (each an "Affiliated Broker-Dealer") include, among others, Citigroup Global Markets Inc., Citibank International plc, and Latin American Investment Bank Bahamas Limited. Further information will be provided upon written request. If Citibank, N.A. receives remuneration from a party other than the customer, the source and amount of this remuneration will be furnished within a reasonable time upon written request. Affiliated Broker-Dealers, and/or their directors, officers or employees, may from time to time provide underwriting and other investment banking services for, or solicit business from, the issuer of any security, instrument or other investment that is the subject of a transaction included herein. Further, Affiliated Broker-Dealers (or customers thereof) may underwrite or make markets in or hold positions in or trade (including options on) these or other securities, instruments or investments of such issuer. An affiliated Broker-Dealer may receive a benefit or profit in connection with any of these activities in addition to any fees charged to you (or any other benefit or profit received) by Citibank, N.A. in connection with a transaction included herein.

With respect to the purchase of zero coupon securities, please note: no periodic interest payment will be made, and if callable, securities may be called below maturity value without notice by mail to holder unless registered.

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Private Bank



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Statement Period 01 Sep 2016 — 30 Sep 2016

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For US Persons Only: This statement may also reflect your contributions and distributions to alternative investments subsequent to the listed valuation dates. Cash distributions from alternative investments are categorized as "cash receipts" herein and will not be reported as taxable income on your year-end Form 1099, where applicable. You will receive either a Schedule K-1 or other documentation from the fund each year for use in preparing your annual tax return. For information regarding the source of a cash distribution, please consult the fund's investor reports, investor services or year-end tax report.

The alternative investments listed are not covered by FDIC (Federal Deposit Insurance Corporation) or SIPC (Securities Investor Protection Corporation).

Mortgage-backed securities ("MBS"), which include collateralized mortgage obligations ("CMOs"), also referred to as real estate mortgage investment conduits ("REMICs"), may not be suitable for all investors. There is the possibility of early return of principal due to mortgage prepayments, which can reduce expected yield and result in reinvestment risk. Conversely, return of principal may be slower than initial prepayment speed assumptions, extending the average life of the security up to its listed maturity date (also referred to as extension risk).

Additionally, the underlying collateral supporting non-Agency MBS may default on principal and interest payments. In certain cases, this could cause the income stream of the security to decline and result in loss of principal. Further, an insufficient level of credit support may result in a downgrade of a mortgage bond's credit rating and lead to a higher probability of principal loss and increased price volatility. Investments in subordinated MBS involve greater credit risk of default than the senior classes of the same issue. Default risk may be pronounced in cases where the MBS security is secured by, or evidencing an interest in, a relatively small or less diverse pool of underlying mortgage loans.

MBS are also sensitive to interest rate changes which can negatively impact the market value of the security. During times of heightened volatility, MBS can experience greater levels of illiquidity and larger price movements. Price volatility may also occur from other factors including, but not limited to, prepayments, future prepayment expectations, credit concerns, underlying collateral performance and technical changes in the market. Please read offering documents and/or prospectus information carefully for the risks associated with the particular MBS security you are purchasing. Please notify your banker if you would like to impose or change any reasonable restrictions on the management of your account, or if there have been any changes in your financial situation, investment objectives, requested restrictions or other instructions which might affect the services to be provided to you or the manner in which your investments should be invested.

INVESTMENT AND INSURANCE AND ANNUITY PRODUCTS (NON-DEPOSIT PRODUCTS) ARE NOT BANK PRODUCTS AND ARE: Not insured by the FDIC • Not insured by the Canada Deposit Insurance Corporation ("CDIC") • Not deposits or other obligations of Citibank or its affiliates • Not government insured • Not guaranteed by Citibank or its affiliates • Subject to investment risks, including possible loss of the principal amount invested.

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LBS041698

EX. 117

Carl Kravitz

1

Volume: 1

Pages: 1-121

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 CARL S. KRAVITZ

September 11, 2017, 9:15-11:54 a.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

Jones & Fuller Reporting
617-451-8900 603-669-7922

[Redacted text block]

[Redacted text block]

1 is that there was resistance to our participation;
 2 that after the first ERISA fee agreement -- and by
 3 that I am referring to the 9 percent deal -- that
 4 our participation was more welcome.
 5 Over time -- and let me -- let me strike
 6 that last sentence.
 7 As the case wore on, we did work closely
 8 with the customer class. But towards the end I
 9 would say there are two things: We took the lead
 10 and had extensive contact and conversation with the
 11 DOL; and in terms of the actual outcome, which
 12 involved the allocation between the customer class
 13 and the ERISA class, we played a critical role.
 14 And in my view this couldn't have been
 15 settled appropriately without separate ERISA
 16 representation because we were allocating between
 17 the ERISA share of the class and the rest, and in my
 18 mind the notion that the same set of lawyers could
 19 have done that is just not appropriate.
 20 And if an objector had raised that in my
 21 view, that there was one lawyer on both sides of
 22 that negotiation, I think that would have been a
 23 difficulty. So that is something that came into
 24 play at the end which is it was critically important

[Redacted text block]

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[REDACTED]

Page 40

1 that could be deducted from the ERISA share?
2 **THE WITNESS:** That is exactly what I was
3 trying to say.
4 **THE SPECIAL MASTER:** Okay. So -- and
5 was DOL's objective in wanting this cap to ensure
6 that at the very least -- to ensure a minimum
7 recovery for the -- what we'll refer to as the ERISA
8 class?
9 **THE WITNESS:** Right. Yes, that was my
10 understanding of at least part or -- or the major
11 part of their motivation. They were trying to
12 protect what the ERISA part would get on a net basis
13 as in addition to on a gross basis.
14 **BY MR. SINNOTT:**
15 Q. All right, Carl. Look at just about
16 two-thirds of the way down page 3. It may be
17 highlighted on your page, but it appears that this
18 was something that Attorney Zeiss had highlighted.
19 It says, "The ERISA settlement
20 allocation was negotiated directly between customer
21 counsel, ERISA counsel and representatives of the
22 DOL, FYI previously defined, and in light of the
23 fiduciary and other claims available under ERISA
24 laws provides a premium per dollar of indirect FX

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1 Q. And the subject matter is State Street,
2 dash, revised POA language, correct?
3 A. **Yes.**
4 Q. And what does POA refer to?
5 A. **Plan of allocation.**
6 Q. Okay.
7 A. **I believe.**
8 Q. And would it be a fair statement that Nicole
9 is attempting to address the allocation of ERISA in
10 this e-mail?
11 A. **Yes, in general that's right, describing,**
12 **you know, the allocation to ERISA and the**
13 **\$10,900,000 fee deduct if in fact the fee award**
14 **reached a certain level. Yes.**
15 Q. So is it fair to say that that 10.9 million
16 is a cap of sorts? That's the outer limit that the
17 Department of Labor has set for ERISA fees?
18 A. **I -- I -- ERISA fees. I would -- I always**
19 **thought of it a tiny bit differently. I always**
20 **thought of it as the cap of the amount of the fee**
21 **award that could be deducted from the ERISA share.**
22 Q. Okay.
23 **THE SPECIAL MASTER:** The cap on the
24 amount -- the cap on the amount of the fee award

Page 41

[REDACTED]

Page 66

1 correct?

2 **A. I see that. And maybe I -- I don't know**

3 **whether the rest of the e-mail string was attached.**

4 **If it was, then it appears to have been sent to me.**

5 **I have no reason to think that it wasn't, or I -- I**

6 **don't know whether the rest was or it wasn't. I'm**

7 **not saying it wasn't.**

8 **Q. All right. And is it fair to say that that**

9 **message that has been forwarded to you by Attorney**

10 **Goldsmith makes the 10.9-million-dollar cap an**

11 **essential term in this settlement, correct?**

12 **A. Yes. And I believe that's true. I mean I**

13 **believe that one of the things that DOL said was**

14 **that that 10.9 million dollars was the maximum**

15 **deduct from the ERISA share that they would agree**

16 **to.**

17 **Q. So DOL had demanded that as one of their**

18 **preconditions?**

19 **A. Well, yes, they did. It came up after the**

20 **settlement. This was not something that was agreed**

21 **at the mediation. They brought up -- they being DOL**

22 **-- brought up capping the deduct weeks later.**

23 **That's my memory.**

24 **THE SPECIAL MASTER: Could you explain**

Page 68

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

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20 [REDACTED]

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22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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1 And from that, just so that we can move
2 right on, Mr. Chargois got some of it.
3 **THE SPECIAL MASTER:** So --
4 **THE WITNESS:** As I understand things
5 based on what I've learned in the last couple of
6 weeks.
7 **THE SPECIAL MASTER:** Right.
8 **THE WITNESS:** As you know, we didn't
9 know anything about Mr. Chargois until it came up in
10 this investigation last month.
11 **THE SPECIAL MASTER:** So several
12 questions.
13 **THE WITNESS:** Sure.
14 **THE SPECIAL MASTER:** Did any of that 3.5
15 million dollars go to the ERISA class, as far as you
16 know?
17 **THE WITNESS:** As far as I know, based on
18 my understanding of the way the settlement worked,
19 the answer is no because that 3.5 million dollars is
20 attorneys' fees that was awarded by the Court.
21 And so it -- instead of going to the
22 ERISA counsel, it went to the customer class
23 counsel.
24 **THE SPECIAL MASTER:** Did any of that 3.5

Page 72

[REDACTED]

Page 71

[REDACTED]

Page 73

[REDACTED]

Page 82

[REDACTED]

Page 84

1 back at the time of the ERISA fee agreement I would
2 have been looking ahead to that because I really
3 didn't know what was going to unfold.
4 However, if you fast forward to the time
5 of the ERISA -- strike that. If you fast forward to
6 the time of the conversations with DOL -- sorry for
7 that -- I think that there is a significant argument
8 that the Chargois arrangement should have been
9 disclosed to DOL.
10 And the fact that we didn't know about
11 it prevented us from doing that. But if you think
12 about it, some of the money that was being deducted
13 from the ERISA share was going into the class
14 counsel fees, some of which was being shared by
15 Mr. Chargois.
16 Given the DOL's interest in the fee
17 issue, I think that they might have been interested
18 in that, and we would have thought long and hard
19 about making a disclosure to the DOL for that
20 reason. I mean I didn't go through that thought
21 process, but my gut tells me that Lynn and I would
22 have been of the view that it should be disclosed.
23 **THE SPECIAL MASTER:** What about to your
24 clients?

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1 and we should have been informed of these facts and
2 all the facts.
3 **THE SPECIAL MASTER:** Had you been
4 informed as counsel, what would you have done?
5 **THE WITNESS:** I could tell you it would
6 have had a material impact on my agreement to enter
7 into the 9 percent because it raised I think serious
8 questions along the lines I've just described, legal
9 and ethical.
10 And I would not have wanted to
11 participate in that process under those
12 circumstances, and I certainly would not have wanted
13 to participate and give my blessing to it. So
14 that's number one.
15 But there's a second thing from my
16 perspective. I also think that the amount of money
17 that was going to Mr. Chargois highlighted the
18 inequitable amount of money that was going to the
19 ERISA counsel. And I think that that would have had
20 an impact on me as well.
21 **THE SPECIAL MASTER:** What about on your
22 negotiations with the Department of Labor?
23 **THE WITNESS:** Well, that actually raises
24 one of the issues, and it's hard for me to say that

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1 **THE WITNESS:** I -- I believe that there
2 is a serious disclosure issue as to our clients as
3 well for the same reason which is that -- that there
4 is money that is coming out of the ERISA share --
5 the 10.9 million dollars; yet, that's not even going
6 to all the ERISA counsel. Some of that money is
7 attorneys' fees that is ending up with Mr. Chargois.
8 And that raises a -- you know, an
9 interesting issue as to whether or not there would
10 have to be disclosure to the ERISA named plaintiffs
11 and perhaps consent.
12 I don't know about the consent thing,
13 but in that situation with the money going to
14 Mr. Chargois and not to ERISA counsel and not to the
15 ERISA class, I think that raises a substantial issue
16 of whether or not some sort of disclosure would have
17 to have been made.
18 **THE SPECIAL MASTER:** Does the following
19 play into it at all: What we have learned to date
20 is that the monies paid to Mr. Chargois were the
21 result of an agreement made with Mr. Chargois back
22 in 2009 in which Mr. Chargois was given an interest
23 of 20 percent in all cases in which Labaton was lead
24 or co-lead counsel and Arkansas was lead or co-lead

EX. 118

From: Kravitz, Carl S. <ckravitz@zuckerman.com>
Sent: Saturday, August 22, 2015 2:59 PM
To: 'Lieff, Robert L.'; Sucharow, Lawrence
Cc: Michael Thornton; Isarko@kellerrohrback; Garrett J. Bradley; rlieff@lieff.com
Subject: RE: State Street

Thanks for the report. Not surprised that they have dug their heels in, but maybe DOL will compromise a little more. No harm in hoping.

<http://mm1.lettermark.net/zuckerman/card/ORBH_9.map>
[Description: Carl Kravitz 202.778.1873
ckravitz@zuckerman.com]<http://mm1.lettermark.net/zuckerman/card/ORBH_9.map>

-----Original Message-----

From: Lieff, Robert L. [mailto:RLIEFF@lchb.com]
Sent: Saturday, August 22, 2015 11:20 AM
To: Sucharow, Lawrence
Cc: Michael Thornton; Isarko@kellerrohrback; Kravitz, Carl S.; Garrett J. Bradley; rlieff@lieff.com
Subject: RE: State Street

I am uncertain as to whether we advised all of you of the results of our telephone call to Suzanne Riley. The call lasted one hour and Lynn and I did our best to convince a mid level government lawyer that compromise is the essence of negotiation without success. The problem is that she has no power to negotiate. We pushed for 290/10 split and she was at 280/20 with a willingness to agree to 282/18, which was where we were when we began. She is going to speak to her superiors on Monday and we will talk to her one last time. Bob

From: Sucharow, Lawrence [LSucharow@labaton.com]
Sent: Friday, August 21, 2015 7:56 AM
To: Lieff, Robert L.
Cc: Michael Thornton; Lynn Sarko; Carl S. Kravitz; Garrett J. Bradley; rlieff@lieff.com
Subject: Re: State Street

I have no problem with you guys trying one additional time to secure a "better deal". I agree that consistency in the percentages is the best way forward and the only way of doing that is to give the DOL credit for a certain amount out of the 300 million and applying for an across the board percentage of 25% on the balance. This is what I thought we agreed to two conversations ago but I was taken aback in the recent conversation by the vehemence against the \$18 million reduction which has been negotiated to to achieve the \$10.5 million fee demand by DOL.

Obviously any number lower than 18 million is a benefit to us. In any event now that you set the call up you might as well take a crack at it (without fracturing the relationship).

Sent from my iPhone

> On Aug 21, 2015, at 10:17 AM, Lieff, Robert L. <RLIEFF@lchb.com> wrote:

>
> Larry, I think the most important aspect of this is to achieve consistency in the fee percentage between the customer class and the Erisa class. That is 25% for both. In order to accomplish this we need to reduce our settlement to \$282 M and to let the DOL take credit for 18M. If we are to make one more stab at it then it would be to try to make our settlement \$290M and the DOL 10M. This would give us a fee request of 72.5 rather than 70.5. Is this worth the effort of one more call? I gather that you and Carl are saying "no" and Mike is saying "yes". The structure of the settlement would be the same as BNYM where we have 14M that the DOL got not being included for purposes of our fee request. Lynn and I have a call scheduled with the DOL at 11 PDT We can make a soft pitch for an extra 8M (from 282 to 290) This has been turned down by the DOL before. As lead counsel do you want us to proceed or not? The important thing to me is consistency of the fee request at 25% and not the extra 8M.

> _____
> From: Michael Thornton [MThornton@tenlaw.com]
> Sent: Friday, August 21, 2015 6:36 AM
> To: Sucharow, Lawrence; Lieff, Robert L.; Lynn Sarko; Carl S. Kravitz; Garrett Bradley
> Subject: Re: State Street

>
> Larry, I think that most of us have long ago have become pragmatists. I think that the concern with the negotiations now is not that they are unfair, but that the result might be something that with "reverse engineering" show a significant disparity between the way ERISA funds and the non are treated. Then the judge might be tempted to go with the low percentage for all.

> The fact is the the DOL has left us at this point with no good choices. I don't think there is a downside to continue to negotiate.

>
> Original Message
> From: Sucharow, Lawrence
> Sent: Friday, August 21, 2015 8:10 AM
> To: Michael Thornton; Robert L. Lieff; Lynn Sarko; Carl S. Kravitz; Garrett Bradley
> Subject: State Street

>
> Guys:
> I just want to let you know that I woke up with a very bad feeling this morning on how we left our negotiations with the DOL.
>
> While I too am unhappy that they are seeking to restrict our fees, I also understand their need and desire to take some credit for what was achieved. It's unfair, It's wrong, but completely understandable.

>
> We had negotiated in good faith with them to a point where it would cost us \$4.5 million from our maximum fees in order to have complete peace.
>
> To me, this is a relatively small price to pay in order to have a united front before the court and protect the balance of our fees. Indeed the differential we had negotiated between their offer and our last offer is only about \$600,000 on fees of 70,000,000+.

>
> Now that the heat of our conversation has cooled down, I am asking everyone to reconsider renegotiating with the DOL and accepting their latest proposal.

>
> Larry
>
> Sent from my iPhone

>
>
> ***Privilege and Confidentiality Notice***

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EX. 119

From: Sucharow, Lawrence <LSucharow@labaton.com>
Sent: Wednesday, August 26, 2015 11:13 AM
To: Lynn Sarko; Robert L. Lieff; Daniel P. Chiplock; Michael Thornton; 'Kravitz, Carl S.'; Brian McTigue; Goldsmith, David; Garrett J. Bradley
Cc: Lynn Sarko
Subject: RE: State Street FX-- ERISA atty fees

Thanks for your and Bob's efforts.

&

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 11:30 AM
To: Sucharow, Lawrence; Robert L. Lieff; Daniel P. Chiplock; Michael Thornton; 'Kravitz, Carl S.'; Brian McTigue; Goldsmith, David; Garrett J. Bradley
Cc: Lynn Sarko
Subject: State Street FX-- ERISA atty fees

&

SUCCESS.

&

I am happy to report that we have a deal with the DOL on the amount of atty fees we can charge in the Class cases.

&

They have agreed that they are agreeable for us to charge the ERISA plans- & **\$10.9 million atty fees.** & & To put it another way- that the settlement amount going to ERISA plans "**net of fees**" will be **\$49.1 million**

&

They understand that we have not yet decided how we want to present the settlement—and they are agnostic on the structure. & & They would like to see how we are going to phrase it—to make sure that we are living up to this agreement--&

But they are fine with:

1. & We can ask the Court for whatever percentage fee we want- as long as the ERISA plans are only charged \$10.9 million.

2. & We can phrase the settlement amount as whatever we want—although they are expecting us to say that the class **settlement amount was \$300 million.** & However- if we want to say it is some lesser amount—or say that we are not seeking fees on the whole portion of the \$60 million gross recovery- that is our business.

&

In other words—they & have given us a green light on how we describe it. & & & Based on this understanding they will not object to our fee application.

&

They also understand that "Litigation costs" will be charged pro rata on the whole \$300 million.

&

Next step--- they would like to see how we are going to phrase this----- ie: by putting something in our term sheet- or them putting something in their term sheet- or some other writing, etc.

&

Now that we know the numbers—let's go back to a discussion of how we are going to present this in the papers.

&

One last thing—please caution everyone in your firms—that we should not start having separate discussion with the DOL on how to phrase the ERISA fee issue. & Once we come up with the language, I will volunteer to deal with the DOL.

&

But the bottom line—we have a deal for \$10.9 million ERISA fees. & & & Let's not discuss this on today's "plan of allocation call" at 2 pm Eastern. & & The DOL will be circulating a new dial in number for that call = as the current number doesn't work.

&

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

&

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&

EX. 120

Message

From: Keller, Christopher J. [ckeller@labaton.com]
Sent: 12/5/2016 8:43:50 PM
To: Belfi, Eric J. [EBelfi@labaton.com]
Subject: FW: Wiring instructions

I'm concerned that, although the fees will be received by lawyers, it looks like we are sending part of our fee to an account that is not clearly a law firm. Let's discuss.

<<http://www.labaton.com/>>

Christopher J. Keller | Partner

140 Broadway, New York, New York 10005

T: (212) 907-0853 | F: (212) 883-7053

E: <<mailto:ckeller@labaton.com>> ckeller@labaton.com | W: <<http://www.labaton.com/>> www.labaton.com

<<http://www.linkedin.com/company/labaton-sucharow-llp>> <<https://twitter.com/LabatonSucharow>>
<<https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>>

From: Damon Chargois [<mailto:damon@cmhllp.com>]
Sent: Monday, December 05, 2016 3:34 PM
To: Belfi, Eric J.; Keller, Christopher J.
Subject: Fwd: Wiring instructions

Here you go, Eric. See email below from last time for routing, account and EIN. The name on the account is K&D Consulting & Investments.

Sent from my iPhone

Begin forwarded message:

From: <damon@cmhllp.com <<mailto:damon@cmhllp.com>> >
Date: September 22, 2016 at 9:30:17 AM CDT
To: <ckeller@labaton.com <<mailto:ckeller@labaton.com>> >
Subject: Wiring instructions

Chris, here are the wiring instructions for Spectrum and Vocera disbursement:

Texas Citizens Bank
4120 Fairmont Parkway, Tx 77504
Account [REDACTED]
Routing [REDACTED]
EIN# [REDACTED]

Sent from my iPhone

EX. 121

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 12/5/2016 8:45:32 PM
To: Keller, Christopher J. [ckeller@labaton.com]
Subject: RE: Wiring instructions

Totally agree. I will call when on the ground.

From: Keller, Christopher J.
Sent: Monday, December 05, 2016 3:44 PM
To: Belfi, Eric J. <EBelfi@labaton.com>
Subject: FW: Wiring instructions

I'm concerned that, although the fees will be received by lawyers, it looks like we are sending part of our fee to an account that is not clearly a law firm. Let's discuss.

Labaton Sucharow

Christopher J. Keller | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0853 | F: (212) 883-7053

E: ckeller@labaton.com | W: www.labaton.com



From: Damon Chargois [<mailto:damon@cmhlip.com>]
Sent: Monday, December 05, 2016 3:34 PM
To: Belfi, Eric J.; Keller, Christopher J.
Subject: Fwd: Wiring instructions

Here you go, Eric. See email below from last time for routing, account and EIN. The name on the account is K&D Consulting & Investments.

Sent from my iPhone

Begin forwarded message:

From: <damon@cmhllp.com>

Date: September 22, 2016 at 9:30:17 AM CDT

To: <ckeller@labaton.com>

Subject: Wiring instructions

Chris, here are the wiring instructions for Spectrum and Vocera disbursement:

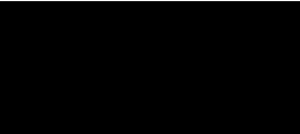
Texas Citizens Bank

4120 Fairmont Parkway, Tx 77504

Account #

Routing #

EIN# 47-4



Sent from my iPhone

EX. 122

Eric Belfi

1

Volume: 1

Pages: 1-132

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 ERIC BELFI

September 5, 2017, 11:54 a.m.-3:15 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

Jones & Fuller Reporting
617-451-8900 603-669-7922

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[REDACTED]

Page 12

[REDACTED]

Page 11

[REDACTED]

Page 13

[REDACTED]

5 We developed a relationship. He had a
6 firm and still has a firm that does a lot of
7 referring of clients. They do some litigation, but
8 mostly what they do is they find clients, and they
9 refer it to other law firms such as ourselves.
10 So he approached me and said he had some
11 opportunities to introduce us to pension plans in
12 the Texas, Arkansas, Oklahoma region because him and
13 his partner had contacts down there.

[REDACTED]

Page 18

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 Q. Notwithstanding the statement that in
7 October 2008 ARTRS with full knowledge that Labaton
8 [REDACTED]
9 as one of its monitoring counsel, would you agree
10 with me that neither Mr. Doane, nor others at
11 Arkansas Teacher Retirement System, was aware of the
12 referral agreement between Chargois & Herron and
13 Labaton?
14 A. They understood that we were working
15 together on this.
16 Q. All right.
17 A. That it was a joint presentation and that
18 both firms would be representing them in these
19 cases.
20 Q. All right. And let me take you beyond that
21 particular proposal --
22 THE SPECIAL MASTER: Let me -- more
23 specifically, was Arkansas -- anyone at Arkansas,
24 Mr. Doane at the time, Miss Clark, anyone or

Page 19

1 subsequently George Hopkins -- made aware of what's
2 referred to as a referral fee of 20 percent on all
3 cases in which Arkansas serves as lead plaintiff or
4 co-lead plaintiff and Labaton is lead or co-lead
5 counsel?
6 THE WITNESS: As to the 20 percent? I
7 don't believe they were ever notified about the 20
8 percent, but they certainly understood that there
9 was a relationship and that there would be some
10 obligation to pay fees to that firm.
11 THE SPECIAL MASTER: On every case?
12 Even if Chargois was not involved specifically as a
13 referring attorney and even if Chargois did no work
14 on the case? Were they aware of that?
15 THE WITNESS: I don't know what was in
16 their mind as far as -- I knew what we had presented
17 to them; that this was a joint application; that we
18 would be working together on this. They came to us
19 and said, look, we can only have one firm on, and
20 they said we'll put your firm on because you're
21 going to be doing the actual monitoring, but you
22 guys can work with them and be part of the team.
23 As far as, you know, everything else you
24 asked, I don't know what was in their mind as far as

Page 20

1 what they knew or didn't know.
2 THE SPECIAL MASTER: And that's a fair
3 answer. Let's not speculate about what was in their
4 mind.
5 THE WITNESS: Yeah.
6 THE SPECIAL MASTER: Was it disclosed to
7 them -- anyone at Arkansas -- that Chargois and
8 Herron or the Chargois & Herron firm were going to
9 receive a fee for every case in which Arkansas was
10 either lead plaintiff or co-lead plaintiff that
11 Labaton served as co-counsel -- lead counsel or
12 co-load counsel?
13 Was that disclosed to them by, as far as
14 you know, anyone at Labaton?
15 THE WITNESS: As far as I know, what was
16 disclosed is that we were working together but not
17 that specific verbiage.
18 But we do put in our retainer agreements
19 that there may be referral fees which is included in
20 the State Street one and is included in other ones
21 that we've done with Arkansas.
22 THE SPECIAL MASTER: What is your
23 understanding of what a referral fee is?
24 THE WITNESS: A referral fee is when you

Page 21

1 have another lawyer or law firm that helps establish
2 a relationship with a client, and essentially they
3 refer the client to you basically as an introduction
4 to the client. And that can have many different
5 manifestations as it goes forward how the
6 relationship proceeds.
7 I think the big distinction between the
8 normal kind of common parlance of what a referring
9 attorney is for most plaintiffs' litigation is they
10 refer them for one case. Maybe it's a personal
11 injury case, and they refer them once. It's not
12 like the injury keeps occurring.
13 Whereas, this is a different type of
14 scenario because the possibility exists, which
15 occurred -- we didn't know it was going to occur --
16 but that Arkansas could end up being in multiple
17 cases.
18 So when you establish the relationship,
19 the referral, you know, goes along with the fact
20 that they established a relationship and that's how
21 we got into the introduction.
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 22

[REDACTED]

Page 24

1 number was because as a fiduciary for the class he
2 was only concerned about, you know, how much were
3 the aggregate attorneys getting and not what is the
4 class getting -- I mean not what is -- what his
5 individual attorney's getting.
6 Q. So is it your testimony that you discussed
7 with George Hopkins the referral fee being paid to
8 Chargois and Herron?
9 A. **No, it is not my testimony.**
10 Q. Did you have any conversation with George
11 that talked about any referring party in that case?
12 A. **We just discussed about how cases would get**
13 **divided up and how fees would be split in**
14 **situations, but it wasn't specific to any particular**
15 **case; it was more kind of general how the industry**
16 **worked.**
17 Q. So the answer is, no, you did not discuss a
18 referral -- referring attorney in that particular
19 case?
20 A. **That is correct.**

[REDACTED]

Page 23

[REDACTED]

5 Q. Is there a specific person that you can
6 point to that was told that Chargois and Herron
7 and/or their firm would be receiving referral fees
8 for every case that Labaton worked on?
9 A. **There's no document that shows that.**
10 Q. Can you point to any conversation with
11 anyone at Arkansas Teachers Retirement System that
12 you or Chris Keller or Damon Chargois or Tim Herron
13 had where this arrangement was discussed?
14 A. **At this point I can't recall that, um, you**
15 **know, going back that many years. I cannot recall a**
16 **specific conversation.**
17 **I can recall a conversation that I had**
18 **with George Hopkins after the Colonial case in which**
19 **we talked about, you know, how fees worked, and he**
20 **basically said that, you know, he only wanted to**
21 **deal with our firm and wasn't concerned about how we**
22 **would cut fees up if we're working with other firms**
23 **and how that worked out.**
24 **He only wanted to know what the absolute**

Page 25

[REDACTED]

20 **THE SPECIAL MASTER:** Let me just --
21 before I forget.
22 We've seen in a number of e-mails
23 Mr. Chargois referred to as local counsel or "the
24 local."

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1 He wasn't local counsel in any of these
2 cases other than maybe the BP case --
3 **THE WITNESS:** Well, there's --
4 **THE SPECIAL MASTER:** -- in the legal
5 sense of being local counsel.
6 **THE WITNESS:** There's two ways that
7 local counsel is defined in our industry.
8 One is you're local to the jurisdiction
9 of where the case is being brought. So if we filed
10 a case in the Eastern District of Michigan, we would
11 retain a local counsel there.
12 We also work with --
13 **THE SPECIAL MASTER:** And in that
14 instance local counsel would file an appearance?
15 **THE WITNESS:** That is correct. We also
16 work with local firms in the local jurisdiction of
17 where some of the clients are, and they assist us in
18 the relationship with the client.
19 They may assist in document review.
20 They may assist in -- in preparation for a
21 deposition. There's even some states, such as
22 Pennsylvania, that actually have a requirement that
23 you have local counsel.
■ [REDACTED]

Page 27

1 counsel would have to appear in court on the docket.
2 The local -- under the local rules, right?
3 **THE WITNESS:** I -- we have not actually
4 represented Pennsylvania. So I don't know. But
5 that would be my presumption.
6 **THE SPECIAL MASTER:** I guess my question
7 is in what sense was Damon Chargois local counsel in
8 any case in which they did no work and did not
9 appear on the docket and did not make an appearance
10 in the case?
11 **THE WITNESS:** When we started the
12 relationship with Damon and Tim to work with
13 Arkansas, our belief -- my belief was that they were
14 going to be partners, and they would help with the
15 client.
16 As it turned out, very quickly after we
17 established the relationship jointly with ATRS, Paul
18 Doane left and was replaced by George Hopkins. When
19 George Hopkins came in, a couple of months after he
20 started, myself and my partner, Larry Sucharow, went
21 down to Little Rock, and we met with George, and we
22 learned very quickly -- as you probably have found
23 spending time with him -- that he's very direct. He
24 doesn't want any third parties involved. And he

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1 wants to deal directly with you.
2 And so he was very clear that we were to
3 just deal directly with him. And I got the sense
4 showing up with local counsel would not be the best
5 way to proceed with George going forward. And so we
6 made a decision at that point not to bring the local
7 counsel into the meetings.
8 **THE SPECIAL MASTER:** So, again, my
9 question is in what sense was he local counsel?
10 If he was not working on a case, if he
11 was not appearing in the case, he was not appearing
12 on the docket, in what sense was he local counsel?
13 **THE WITNESS:** He helped us initiate the
14 relationship. He was part of the joint presentation
15 that we got picked.
16 And the question that you're asking,
17 which I can't answer, is how long does that last.
18 **THE SPECIAL MASTER:** Well, that's a
19 different question.
20 I guess my question precedent to that --
21 preceding to that is in what sense is that local
22 counsel? As a judge understands it.
23 **THE WITNESS:** Well, it's very different
24 terminology than what you would understand as local

Page 29

■ [REDACTED]

Page 34

[Redacted text block]

Page 36

[Redacted text block]

Page 35

[Redacted text block]

Page 37

[Redacted text block]

15 So how did Chargois and Herron obtain
16 Arkansas Teachers as a client for Labaton?
17 **A. I don't think they necessarily obtained them**
18 **as a client. They helped us get an introduction so**
19 **we could do a presentation to the client.**
20 **And then once we did the presentation,**
21 **we were kind of put on their radar. So at some**
22 **point later when they did the RFQ, they sent an RFQ**
23 **to us for us to respond to.**
24 **THE SPECIAL MASTER: Did Chargois**

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1 participate substantively in that presentation?
2 **THE WITNESS:** The presentation that we
3 did to the client was in New York because Mr. Doane
4 had a conference in New York, and Damon arranged for
5 him to come to our office, but Damon I do not
6 believe participated in it. It was in New York.
7 **BY MR. SINNOTT:**
8 Q. And how was he able to get that introduction
9 for you with Mr. Doane?
10 **A. His partner, Tim Herron, was from Arkansas.**
11 **Little Rock is a pretty small community, and he just**
12 **knew people down there that were able to get us an**
13 **introduction to the executive director.**
14 **And I also believe that Tim actually was**
15 **next-door neighbors with Mr. Doane.**
16 Q. Okay.
17 **A. That's Tim Herron.**
18 Q. Tim Herron?
19 **A. Yes.**
20 Q. And were any elected officials brought into
21 the picture for purposes of assisting with this
22 introduction?
23 **A. Yes. When we went down there -- and it's**
24 **pretty common that we are given opportunities to**

Page 40

[REDACTED]

Page 39

1 **speak with people from the legislature, attorney's**
2 **general's office or even sometimes the governor's**
3 **office, about the service that we want to provide**
4 **because, as you probably know -- and I know the**
5 **judge knows -- that we have tremendous problems with**
6 **our pension plans around this country.**
7 **So when you have a law firm coming in**
8 **and saying we are trying to get money back for the**
9 **pension plan, this certainly piques their interest**
10 **because they see it as an opportunity to try to**
11 **recoup funds to bring back to the pension plan. So**
12 **it's very common for us to speak to elected**
13 **officials on this issue because it is such an**
14 **important issue.**
[REDACTED]

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[REDACTED]

Page 50

[REDACTED]

Page 52

[REDACTED]

18 **THE SPECIAL MASTER:** Does Labaton have
19 any other ongoing relationship agreements such as
20 the one with Chargois in which an attorney has an
21 interest going out years in every single case that
22 Chargois or any -- I'm sorry -- in any case in which
23 that lawyer originally helped facilitate the
24 relationship?

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[REDACTED]

Page 53

1 **THE WITNESS:** Yes.
2 **THE SPECIAL MASTER:** It does?
3 **THE WITNESS:** Yes.
4 **THE SPECIAL MASTER:** Is it the same kind
5 of an agreement that it has with Mr. Chargois in
6 this case in which they get a fee for every single
7 case?
8 **THE WITNESS:** Yes.
9 **THE SPECIAL MASTER:** How many such
10 relationships would that be?
11 **THE WITNESS:** Over ten.
12 **THE SPECIAL MASTER:** Over ten?
13 And in those relationships is the
14 forwarding attorney -- we've heard a number of
15 different names. Do they do any work on these
16 cases, actual substantive work on the case?
17 **THE WITNESS:** Yes.
18 **THE SPECIAL MASTER:** They actually work
19 on the cases?
20 **THE WITNESS:** Varying degrees, yes.
21 **THE SPECIAL MASTER:** Varying degrees.
22 So let me rephrase the question.
23 Does Labaton have any agreements with
24 firms similar to the agreement with the Chargois

Page 54

1 firm in which the facilitating attorney or
2 forwarding attorney does no work substantively on
3 the case and yet gets a fee?
4 **MS. LUKEY:** Your Honor, I think it might
5 be helpful to you if you asked him what the
6 agreement was supposed to be with Chargois about --
7 **THE SPECIAL MASTER:** Well, he can
8 incorporate that in his answer.
9 **MS. LUKEY:** -- doing work.
10 **THE WITNESS:** Could you repeat the
11 question?
12 **THE SPECIAL MASTER:** I'll try.
13 Does Labaton have any other agreements,
14 relationships with forwarding attorneys -- that was
15 Mr. Sucharow's phrase --
16 **THE WITNESS:** Yes.
17 **THE SPECIAL MASTER:** -- in which those
18 attorneys perform no work on a case and simply
19 facilitated the agreement with the client at some
20 point in the past but now have an ongoing interest
21 in Labaton's fee?
22 **THE WITNESS:** No.
23 **THE SPECIAL MASTER:** Now --
24 **THE WITNESS:** They all have varying

Page 55

1 degrees of how much they do, but the intent with the
2 agreement with Damon was that he would be active.
3 We never had the vision that it would
4 turn out the way it did turn out in that they don't
5 do anything in these cases, and it's just a straight
6 contractual obligation that we have.
7 Any of the referring or forwarding
8 attorneys that we work with have some involvement in
9 the cases. There are some that are very active in
10 the case, and there are some that are less active,
11 but all of them have some sort of activity in these
12 cases.
13 **THE SPECIAL MASTER:** Is it fair to say
14 that in those other cases those attorneys have a
15 relationship with the client?
16 **THE WITNESS:** Yes.
17 **THE SPECIAL MASTER:** A relationship that
18 is more than just simply a door-opening
19 relationship?
20 **THE WITNESS:** There's varying degrees of
21 the importance of the local attorney in these
22 relationships. There are some that, you know,
23 merely were door opening, but they've continued to
24 stay involved. There are some that they had a

Page 56

1 actual relationship with the client where they may
2 be were -- they were retained to do other work, and
3 they gave us an introduction.
4 So this was -- you know, it would be all
5 different degrees. So it kind of runs the gamut.
6 **THE SPECIAL MASTER:** Is it fair to say
7 that the way that this relationship with
8 Mr. Chargois has turned out in which he gets an
9 ongoing fee, irrespective as to whether he has
10 continued a relationship with a client or has done
11 any work on any case but yet gets a fee, is the only
12 one in which Labaton has of that nature?
13 **THE WITNESS:** Yes.
14 **THE SPECIAL MASTER:** Now Miss Lukey
15 wanted to give you an opportunity to I think expand
16 upon how the relationship with Mr. Chargois
17 developed.
18 **MS. LUKEY:** To what you expected and how
19 it developed.
20 **THE SPECIAL MASTER:** As to what you
21 expected.
22 **THE WITNESS:** Well, I think it's
23 important to understand that when we first started
24 this relationship we had Paul Doane in there. And,

Page 57

1 you know, as it turned out, Paul Doane ends up
2 leaving, and George Hopkins comes in. And, you
3 know, obviously, two totally different
4 personalities.
5 And so myself, I just had a gut reaction
6 that I needed to deal directly with George, and I
7 didn't want to bring Damon and Tim into the meeting.
8 So that's when Larry and I went down there, and from
9 that point forward George just started dealing with
10 me very directly.
11 He'd call me on my cell phone at 10
12 o'clock at night, and we developed a relationship.
13 I just saw that it was not worth trying to intermix
14 them into what we were doing because we developed
15 this kind of very close relationship, and there was
16 nobody needed in order for me to communicate to him
17 or for him to communicate to me.
18 He's a very direct guy, and he would
19 never want someone in between us.
20 **THE SPECIAL MASTER:** So is it fair to
21 say the relationship changed, the nature of the
22 relationship with Mr. Chargois and the Arkansas
23 client? Is that fair to say?
24 **THE WITNESS:** Yes.

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[REDACTED]

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1 question. In this case and, apparently, the other
2 cases, the relationship with Mr. Chargois was not
3 disclosed to the Court as part of the settlement and
4 fee application.
5 In view of all of this and from your
6 firm's perspective, would it not be -- would it not
7 have been just good business practice to put this in
8 front of the Court and have the Court weigh in?
9 **THE WITNESS:** We felt as though we had a
10 contractual obligation, and I don't know if the
11 Court would have done anything different with that.
12 And if we did not meet the contractual
13 obligation, I think we would have ended up with a
14 lawsuit.
15 **THE SPECIAL MASTER:** I guess my question
16 is more strategic and tactical.
17 There were obviously problems in the
18 relationship in the amount that you were having to
19 pay to Mr. Chargois in each of these cases in which
20 your firm was having to make a more significant
21 investment because they were settling at a later
22 point in the case after more work by Labaton, right?
23 **THE WITNESS:** Correct.
24 **THE SPECIAL MASTER:** Tactically and

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[REDACTED]

24 **THE SPECIAL MASTER:** Let me ask a

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1 strategically would it not have been a good idea to
2 bring it to the Court and maybe the Court would say,
3 hey, wait a minute, what's going on here?
4 **THE WITNESS:** The concern ultimately
5 that drove the decision-making process is our
6 concern with how Arkansas Teacher Retirement System
7 would deal with the fact that even if we brought it
8 in front of the district of Massachusetts in front
9 of Judge Wolf, that we may have ended up in state
10 court in for example Galveston, Texas with other
11 litigation.
12 And, you know, we would have had a
13 contract dispute that would have brought Arkansas
14 into that, and that was a real concern of ours about
15 what that would have looked like and how the client
16 would have felt about that. It was something I had
17 real concerns about.
[REDACTED]

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[REDACTED]

Page 96

[REDACTED]

14 **THE SPECIAL MASTER:** Okay. There was an
15 agreement at some point not to share the Chargois
16 agreement and the payment to Chargois with the ERISA
17 lawyers. Were you part of that?
18 **THE WITNESS:** No.
19 **THE SPECIAL MASTER:** Were you aware that
20 it was not going to be shared with the ERISA
21 lawyers?
22 **THE WITNESS:** I don't recall. It was
23 not something that was significant to me.
24 **THE SPECIAL MASTER:** Did they consult

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[REDACTED]

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1 with you about it?
2 **THE WITNESS:** No.
3 **THE SPECIAL MASTER:** So you did not have
4 any role at all in agreeing not to disclose the
5 Chargois payments to the ERISA lawyers?
6 **THE WITNESS:** Correct.

[REDACTED]

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1 first page, and you sent a response to George where
 2 you said, "Dear George, I do not believe that I
 3 mentioned to you in our call that we need to file
 4 the papers on Tuesday. So please have it signed."
 5 You blind copied Mr. Herron on that
 6 message, correct?
 7 **A. Yes.**
 8 **Q. Why did you do that?**
 9 **A. I wanted to keep him updated on what was**
 10 **going on in the case.**
 11 **Q. Why didn't you just include him as a CC?**
 12 **A. As I testified earlier, George had just**
 13 **started. I didn't know how to deal with him. It**
 14 **was a brand new person. I did not want to bring**
 15 **another person in that wasn't from our firm at this**
 16 **point.**
 17 **So I thought it was best to just keep**
 18 **him apprised but not put him on the correspondence.**
 19 **Q. Well, were you trying to hide this referral**
 20 **relationship from him?**
 21 **A. No.**
 22 **TELECON VOICE MESSAGE:** The following
 23 participant has entered the conference: Sarko.
 24 **Q. It seems like the easiest way to keep him**

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1 informed -- to keep your referring attorney informed
 2 without calling upon Mr. Hopkins to have to do
 3 anything would be just to CC him on it or to inform
 4 him that you're not -- you weren't looking for
 5 action. But you chose to send a blind copy to -- to
 6 the referring firm.
 7 Could you tell me again why you did
 8 that?
 9 **A. George was brand new. I -- you know, I**
 10 **didn't know if Tim knew who George was or if George**
 11 **knew who Tim was. I knew George was someone that**
 12 **could be a little bit difficult to deal with.**
 13 **I had heard stories of other firms that**
 14 **had dealt with him, and there was one particular**
 15 **incident that I know another one of my competitors**
 16 **had an issue where he wouldn't sign a certification,**
 17 **and I was really just trying to keep it very simple.**
 18 **This was the first case that they**
 19 **retained us. So I really just wanted to keep it**
 20 **very uncomplicated because we wanted to get the**
 21 **certification because we had to file this motion by**
 22 **April 7th.**
 23 **THE SPECIAL MASTER:** Were you concerned
 24 that if George had known about the relationship with

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1 Chargois and Herron he may have raised issues?
 2 **THE WITNESS:** I mean it's difficult to
 3 go back into my mind back in 09. But to the best of
 4 my recollection, I would say that I would have been
 5 concerned I didn't know what his response would be,
 6 and he seemed to be willing to do the case.
 7 So I did not want to --
 8 **THE SPECIAL MASTER:** -- rock the boat?
 9 **THE WITNESS:** That is correct.
 10 **BY MR. SINNOTT:**
 11 **Q. But in trying to avoid rocking the boat, you**
 12 **were concealing this relationship from him, were you**
 13 **not?**
 14 **A. I think concealing's a strong word. I mean**
 15 **they were on the papers that we had to ATRS. When**
 16 **we originally were hired, this was a new executive**
 17 **director. I didn't know how he was going to**
 18 **operate.**
 19 **So I was kind of just waiting until we**
 20 **figured things out with him as far as how to address**
 21 **it, but I -- I think concealing is a strong word**
 22 **there.**
 23 **THE SPECIAL MASTER:** The fact that he
 24 was a new executive director, wouldn't that have

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1 counseled more transparency rather than less?
 2 **THE WITNESS:** I was trying to deal with
 3 the personality of George, and I thought the best
 4 way to deal with him initially was to keep it very
 5 simple.
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

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[REDACTED]

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[REDACTED]

Page 115

[REDACTED]

17 **THE SPECIAL MASTER:** Was she ever told
18 in any case that Chargois and his firm were being
19 paid -- specifically told were being paid referral
20 fees?
21 **THE WITNESS:** Not that I'm aware of.

[REDACTED]

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[REDACTED]

20 **A.** To the best of my recollection, I had a
21 followup call with Christa after I got this e-mail,
22 and we had a conversation concerning that, you know,
23 we would be working with Chargois & Herron, but we
24 would be the ones that would go on the contract.

1 Q. And did you tell her that Chargois & Herron
 2 would be a necessary and appropriate expense?
 3 A. **The issue at this point is this is like**
 4 **eight years ago, and I -- I can't spell out the**
 5 **conversation. I just know I had a followup**
 6 **conversation with Christa concerning the fact that**
 7 **they were going to be involved in the relationship.**
 8 **As far as being able to decipher**
 9 **anything else that happened in that conversation, I**
 10 **couldn't tell you.**

11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 **those into different categories. Certainly with**
 17 **George Hopkins there was no communication to him**
 18 **specifically that Chargois & Herron was going to**
 19 **receive referral fees.**
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

21 [REDACTED]
 22 Q. George Hopkins has been the executive
 23 director since December 29, 2008, and that's, you
 24 know, a little less than nine years ago.
 25 You've never mentioned this relationship
 26 to him, have you?
 27 A. **Correct.**
 28 Q. Don't you think that would be something that
 29 would be prudent and expected for a law firm to do
 30 with a client?
 31 A. **He did not seem interested after the**
 32 **Colonial conversation we had about how fees are**
 33 **split up and how it's done to have any**
 34 **conversations. He was only concerned about what the**
 35 **total fee was going to be for the class.**
 36 **He was not concerned with who we were**
 37 **splitting fees with in each of these cases. It was**
 38 **never something that -- it was not -- it was not**
 39 **something that he ever actually asked about, but,**
 40 **more importantly, I think it was something that he**
 41 **basically said he didn't want to deal with. He only**
 42 **wanted to deal with what was the total fee.**
 43 Q. Once again, much like affiliation,
 44 allocation is a very broad concept, correct?

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

1 A. **Yes.**
 2 Q. It encompasses much, much more than fee
 3 splitting, correct?
 4 A. **I guess so.**
 5 Q. Well, it certainly encompasses more than fee
 6 referrals, correct? Or referring attorneys?
 7 A. **Referring attorneys can have a fee**
 8 **allocation.**
 9 Q. Right. But that's just one small piece,
 10 correct?
 11 A. **I'm not sure what you're -- what you're**
 12 **trying to get at with these questions.**
 13 Q. Well, what I'm getting at is that you seem
 14 to interpret a statement by Mr. Hopkins that he
 15 doesn't want to get into how fees are allocated to
 16 be a license to have essentially a no-show referral
 17 arrangement with Mr. Chargois.
 18 And isn't that a reach?
 19 A. **We didn't view it as a no-show obligation.**
 20 **We believed it to be a contract obligation that we**
 21 **had, and we were concerned that we were going to get**
 22 **sued if we did not pay them what they thought was**
 23 **their entitlement.**
 24 Q. I'm not -- I'm not taking issue with the

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1 decisions you made on that. I'm taking issue with
2 the lack of transparency and the lack of informing
3 of a client of this relationship.
4 Did you make the decision, Eric, not to
5 disclose this information to Mr. Hopkins, or did
6 someone else at the firm?
7 **A. I don't think there was any intent not to**
8 **disclose it. It's just something that didn't come**
9 **up.**
10 Q. For in excess of eleven years -- ten years?
11 **A. I'd say about eight years but...**
12 Q. Didn't they become a client in 2007?
13 **A. No, they did not become a client until**
14 **October 2008.**
15 Q. So I stand corrected. So for nine years it
16 hasn't come up?
17 **A. No.**
18 Q. All right.
19 **MR. SINNOTT:** Anything else, judge?
20 **THE SPECIAL MASTER:** Well, I do have a
21 couple of questions. I have to go, but there are
22 other things we want to ask, but let me ask this:
23 Were you involved at all in the decision not to
24 inform the Court of the Chargois relationship?

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[REDACTED]

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1 **THE WITNESS:** No.
2 **THE SPECIAL MASTER:** Who would have made
3 that decision?
4 **THE WITNESS:** I believe it would have
5 been dealt with by the settlement team.
[REDACTED]

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[REDACTED]

EX. 123

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,)
on behalf of itself and all others similarly situated,) No. 11-cv-10230 MLW

Plaintiffs,)

v.)

STATE STREET BANK AND TRUST COMPANY,)

Defendant.)

ARNOLD HENRIQUEZ, *et al.*,)
Plaintiffs,) No. 11-cv-12049 MLW

v.)

STATE STREET BANK AND TRUST COMPANY,)
STATE STREET GLOBAL MARKETS, LLC and)
DOES 1-20,)

Defendants.)

THE ANDOVER COMPANIES EMPLOYEE SAVINGS)
AND PROFIT SHARING PLAN, *et al.*,) No. 12-cv-11698 MLW

Plaintiffs,)

v.)

STATE STREET BANK AND TRUST COMPANY,)

Defendant.)

LABATON SUCHAROW LLP'S RESPONSE TO SPECIAL MASTER
HONORABLE GERALD E. ROSEN'S (RET.) SUPPLEMENTAL
INTERROGATORIES TO LABATON SUCHAROW LLP

Labaton Sucharow LLP (“Labaton Sucharow” or the “Firm”) responds as follows to the Special Master Honorable Gerald E. Rosen’s (Ret.) Supplemental Interrogatories to Labaton Sucharow LLP (“Supplemental Interrogatories”).

Labaton Sucharow’s answers are based solely on the facts and contentions presently known. To the extent Labaton Sucharow answers any Interrogatory, it does so without waiving any rights or objections and expressly reserves all rights and objections. Labaton Sucharow’s answers to the Interrogatories are made without waiving the right to: (i) amend, modify or supplement the answers and objections stated herein, if necessary; (ii) rely on any facts, documents or other evidence which may develop or come to Labaton Sucharow’s attention at a later date; and (iii) rely upon, reference or put into evidence additional expert information, testimony or reports.

GENERAL OBJECTIONS

The following General Objections are incorporated by reference into each response to the Supplemental Interrogatories, whether or not they are referenced in a specific response below.

1. Labaton Sucharow objects to Definition No. 1 as overbroad, irrelevant, and lacking in proportionality. Consistent with the agreement reached with counsel to the Special Master in connection with prior sets of Interrogatories, Labaton Sucharow will construe the term “you”, “your”, “the Firm”, and “the Law Firm” to refer to Labaton Sucharow LLP, and its employees.

2. Labaton Sucharow objects to the Supplemental Interrogatories to the extent they seek information protected by the attorney-client privilege, the work product doctrine, or information that otherwise is privileged, protected or exempt from discovery. To the extent that Labaton Sucharow has provided any answers below that may include information that is

privileged or protected as work product, the Firm provides such answers pursuant to the Limited Protective Order of the Special Master Relating to Attorney/Client Privileged and Work Product Documents and Information Being Provided to the Special Master (ECF No. 191). Pursuant to this protective order, the provision of information to the Special Master does not constitute a waiver of the attorney-client privilege or work product protection.

3. Labaton Sucharow objects to the Supplemental Interrogatories to the extent they purport to impose obligations that differ from or exceed those imposed by the Federal Rules of Civil Procedure, particularly Rule 33, and by any court decisions interpreting those Rules.

4. Labaton Sucharow objects to the Supplemental Interrogatories to the extent they seek information beyond the scope of, or not relevant to, the Courts' February 6, 2017 Memorandum and Order in the above-referenced cases.

5. In responding to the Supplemental Interrogatories, Labaton Sucharow has made reasonable efforts to respond based on its understanding and interpretation of each Interrogatory. If the Special Master subsequently asserts a reasonable interpretation of an Interrogatory which differs from that of Labaton Sucharow, Labaton Sucharow reserves the right to supplement its responses.

6. Labaton Sucharow reserves the right to supplement its answers should additional responsive information be discovered following the designated dates for responses.

7. Capitalized terms shall have the meanings set forth in the Supplemental Interrogatories, subject to any objections asserted herein. All other capitalized but undefined terms used in this response have the same meanings as set forth in the Stipulation and Agreement of Settlement (ECF No. 89).

LABATON SUCHAROW'S OBJECTIONS AND ANSWERS

INTERROGATORY 1(a):

Describe in detail the nature of the relationship and/or partnership between and among Labaton, Lieff and/or Thornton, on the one hand, and Damon Chargois, Esq. (or any firm represented by Mr. Chargois), whether past or present. In your answer, please include the following:

- a. The origins of the relationship, including a detailed description of any past legal, financial, and/or professional affiliations between the Firm, on the one hand, and Mr. Chargois or any firm represented by Mr. Chargois, on the other, and if applicable a case caption or description of the matter;

RESPONSE TO INTERROGATORY 1(a):

The Firm incorporates the General Objections set forth above. Labaton Sucharow further objects to this Interrogatory (and to the other subsections of Interrogatory 1) on the grounds that it is overbroad, unduly burdensome, lacking in proportionality, and beyond the scope of the Court's February 6, 2017 Memorandum and Order in the above-referenced cases. Subject to those objections, the Firm responds as follows:

Labaton Sucharow partner Eric Belfi first came to know Mr. Chargois in approximately 2004, when Mr. Belfi was at his prior firm, Murray, Frank & Sailer LLP. Mr. Chargois practices in Houston, Texas, and his firm, Chargois & Herron, LLP¹, previously had an office in Little Rock, Arkansas. Mr. Chargois and Tim Herron, a partner in the Little Rock office, introduced Labaton Sucharow to Paul Doane, then Executive Director of ARTRS, in 2007. In October 2008, ARTRS, with full knowledge that Labaton Sucharow was working with Chargois & Herron, selected Labaton Sucharow as one of its "monitoring counsel." Because Chargois & Herron facilitated the introduction that led to that selection, Chargois & Herron and Labaton

¹ Over time, the firm name and composition has changed but Mr. Chargois has been a named partner throughout.

Sucharow reached an agreement that, if the Firm represents ARTRS and obtains a settlement or judgment, Chargois & Herron will receive a referral fee. The referral fee is 20% of any net fee award to Labaton Sucharow that relates to ARTRS (pro rata if there are multiple parties represented by the Firm), unless otherwise negotiated in specific cases.

Pursuant to this arrangement, Chargois & Herron has received referral fees in the following cases:

- *In Re A10 Networks, Inc. Shareholder Litigation*, No. 2015-1-CV-276207 (Cal. Super. Ct. Jan. 29, 2015)
- *Brado v. Vocera Communications, Inc.*, No. 13-cv-3567 (N.D. Cal. Aug. 1, 2013)
- *Perry v. Spectrum Pharmaceuticals, Inc.*, No. 13-cv-0433 (D. Nev. Mar. 14, 2013)
- *Hoppaugh v. K12, Inc.*, No. 12-cv-0103 (E.D. Va. Jan. 30, 2012)
- *In re Hewlett-Packard Company Securities Litigation*, No. 11-cv-1404 (C.D. Cal. Sept. 13, 2011)
- *Arkansas Teacher Retirement System v. State Street Corporation*, No. 11-cv-10230 (D. Mass. Feb. 10, 2011)
- *In Re Beckman Coulter, Inc. Securities Litigation*, No. 10-cv-1327 (C.D. Cal. Sept. 3, 2010)
- *In re Colonial BancGroup, Inc. Securities Litigation*, No. 09-cv-0104 (M.D. Ala. Feb. 9, 2009)
- *In Re Capacitors Antitrust Litigation*, No. 14-cv-3264-JD (N.D. Cal.)

Additional information regarding the referral relationship and agreement can be found in documents being produced in response to the Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Request for the Production of Documents to Labaton Sucharow LLP ("Supplemental Request for Production").

The Firm has also worked with Mr. Chargois as local counsel in matters pending in courts in Texas, and has worked with Mr. Chargois on other business development opportunities.

INTERROGATORY 1(b):

- b. Whether the Plaintiffs' Firms intended to pay a portion of the Fee Award to Mr. Chargois, whether or not said payment was made, and if so, the total amount of the intended (or actual) payment, date(s) of any payments made, and the basis therefore;

RESPONSE TO INTERROGATORY 1(b):

The Firm incorporates the General Objections set forth above. Subject to those objections, the Firm responds as follows:

In April 2013, the Plaintiffs' Law Firms discussed Labaton Sucharow's obligation to pay a referral fee to Chargois & Herron, and agreed that if the SST Litigation resulted in a settlement or judgment, the amount owed to Chargois & Herron (20% of Labaton Sucharow's share of any fee award) would be calculated as a percentage "off the top" of the total fee award. For example, if the Plaintiffs' Law Firms decided that Labaton Sucharow should receive 25% of the total fee award, Chargois & Herron's share would be 5% of the total fee award (which is 20% of Labaton Sucharow's 25%). The Plaintiffs' Law Firms agreed that the payment to Chargois & Herron would come out of the portion of the Fee Award allocated to the three Plaintiffs' Law Firms. More specifically, the allocations from the Fee Award to Labaton Sucharow, Lieff and Thornton would each be reduced by 1/3 of the total owed to Chargois & Herron, in order to "fund" the referral payment. Accordingly, this shared obligation would affect neither the amount of the settlement flowing to the Class nor the amount of fees flowing to the ERISA counsel.

Once the parties reached a settlement in principle, the Plaintiffs' Law Firms again discussed the referral fee with Mr. Chargois, and agreed that it would be calculated as 5.5% of

the total Fee Award in the case. As they had agreed in 2013, the amount of the fee, \$4,102,549.43 (which includes \$2,780.68 in interest for the period 11/3/2016 through 12/8/2016), was deducted in equal parts from the portion of the award otherwise payable to the three Plaintiffs' Law Firms. The money was transmitted to Chargois & Herron on December 8, 2016, after Mr. Chargois signed an undertaking promising to return his firm's pro rata share of a reduction in the Fee Award, should the Court order one in the future.

Additional responsive information is included in documents being produced in response to the Supplemental Request for Production.

INTERROGATORY 1(c):

- c. To the extent Mr. Chargois was involved in the SST Litigation, or contributed in any way to the investigation, litigation, mediation and/or settlement of the Litigation, describe in detail the nature of his involvement, the dates of any work performed, and any individuals and/or firms with knowledge of said involvement;

RESPONSE TO INTERROGATORY 1(c):

The Firm incorporates the General Objections set forth above. Subject to those objections, the Firm responds as follows:

Mr. Chargois was not substantively involved in the investigation, litigation, mediation, and/or settlement of the SST Litigation. To the best of the recollection of Labaton Sucharow attorneys involved, he was not involved in any in-person meetings with ARTRS regarding the matter, although he may have been present on one or more telephone calls early in the process. Labaton Sucharow attorneys, principally Eric Belfi, spoke to or emailed with Mr. Chargois occasionally and apprised him of the status of the matter. Additional responsive information is included in documents being produced in response to the Supplemental Request for Production.

INTERROGATORY 1(d):

- d. The nature of any proposed or actual agreements, whether informal or formal, between and among Labaton, Loeff, and/or Thornton, on the one hand, and Mr. Chargois, to compensate Mr. Chargois a percentage of the total attorney's fees awarded in the SST Litigation, regardless of the total amount of that aggregate fee;

RESPONSE TO INTERROGATORY 1(d):

The Firm incorporates the General Objections set forth above. Subject to those objections, the Firm responds as follows:

The agreement between Labaton Sucharow and Chargois & Herron, discussed in response to Interrogatory 1(a) above, was not finalized in writing. Several times, Labaton Sucharow partners Christopher Keller and Eric Belfi have exchanged emails and drafts with Mr. Chargois attempting to memorialize the terms, but they never finalized a signed, written agreement.

The agreement between Mr. Chargois and the Plaintiffs' Law Firms, discussed in response to Interrogatory No. 1(b) above, was confirmed in email correspondence, which is being produced in response to the Supplemental Request for Production.

INTERROGATORY 1(e):

- e. The significance of Larry Sucharow's email to David Goldsmith, Garrett Bradley, Christopher Keller and Eric Belfi, dated November 22, 2016 (Exhibit A), including references to "Damon's percentage [] off top" and the basis for stating that there is "no reason for ERISA to see Damon's split";

RESPONSE TO INTERROGATORY 1(e):

The Firm incorporates the General Objections set forth above. The Firm further objects because the phrase "[t]he significance" is vague and ambiguous. Subject to those objections, the Firm offers the following additional information regarding the referenced email:

The amount that a law firm pays in a referral fee is highly sensitive, and the Firm did not wish to disclose the obligation to Chargois & Herron if it was not necessary or required. Although the Firm shared information about the obligation with Lieff and Thornton, that was in the context of seeking contribution from those firms to assist in paying the fee, since ARTRS served as the sole named Plaintiff in the SST Litigation. The Firm did not otherwise disclose the payment to Chargois & Herron in connection with the SST Litigation, because it was based upon an obligation internal to Labaton Sucharow that did not affect the lodestar submission (there being no time for Mr. Chargois or his firm included) or Fee Petition. Moreover, the Court never asked the Plaintiffs' Law Firms or the ERISA firms to detail how the Fee Award would be distributed among the various lawyers, so there was no reason or occasion to inform the Court of the referral obligation, which did not reduce the amount paid to the class or impact the class in any way.

There also was no reason to share information regarding the referral fee with the ERISA firms, because it did not impact the portion of the Fee Award allocated to those firms. Specifically, the award to ERISA counsel was calculated as 10% off the total Fee Award, paid from that total. The payment to Chargois & Herron was calculated as 5.5% off the total Fee Award, but was paid from the balance of the award payable to the three Plaintiffs' Law Firms. Because the existence of the referral fee had no bearing on anything relating to the ERISA firms or the portion of the Fee Award paid to them, Mr. Sucharow asked in the referenced email that separate correspondence be sent, so that the ERISA firms were not provided this piece of irrelevant, confidential, information.

INTERROGATORY 1(f):

- f. The significance of Bob Lieff's email to Garrett Bradley, Michael Thornton, Eric Belfi, 'cc Damon Chargois, Christopher Keller, and Daniel Chiplock, dated April 24, 2013 (Exhibit B), corresponding with Garrett Bradley concerning an obligation to pay "local counsel" assisting Labaton in matters involving the Arkansas Teachers Retirement System 20% of the net fee to Labaton; and

RESPONSE TO INTERROGATORY 1(e):

The Firm incorporates the General Objections set forth above. The Firm further objects because the phrase "[t]he significance" is vague and ambiguous. The Firm further objects because Labaton Sucharow cannot testify as to the meaning behind communications written by others. Subject to those objections, the Firm offers the following additional information regarding the referenced email:

Labaton Sucharow believes that the "obligation" referenced in this string of emails refers to the obligation discussed in response to Interrogatory 1(a) above and discussed further in response to the other sub-parts of this Interrogatory. The reference to Mr. Chargois and his firm as "local counsel" is sometimes used in this context, because it was Mr. Chargois' partner – an Arkansas lawyer – who introduced Labaton Sucharow to ARTRS. Mr. Chargois and his firm were at times referred to with the shorthand "local counsel" because of the Arkansas presence that Chargois & Herron had when it facilitated that introduction.

INTERROGATORY 1(g):

- g. Explain why the nature of this relationship and any intention to pay Mr. Chargois was not disclosed to Judge Wolf prior to submitting the Fee Petition nor to the Special Master during the course of his investigation.

RESPONSE TO INTERROGATORY 1(g):

The Firm incorporates the General Objections set forth above. Subject to those objections, the Firm responds as follows:

The Court did not ask Plaintiffs' Law Firms or the ERISA firms to explain how the Fee Award would be distributed or split, and Chargois & Herron had recorded no substantive attorney time to be included on the lodestar, so there was no occasion to raise the Chargois & Herron referral obligation with Judge Wolf. Labaton Sucharow had no affirmative obligation outside of an order imposing such a requirement to disclose this private referral arrangement to the Court. *See, e.g.,* William Rubenstein, Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 15:12 (5th ed.); *see also* response to Interrogatory No. 1(e) above.

With respect to the proceedings before the Special Master, Labaton Sucharow does not read the prior interrogatories or requests for production as requesting this or other information regarding the fee allocation, nor is Labaton Sucharow aware of any question at deposition that would have called for reference to this relationship. Request for Production No. 22, which appears geared toward discovering information regarding the portion of the Fee Award paid to ERISA counsel, might arguably be read to encompass such information; but that request was struck in connection with the conferral process.

Accordingly, Labaton Sucharow and its counsel who assisted in this portion of the document search and review, Mayer Brown LLP, did not design keyword searches or conduct a responsiveness review geared toward finding documents regarding the Fee Award allocation or the referral fee paid to Chargois & Herron. To the extent that Mayer Brown did come across some documents that mention Chargois & Herron or Mr. Chargois, they were designated as non-responsive.

INTERROGATORY 2:

Describe in detail all allocations of the Fee Award deposited by the Court into the Labaton Trust Account made to date. Please include the amount and recipient of each individual allocation, the date, and the brief description of the services rendered warranting payment. To the extent any money was not distributed and remains in the Labaton Trust Account at this time, please indicate how much, if any, of the sum now remaining has been earmarked, and the reason for the payment. Altogether, your answer to this interrogatory should account for the entirety of the \$75,541,250.00 award.

RESPONSE TO INTERROGATORY 2:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm provides the following information:

The Fee Award was not deposited by the Court into an attorney trust account. Pursuant to the terms of the Stipulation and Agreement of Settlement approved by the Court, the Class Settlement Amount was deposited by State Street into an escrow account. In December 2016, after the Court entered the Fee Award, and after the Settlement reached its Effective Date, the Court-awarded attorneys' fees, Litigation Expenses, and Service Awards were paid out of the Class Settlement Amount.

Additionally, the Court awarded interest on the attorneys' fees, which totaled \$50,557.88 at the time of payment. Accordingly, the total amount of attorneys' fees awarded, including accrued interest, was \$74,591,807.88 (\$74,541,250.00 + \$50,557.88). Further, although the Court awarded \$1,257,697.94 in Litigation Expenses, this amount included \$1,800 in estimated travel costs for Labaton Sucharow attorneys to attend the November 2, 2016 hearing. *See Firm individual fee declaration, ECF No. 104-15, at page 11.* The Firm's travel costs in connection with the hearing were \$1,642.25, *i.e.*, less than \$1,800. Accordingly, total Litigation Expenses were \$1,257,540.19, slightly less than the \$1,257,697.94 amount referenced in the Fee Award.

Below are the amounts that were disbursed for attorneys' fees and Litigation Expenses:

| <u>Firm</u> | <u>Fees</u> | <u>Interest on Fees</u> | <u>Expenses</u> | <u>Total</u> |
|-------------------|------------------------|-------------------------|-----------------------|------------------------|
| Labaton Sucharow | \$29,604,057.44 | \$20,079.07 | \$258,666.85 | \$29,882,803.36 |
| Thornton Law Firm | \$18,266,333.31 | \$12,389.21 | \$295,315.50 | \$18,574,038.02 |
| Lieff Cabraser | \$15,116,965.50 | \$10,253.14 | \$271,944.53 | \$15,399,163.17 |
| Keller Rohrback | \$2,484,708.33 | \$1,685.26 | \$342,766.63 | \$2,829,160.22 |
| McTigue Law | \$2,484,708.34 | \$1,685.26 | \$50,176.39 | \$2,536,569.99 |
| Zuckerman Spaeder | \$2,484,708.33 | \$1,685.26 | \$38,670.29 | \$2,525,063.88 |
| Damon Chargois | \$4,099,768.75 | \$2,780.68 | - 0 - | \$4,102,549.43 |
| TOTAL | \$74,541,250.00 | \$50,557.88 | \$1,257,540.19 | \$75,849,348.07 |

The attorneys' fees and expenses paid to Labaton Sucharow includes \$300,000 in fees and \$2,158.33 in expenses that were paid by the Firm in December 2016 to the law firm of Goldman Scarlato & Penny, P.C. in consideration for services rendered by Paul J. Scarlato, Esq. At Labaton Sucharow's request, Mr. Scarlato assisted with research and drafting for the April 2011 Amended Complaint and July 2011 submissions in opposition to State Street's motion to dismiss. At the time, Mr. Scarlato was Of Counsel to Labaton Sucharow as well as a partner of the Goldman Scarlato firm. Mr. Scarlato's time was reported in the Firm's individual fee declaration, ECF No. 104-15, at page 7.

Below are the Court-approved Services Awards that were disbursed:

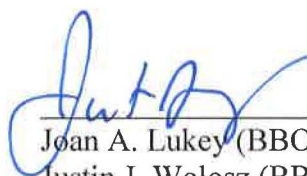
| | |
|--|-------------|
| Arkansas Teacher Retirement System | \$25,000.00 |
| Arnold Henriquez | \$10,000.00 |
| Michael Cohn | \$10,000.00 |
| William Taylor | \$10,000.00 |
| Richard Sutherland | \$10,000.00 |
| The Andover Companies Employee Savings and Profit Sharing Plan | \$10,000.00 |
| James Pehoushek-Stangeland | \$10,000.00 |

The services rendered warranting payment of the above amounts are set forth in the Fee Petition (ECF No. 104), including their individual declarations annexed thereto, and the

Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs (ECF No. 103). With respect to Damon Chargois, Esq., the Firm respectfully refers the Special Master to its Response to Supplemental Interrogatory 1 above.

As of July 31, 2017, the balance of the Class Settlement Fund was \$224,394,977.36, which is primarily invested in U.S. Treasury Bills. None of this balance has been "earmarked" for additional attorneys' fees or Litigation Expenses. The Claims Administrator is owed certain Notice and Administration Expenses, which are incurred on an ongoing basis.

Dated: August 11, 2017



Joan A. Lukey (BBO No. 307340)
Justin J. Wolosz (BBO No. 643543)
CHOATE, HALL & STEWART LLP
Two International Place
Boston, MA 02110
Tel: (617) 248-5000
joan.lukey@choate.com
jwolosz@choate.com

Attorneys for Labaton Sucharow LLP

VERIFICATION

On behalf of Labaton Sucharow LLP, I have read Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Interrogatories to Labaton Sucharow LLP. The Response was prepared with the assistance of the employees, representatives, and counsel of Labaton Sucharow LLP, and the information provided is not fully within my personal knowledge. I reserve the right to make changes or additions to these responses if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. To the extent that these responses are within my personal knowledge, I certify them to be true. To the extent that these responses are not within my personal knowledge, I have no reason to believe that they are not true.

Signed under oath under the penalties of perjury this ___ day of August, 2017.

Eric J. Belfi

CERTIFICATE OF SERVICE

I, Justin J. Wolosz, hereby certify that on this 11th day of August I have caused a copy of the foregoing Labaton Sucharow LLP's Response To Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Interrogatories to Labaton Sucharow LLP to be served via email and overnight mail upon William F. Sinnott, Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, MA 02108.


Justin J. Wolosz

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

EX. 124

Message

From: Zeiss, Nicole [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=ZEISSN]
Sent: 12/7/2016 5:01:27 PM
To: Ng, Cindy [CNg@labaton.com]
CC: Goldsmith, David [dgoldsmith@labaton.com]
Subject: final work on letter to Citibank

Damon's allocation should come out of our IOLA. It is fine for that to happen on Friday.

Thanks

From: Zeiss, Nicole
Sent: Wednesday, December 07, 2016 11:30 AM
To: Ng, Cindy
Cc: Goldsmith, David
Subject: Chargois wire instructions are below

Below are his wire instructions, looks like they match the W-9 and undertaking. Sorry to be all over the place but I have to ask Larry something about whether Damon should be paid out of the Citibank escrow account

From: Belfi, Eric J.
Sent: Wednesday, December 07, 2016 8:58 AM
To: Zeiss, Nicole
Subject: Re: Damon

Please use this:

Wells Fargo Bank NA

121000248

Damon J. Chargois

ss# [REDACTED]

Routing: [REDACTED]

Acct. #: [REDACTED]

Wells Fargo

420 Montgomery Street

San Francisco, CA 94104

He needs a new undertaking for Damon Chargois, Esq.

Eric Belfi

Partner

Labaton Sucharow LLP

140 Broadway

New York, N.Y. 10005

o: 1.212.907.0878

c: 1.516.509.5236

On Dec 7, 2016, at 5:01 AM, Zeiss, Nicole <NZeiss@labaton.com> wrote:

Hi again, we have to pull the trigger on this this am so Cindy can finalize the bank letter. Thanks

Sent from my BlackBerry 10 smartphone.

From: Zeiss, Nicole

Sent: Tuesday, December 6, 2016 11:18 AM

To: Belfi, Eric J.

Subject: Damon

I spoke with David. Do you think we will have time to process his allocation once he wants it, or will it be a rush? If it will be a rush, then I want to tell accounting to bring the money into our IOLA. Otherwise, it can stay in the settlement fund, but it will take some hoops to get it out (Keller AND Larry signature).

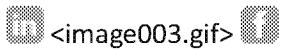
**Labaton
Sucharow**

Nicole M. Zeiss | Partner

140 Broadway, New York, New York 10005

T: (212) 907-0867 | F: (212) 883-7067

E: nzeiss@labaton.com | W: www.labaton.com



EX. 125

Damon Chargois

1

Volume: 1

Pages: 1-330

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 DAMON J. CHARGOIS

October 2, 2017, 9:16 a.m.-5:01 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

**Jones & Fuller Reporting
617-451-8900 603-669-7922**

Page 14

[REDACTED]

Page 16

[REDACTED]

Page 15

[REDACTED]

Page 17

1 that?

2 **THE WITNESS:** Either end of 2006 or

3 beginning of 2007. Somewhere around there.

4 **BY MR. SINNOTT:**

5 Q. So what happened after you learned about

6 Labaton's desire to make contact with you?

7 **A. A lawyer in our office, Kamran Mashayekh,**

8 **put us together -- not sure -- basically he had**

9 **spoken to them before me.**

10 Then Eric Belfi I believe called me

11 directly and asked if I'd be interested in working

12 on a case called HCC Holdings that was on file in

13 Houston.

14 I asked tell me a little bit about it

15 and what you would expect of me, and he said

16 essentially filing documents, and you may have to

17 sign off on a pro hac vice for any lawyers that are

18 not authorized to appear in the case.

19 Q. All right. Were you asked, in effect, to be

20 local counsel --

21 **A. Yes, sir.**

22 Q. -- for Labaton? Okay.

23 Was that the expression that Labaton

24 used in hiring you?

Page 26

[REDACTED]

Page 28

[REDACTED]

Page 27

1 investors?
2 **A. I asked people that I knew if they knew what**
3 **an institutional investor was and, if so, if they**
4 **knew anyone that I could talk to.**
5 **Q. So you were starting from scratch? Is that**
6 **a fair statement?**
7 **A. That's a fair statement.**
8 **Q. Okay.**
9 **THE SPECIAL MASTER: Did you have a**
10 **partner in Arkansas?**
11 **THE WITNESS: I did.**
12 **THE SPECIAL MASTER: And that was?**
13 **THE WITNESS: Tim Herron.**
14 **THE SPECIAL MASTER: Tim Herron.**
15 **THE WITNESS: (Nods head.)**
16 **THE SPECIAL MASTER: Did Mr. Herron have**
17 **relationships with institutional investors at the**
18 **time?**
19 **THE WITNESS: No, sir.**
20 **THE SPECIAL MASTER: Was it just the two**
21 **of you that were affiliated in the Little Rock**
22 **office then?**
23 **THE WITNESS: Yes, sir.**
24 **THE SPECIAL MASTER: Okay.**

Page 29

[REDACTED]

Page 30

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 32

1 had any information or knew anyone that we could
2 talk to.
3 And Eric Belfi indicated that they also
4 wanted to engage a local law firm to help them to
5 establish a foothold, a presence in the community so
6 that it's just -- I guess it gives a better
7 impression than if they're some -- with all due
8 respect, some guys that are beasts --
9 **THE SPECIAL MASTER:** New York firm.
10 A. -- just trying to get business, and they
11 don't care about what's going on.
12 So we opened up doors and introduced
13 them to anyone we knew, sure.
14 Q. Okay. And had the Labaton attorneys given
15 you an idea of exactly the profile of persons or
16 plans that they wanted to gain an introduction to?
17 **THE SPECIAL MASTER:** Or types of cases.
18 **THE WITNESS:** Yes, sir.
19 A. They were interested in getting
20 introductions to institutional investors with the
21 goal of monitoring their portfolios. They had to
22 explain to me what that meant.
23 Once they explained to me what it meant,
24 that's what I did.

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1 A. Relatively new. I hate to say new because
2 the hormone replacement therapy litigation was very
3 active. I was there every month, and it was very,
4 very involved.
5 Q. Okay. And was Labaton involved in that at
6 all?
7 A. No, sir.
8 Q. Were any other firms involved or was that
9 something that your own firm was handling?
10 A. It was my own firm. Our original cases.
11 Q. And was it a successful practice?
12 A. Ultimately, no. We couldn't afford them.
13 So we ended up having to refer them out and close
14 our Little Rock firm.
15 Q. Okay. And when did you ultimately close the
16 Little Rock firm?
17 A. That was around 2010 or end of 2009.
18 Q. Now what did you do in order to assist Belfi
19 and Keller in meeting institutional investors?
20 Tell us what your approach was to this
21 and what you actually did.
22 A. Tim and I reached out to friends or
23 associates, people that we knew, told them why we
24 were reaching out to them and asking them if they

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1 Q. Okay.
2 **THE SPECIAL MASTER:** Was that
3 institutional investors with respect to monitoring
4 as to certain kinds of cases, securities cases,
5 transactional cases, antitrust cases? Or was that
6 not --
7 **THE WITNESS:** I don't know.
8 **THE SPECIAL MASTER:** -- was that not
9 specified?
10 **THE WITNESS:** That was not specified.
11 **BY MR. SINNOTT:**
12 Q. At some point did you have some success in
13 making inroads into this area?
14 A. Yes, sir.
15 Q. Tell us about that.
16 A. Tim was friends with Senator Farris -- Steve
17 Farris and asked him do you know anyone or point us
18 to anyone we might be able to talk to, and he told
19 Tim that recently a gentleman named Paul Doane had
20 taken over Arkansas Teachers, and you might want to
21 give him a try. Good luck.
22 Q. Did he facilitate that introduction in any
23 way?
24 A. No, sir. Tim just told me about it, and I

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1 looked up Paul Doane and called him.
2 THE SPECIAL MASTER: Cold?
3 THE WITNESS: Yes, sir.
4 Q. And what was Mr. Doane's response when you
5 called him?
6 A. The gist of it was who are you and why are
7 you calling me, but I told him who I was, who our
8 firm was. We're local not far from your office and
9 how I got his name and why I was calling.
10 Q. Okay. And did he offer to help you?
11 A. I don't understand.
12 Q. Did he ask you to come in for a meeting? Or
13 did he --
14 A. No, sir.
15 Q. -- extend -- you know, try to arrange for
16 you to talk again with him?
17 A. No, sir.
18 Q. All right. What did he say?
19 A. He listened to what I had to say, and I
20 asked him if I could meet with him. And then I told
21 him that, you know, I was working with a New York
22 law firm that specializes in institutional
23 investors.
24 Q. Okay. So how did you leave it after that

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1 conversation?
2 A. Let me know if you're willing to give us
3 some time.
4 Q. Okay. And what happened next?
5 A. He -- I don't know if it was a followup call
6 by me or if it was that call, but he ultimately
7 agreed to meet.
8 Q. Okay. And did you meet him by yourself, or
9 were you accompanied by someone else?
10 A. The Labaton -- I believe it was Eric Belfi
11 and Chris Keller, but I can't swear to that. I know
12 Eric Belfi was there. I don't know if Chris Keller
13 was there.
14 Q. Okay. And how soon after the telephone
15 conversation did this meeting take place?
16 A. I'll guess within a week or two.
17 Q. Okay. And is it fair to say that Eric and
18 Chris were responsive and came down --
19 A. Yes.
20 Q. -- at the time that you told them that the
21 meeting would be -- time and date?
22 A. Yes, sir.
23 Q. Okay. So tell us what happened at that
24 meeting.

Page 36

1 A. Eric --
2 THE SPECIAL MASTER: Hold that thought.
3 MR. SINNOTT: Sure.
4 THE SPECIAL MASTER: Was this the first
5 institutional investor that you'd been successful in
6 setting up a meeting with?
7 THE WITNESS: Yes, sir.
8 THE SPECIAL MASTER: I'm sorry. If you
9 remember your question.
10 MR. SINNOTT: Okay. I do.
11 BY MR. SINNOTT:
12 Q. Tell us what happened at the meeting.
13 A. Eric Belfi presented all of the services
14 that Labaton has available and what their -- what
15 they could do and presented as a courtesy that they
16 do this monitoring of the portfolio.
17 Q. Okay. And did Mr. Doane ask any questions
18 of Eric?
19 A. I'm sure he did. I don't remember specific
20 questions.
21 Q. Okay. Did you participate in the
22 conversation?
23 A. I was there, but as far as substantive
24 matters, no.

Page 37

1 Q. You let Eric do the talking?
2 A. Yes, sir.
3 Q. Okay. But you're a good listener?
4 A. I'm a good listener.
5 Q. Okay. How long was the meeting?
6 A. Maybe 30, 45 minutes.
7 Q. Okay. And how did Eric and Mr. Doane leave
8 it at the end of the meeting?
9 A. Something along the lines of let's follow
10 up, or I'll be in touch.
11 Q. Okay. And did you and Eric debrief after
12 the meeting or go somewhere and talk about what
13 happened and/or next steps?
14 A. I'm sure we talked after the meeting, but as
15 far as next steps, no.
16 Q. All right. What's the next thing that
17 happened with respect to Mr. Doane to your
18 knowledge?
19 A. Eric Belfi called me and asked me to send a
20 little blurb about my firm because he was interested
21 in including us in the request for -- it's either an
22 RFQ or an RFP but to include us in that.
23 Q. Okay.
24 A. And so I sent my firm information to him.

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1 Q. Had Mr. Doane raised the subject of a
2 request for proposals or something along those
3 lines, an RFP, during the conversation with Eric?
4 **A. Not that I recall.**
5 Q. Do you know where Eric got the idea that
6 this would be an appropriate way to seek business
7 with Arkansas?
8 **A. I assume Paul Doane.**
9 Q. Okay.
10 **A. But I don't know.**
11 Q. All right. You don't recall anything in the
12 conversation about an RFP?
13 **A. No.**
14 Q. All right.
15 **THE SPECIAL MASTER:** So do you know did
16 either Eric or Chris mention to you that they were
17 going to pick up the threads from this first meeting
18 and deal directly with Mr. Doane?
19 **THE WITNESS:** Yes.
20 Q. And did they indicate what, if anything,
21 they'd be looking for you to do as part of this
22 ongoing relationship with Mr. Doane?
23 **A. At that time the impression that I had is**
24 **that I would be local counsel just as I was in the**

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[REDACTED]

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1 **HCC Holdings case.**
2 Q. Okay. But that was an assumption on your
3 part?
4 **A. Yes, sir.**
5 Q. And at some point did you attempt to
6 introduce Eric and/or Christopher to any other
7 figures in Little Rock?
8 **A. Yes, sir.**
9 Q. All right. Tell us about that.
10 **A. In furtherance of the stated desire to be a**
11 **presence in Little Rock, have an interest in Little**
12 **Rock, Eric came down, and we showed him around**
13 **Little Rock, introduced him to Senator Farris, and I**
14 **don't know if it was that time or a subsequent time,**
15 **but we asked and Mike Beebe was kind enough -- he**
16 **was running for governor at the time -- to give us**
17 **five minutes, ten minutes, and I introduced Eric to**
18 **Mike Beebe.**
19 Q. Okay. What was Mike Beebe's position at
20 that time?
21 **A. He was the outgoing attorney general.**
22 **THE SPECIAL MASTER:** And running for
23 governor?
24 **THE WITNESS:** And running for governor.

Page 41

[REDACTED]

Page 46

[REDACTED]

Page 48

1 association with Labaton?
2 **A. Yes, sir.**
3 Q. And what did you tell him that -- you know,
4 at this first meeting that you were doing on behalf
5 of Labaton?
6 **A. Helping to introduce them to institutional**
7 **investors.**
8 Q. Okay. Now getting back to Paul Doane and
9 Little Rock, after the RFP was submitted by Labaton
10 and by yourself -- and I take it it was a joint
11 proposal?
12 **A. It was.**
13 Q. How long was it before you heard of any
14 progress?
15 **A. I believe Eric called me within two to four**
16 **weeks of that, told me that it had been kicked back.**
17 **Said that the Arkansas Teachers wanted one firm on**
18 **the form.**
19 Q. Okay. So what did that mean?
20 **A. I said go ahead and withdraw our firm and**
21 **good luck.**
22 Q. Okay. So you and your firm bowed out of the
23 monitoring relationship? Is that what it was
24 called?

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[REDACTED]

Page 49

1 **A. Yes, sir.**
2 Q. Okay. But Labaton stayed in there, and
3 Labaton was retained or offered that position,
4 correct?
5 **A. Yes, sir.**
6 Q. Did you have any conversation with Paul
7 Doane about this or with general counsel from
8 Arkansas Teachers?
9 **A. No, sir.**
10 Q. All right. And was your understanding from
11 Eric that you were not part of this successful
12 proposal, correct?
13 **A. If I could ask what do you mean not a part**
14 **of the successful proposal?**
15 Q. You were not retained --
16 **A. Oh, yes.**
17 Q. So Labaton was retained, and you weren't?
18 **A. Yes. Correct.**
19 Q. Okay, thank you. I don't think I was making
20 myself clear.
21 So after that RFP and Labaton
22 successfully being selected as monitoring counsel,
23 what was your role with respect to Labaton?
24 **A. Help introduce them to other pension funds**

Page 50

1 or institutional investors as I am able to.
2 Q. Okay. And who were some of those other
3 folks that you introduced them to, Damon?
4 A. Over the years, Texas Teachers Pension Fund,
5 Houston Municipal Employees Pension Fund, the
6 Houston Firefighters -- I don't think he was on the
7 board, but he was prominent within Houston
8 Firefighters, a gentleman.
9 And as far as institutional investors
10 go, that's it.
11 Q. Okay. As a result of your having made this
12 introduction of Labaton to Arkansas Teachers, did
13 you come to an agreement or a contract or something
14 formal or informal with respect to your ongoing
15 relationship with Labaton?
16 A. Yes, sir.
17 Q. Could you tell us about that?
18 A. Sure. If the -- the agreement as they
19 presented it to me was if ultimately they are
20 selected to represent any institutional investor
21 that I facilitated an introduction to, if they are
22 successful in obtaining a recovery, they would split
23 their attorneys' fees with my firm 80 percent/20
24 percent.

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1 Q. So you would receive 20 percent of the
2 attorneys' fees?
3 A. Yes, sir.
4 Q. And they would receive 80 percent?
5 A. Yes, sir.
6 THE SPECIAL MASTER: Was that in all
7 cases in which they would be counsel to a party that
8 you had helped to facilitate the relationship with?
9 THE WITNESS: Yes, sir.
10 THE SPECIAL MASTER: Not limited to
11 Arkansas?
12 THE WITNESS: Correct.
13 THE SPECIAL MASTER: And when did you
14 begin having these discussions? This will be a
15 compound question, but you can break it down.
16 THE WITNESS: Sure.
17 THE SPECIAL MASTER: Were the
18 discussions with Eric Belfi or Chris Keller or both?
19 THE WITNESS: Good question.
20 When Eric Belfi and Chris Keller came
21 down to Little Rock that first time that we'd
22 already talked about --
23 THE SPECIAL MASTER: To meet with
24 Senator Farris?

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1 THE WITNESS: No. I believe that was
2 another occasion.
3 THE SPECIAL MASTER: Okay.
4 THE WITNESS: When they came to Little
5 Rock to meet with myself, and I believe Tim was
6 there as well --
7 THE SPECIAL MASTER: Oh, okay.
8 THE WITNESS: -- in our offices, they
9 said here's what we're interested in. We would like
10 to have a presence in Little Rock. We don't have
11 one currently.
12 We'd like a presence in Houston because
13 we don't have one currently. We like to work with
14 local counsel. You're local counsel.
15 And they presented the arrangements I
16 just told you about.
17 THE SPECIAL MASTER: So this was almost
18 at the outset of the relationship then?
19 THE WITNESS: Yes, sir.
20 THE SPECIAL MASTER: And you began
21 talking with any level of specificity about how the
22 relationship would be managed and compensation for
23 the relationship for you?
24 THE WITNESS: Yes, sir.

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1 THE SPECIAL MASTER: Okay.
2 MR. MARX: I think the record's clear
3 now based on the followup questions, but your
4 question earlier, Bill, was as a result of this RFP
5 process and Little Rock what was the nature of the
6 agreement between Damon's firm and Labaton.
7 I think it's clear now that that was an
8 initial conversation about an overarching agreement
9 which included --
10 THE SPECIAL MASTER: Correct me if I'm
11 wrong. I don't want to misstate it, but it sounds
12 like the commercial piece of the relationship
13 between you and Labaton actually began almost at the
14 outset of the relationship that there was some
15 understanding about how you would be compensated --
16 I say "you," I mean your firm.
17 THE WITNESS: That's correct.
18 BY MR. SINNOTT:
19 Q. And with respect to Arkansas Teachers,
20 Damon, how many other cases resulted from that
21 introduction that you had made of Labaton to
22 Arkansas?
23 And when I say Arkansas, I'm using that
24 as shorthand for Arkansas Teachers.

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1 **A. I understand. I understand.**
 2 **Including State Street, I believe five**
 3 **-- four or five.**
 4 Q. Okay.
 5 **THE SPECIAL MASTER:** Did you have
 6 ongoing contact with Arkansas at all during this
 7 period?
 8 **THE WITNESS:** No, sir.
 9 **THE SPECIAL MASTER:** Not with Paul
 10 Doane?
 11 **THE WITNESS:** No, sir.
 12 **THE SPECIAL MASTER:** George Hopkins?
 13 **THE WITNESS:** I met him once at a
 14 hearing in San Francisco years later.
 15 **THE SPECIAL MASTER:** A case -- on a
 16 case?
 17 **THE WITNESS:** Yes. Um, [REDACTED] case.
 18 I was going to San Francisco to visit my
 19 sister and brother-in-law, and Eric told me that
 20 there was a hearing that was taking place there. I
 21 said I'm going to come by. So I went by.
 22 George Hopkins was there, and Eric
 23 introduced us. I said hi.
 24 **THE SPECIAL MASTER:** You weren't local

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1 counsel on that case though?
 2 **THE WITNESS:** I wasn't local counsel on
 3 that case or on any of these class action pension
 4 funds.
 5 **THE SPECIAL MASTER:** I'm curious, Damon,
 6 what is your understanding of what a local counsel
 7 does?
 8 **THE WITNESS:** More along the lines of
 9 what I did in the HCC Holdings case; that if there's
 10 a non-dispositive hearing or if there's something
 11 that needs to be filed under seal or if someone
 12 needs to be admitted under a pro hac vice motion,
 13 that's why you have local counsel.
 14 **THE SPECIAL MASTER:** And you have to
 15 appear in the case?
 16 **THE WITNESS:** Yes, sir. And you have to
 17 appear in the case.
 18 **THE SPECIAL MASTER:** And you have to
 19 file an appearance in the case?
 20 **THE WITNESS:** You have to file an
 21 appearance in the case.
 22 **THE SPECIAL MASTER:** And be responsible
 23 to the Court to look to as the local lawyer.
 24 **THE WITNESS:** Yes, sir.

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1 **THE SPECIAL MASTER:** If the Court wants
 2 to pick up the phone and call a local lawyer, you're
 3 the one, right?
 4 **THE WITNESS:** Yes, sir.
 5 Q. But that --
 6 **THE SPECIAL MASTER:** You heard -- I'm
 7 sorry, Bill.
 8 **MR. SINNOTT:** No.
 9 **THE SPECIAL MASTER:** We've heard in the
 10 case there's another definition that lawyers have
 11 used for local counsel which is basically to be
 12 local to the client itself and either in addition to
 13 or only to be available to service the client --
 14 professionally service the client. Is that a role
 15 you've ever played?
 16 **THE WITNESS:** Not that I'm aware of.
 17 **THE SPECIAL MASTER:** Okay. All right.
 18 **BY MR. SINNOTT:**
 19 Q. Is it fair to say that there was no
 20 expectation arising out of the Arkansas introduction
 21 that you had made that you would enter appearances
 22 in cases?
 23 **A. That's correct.**
 24 Q. No expectation that you would take a role in

Page 57

1 those cases?
 2 **A. That's correct.**
 3 Q. And that was apparent to Mr. Belfi?
 4 **A. Yes, sir.**
 5 Q. And to Mr. Keller?
 6 **A. Yes, sir.**
 7 Q. And to everyone at Labaton?
 8 **A. I don't know --**
 9 **MS. LUKEY:** Objection.
 10 **A. I don't know about everyone at Labaton.**
 11 Q. Okay. But you didn't encounter anyone that
 12 asked you what you were doing in those future cases,
 13 correct?
 14 **A. No, sir.**
 15 **THE SPECIAL MASTER:** Did anybody from
 16 Labaton ever ask you to perform services as what
 17 we've discussed a local counsel would do?
 18 **THE WITNESS:** In a current case that is
 19 not a class action case, yes.
 20 **THE SPECIAL MASTER:** But in these other
 21 cases?
 22 **THE WITNESS:** No, sir.
 23 **BY MR. SINNOTT:**
 24 Q. And let me -- I know you said you thought

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1 forwarding relationship, a -- I may get this one --
 2 a private fee arrangement. Was that the phrase?
 3 **MR. SINNOTT:** Something like that, yeah.
 4 **MS. LUKEY:** Objection on that one. I
 5 don't remember that one. It may have happened.
 6 **THE SPECIAL MASTER:** It was there. I
 7 might have the phrase wrong, but it was sort of a
 8 private arrangement. Am I missing anything?
 9 **MR. SINNOTT:** No. I think you got 'em.
 10 **THE SPECIAL MASTER:** What is your
 11 understanding of the relationship?
 12 And if it evolved from something to
 13 something else --
 14 **THE WITNESS:** Right.
 15 **THE SPECIAL MASTER:** -- we'd be very
 16 interested in that.
 17 **THE WITNESS:** At the very beginning I
 18 thought I would be local counsel. I was not.
 19 **THE SPECIAL MASTER:** As we understand it
 20 in our --
 21 **THE WITNESS:** As we understand it
 22 talking today.
 23 **THE SPECIAL MASTER:** -- in our
 24 discussion, yeah.

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1 **BY MR. SINNOTT:**
 2 Q. And as you were in the HCC Holdings case?
 3 **A. Yes, and as I was in the HCC Holdings case.**
 4 **When Eric informed me that it had been kicked back,**
 5 **I needed to withdraw, ever since then I've only**
 6 **referred to this as an agreement.**
 7 **I don't have a client so...**
 8 Q. Okay.
 9 **THE SPECIAL MASTER:** Just an agreement?
 10 **THE WITNESS:** Just an agreement.
 11 **THE SPECIAL MASTER:** Not a referral fee
 12 arrangement?
 13 **THE WITNESS:** No, sir.
 14 **THE SPECIAL MASTER:** Not a local counsel
 15 arrangement?
 16 **THE WITNESS:** No, sir.
 17 **THE SPECIAL MASTER:** Not a forwarding
 18 fee arrangement?
 19 **THE WITNESS:** I'm not sure what
 20 forwarding fee means.
 21 **MR. SINNOTT:** Neither are we.
 22 **THE SPECIAL MASTER:** We weren't either.
 23 I was going to follow up on that and ask you if
 24 you've ever heard the term.

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1 **THE WITNESS:** I have not.
 2 **THE SPECIAL MASTER:** So just a fee
 3 arrangement or just an arrangement?
 4 **THE WITNESS:** I've always referred to it
 5 as our agreement.
 6 **THE SPECIAL MASTER:** Agreement. Okay.
 7 **BY MR. SINNOTT:**
 8 Q. Have you ever referred to it as an
 9 obligation?
 10 **A. An obligation? I don't think so.**
 11 Q. Do you ever recall hearing Labaton or other
 12 counsel refer to your agreement as an obligation?
 13 **A. Maybe. I don't recall.**
 14 Q. Okay.
 15 **THE SPECIAL MASTER:** Have they ever
 16 referred to you in your conversations with them as
 17 referring counsel or referring attorney or referral
 18 fee? Anything --
 19 **THE WITNESS:** No, sir.
 20 **THE SPECIAL MASTER:** Okay. You've heard
 21 the phrase though a referral fee or a referring --
 22 referring counsel?
 23 **THE WITNESS:** I am familiar with that
 24 phrase.

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1 **THE SPECIAL MASTER:** Yep. To your
 2 understanding of that phrase, have you acted as
 3 referring counsel in any of these cases?
 4 **THE WITNESS:** The capacitor case.
 5 **THE SPECIAL MASTER:** The capacitor case.
 6 **THE WITNESS:** Yes, sir. That did not
 7 involve Arkansas Teachers.
 8 **THE SPECIAL MASTER:** Right. Any other
 9 cases?
 10 **THE WITNESS:** I don't know if they came
 11 to fruition for them, but through the years they
 12 would periodically ask me if I had any connections
 13 or inroads into some of their antitrust
 14 investigations.
 15 So if they're looking for someone in a
 16 particular industry, they would ask me. And
 17 sometimes I would have success. Sometimes I
 18 wouldn't.
 19 **THE SPECIAL MASTER:** And -- but in terms
 20 of being referring counsel and receiving a referral
 21 fee, to your knowledge has that happened in any case
 22 other than the capacitor case?
 23 **THE WITNESS:** I didn't receive a fee in
 24 that case. I don't know that it's resolved even.

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1 **THE SPECIAL MASTER:** Okay.
2 **THE WITNESS:** But other than that, no.
3 **BY MR. SINNOTT:**
4 Q. How about the Colonial case?
5 **A. Colonial Bank, yes.**
6 Q. Okay.
7 **A. I received -- I'm guessing. Not to the**
8 **penny. But I believe the -- it was in two parts.**
9 **And I believe the attorneys' fees total for Labaton**
10 **were around 4 million dollars.**
11 **And my firm received 90,000 plus**
12 **\$75,000.**
13 **THE SPECIAL MASTER:** That's a far cry
14 from 20 percent?
15 **THE WITNESS:** Yes, it is.
16 **THE SPECIAL MASTER:** Did you view that
17 as a referral fee as you understand the term?
18 **THE WITNESS:** No, sir.
19 **THE SPECIAL MASTER:** I'm curious.
20 **THE WITNESS:** Yes.
21 **THE SPECIAL MASTER:** Your understanding
22 of the agreement was 20 percent.
23 **THE WITNESS:** Yes, sir.
24 **THE SPECIAL MASTER:** Why didn't you get

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1 20 percent?
2 **THE WITNESS:** Great question.
3 Eric Belfi called me and explained that
4 there were many variables and circumstances that
5 they -- that they had not considered that affected
6 the case and the risk that they took in the case and
7 would I accept less. And I did.
8 **THE SPECIAL MASTER:** So it became a
9 negotiation?
10 **THE WITNESS:** Each time.
11 **THE SPECIAL MASTER:** Each case.
12 **THE WITNESS:** Yes, sir.
13 **THE SPECIAL MASTER:** Or each payment --
14 **THE WITNESS:** Yes, sir.
15 **THE SPECIAL MASTER:** -- in the Colonial
16 Bank case?
17 **THE WITNESS:** Yes, sir. Sorry.
18 **THE SPECIAL MASTER:** I keep asking
19 compound questions.
20 **THE WITNESS:** In each case --
21 **MS. LUKEY:** Each case -- I've lost the
22 thread.
23 **THE SPECIAL MASTER:** Let me start again,
24 Damon.

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1 **THE WITNESS:** Yes, sir.
2 **THE SPECIAL MASTER:** Was the payment you
3 would receive the product of a negotiation in each
4 case?
5 **THE WITNESS:** Yes, sir.
6 **THE SPECIAL MASTER:** Okay.
7 **BY MR. SINNOTT:**
8 Q. And the Colonial case was an Arkansas
9 Teachers case, correct?
10 **A. Yes, sir.**
11 Q. But you said the capacitors was not?
12 **A. Yes, sir.**
13 Q. So Labaton used you as an entree or a
14 facilitator of introductions beyond Arkansas
15 Teachers as testified earlier?
16 **A. Yes, sir.**
17 Q. And capacitors was one of those?
18 **A. Yes, sir.**
19 Q. How about Beckman Coulter securities
20 litigation --
21 **A. Not familiar with that one.**
22 Q. -- 2010 Central District of California?
23 **A. Not familiar with that one.**
24 **THE SPECIAL MASTER:** Did you -- you

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1 don't remember receiving a payment from that case?
2 **THE WITNESS:** Beckman Coulter? I did
3 not --
4 **THE SPECIAL MASTER:** Maybe it went by
5 some other name. In re securities litigation --
6 **BY MR. SINNOTT:**
7 Q. In re Beckman Coulter securities litigation.
8 **A. No, sir.**
9 Q. Okay. Hewlett-Packard?
10 **A. Yes, sir.**
11 Q. All right. Tell us about that.
12 **A. Labaton received a fee of 14-and-a-half**
13 **million dollars, give or take. And our negotiated**
14 **amount was \$201,000. I remember the one.**
15 **THE SPECIAL MASTER:** How did that case
16 come -- what was your role in facilitating that
17 case?
18 **THE WITNESS:** That was an Arkansas
19 Teachers case.
20 **THE SPECIAL MASTER:** Oh, that was an
21 Arkansas case?
22 **THE WITNESS:** Yes, sir.
23 **THE SPECIAL MASTER:** So that goes back
24 to the initial relationship with Arkansas that you

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1 facilitated?
2 **THE WITNESS:** Yes, sir.
3 **THE SPECIAL MASTER:** But no separate
4 additional facilitation in this case, correct?
5 **THE WITNESS:** That's correct.
6 **BY MR. SINNOTT:**
7 Q. How about the K12 case?
8 **MS. LUKEY:** I'm sorry?
9 **MR. SINNOTT:** K12.
10 **THE SPECIAL MASTER:** K12.
11 **MS. LUKEY:** Thank you.
12 A. **K12 was an Arkansas Teachers case.**
13 **It's going back a little bit, but I**
14 **believe -- don't hold me to it, but I believe the**
15 **attorneys fee that Labaton collected in that case**
16 **was just shy of two million dollars, and our -- my**
17 **firm's payment was around -- between 150 and**
18 **\$200,000. That was the negotiated figure.**
19 Q. Spectrum Pharmaceuticals?
20 A. **Yes, sir.**
21 Q. Was that an Arkansas case?
22 A. **Yes, sir.**
23 Q. And tell us about that.
24 A. **Well, Spectrum and another one called Vocera**

Page 72

[REDACTED]

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1 resolved around the same time. And, um, I believe --
2 so I've always viewed them together. I believe --
3 **THE SPECIAL MASTER:** Were they both
4 Arkansas cases?
5 **THE WITNESS:** Yes, sir.
6 A. **I believe the overall attorneys' fee for**
7 **Labaton was around 4-and-a-half million dollars,**
8 **maybe 4 -- 4-and-a-half million dollars, and my**
9 **firm's negotiated fee was \$105,000 for one and**
10 **\$240,000, give or take, for the other.**
11 Q. Okay. How about in re A10 Networks
12 shareholder litigation? Does that sound familiar?
13 A. **No, sir.**
14 Q. Okay. And you said earlier that you had a
15 role or received payment for the Netflix case?
16 A. **That was dismissed.**
17 Q. It was dismissed. So you didn't get
18 anything out of that?
19 A. **No, sir.**
20 Q. And Labaton didn't get anything out of that?
21 A. **Not that I know of.**
22 Q. How about the BP Oil matter?
23 A. **Yes, sir.**
24 Q. Did you receive any payments from that case?

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[REDACTED]

Page 250

[REDACTED]

Page 252

[REDACTED]

Page 251

[REDACTED]

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1 Q. Okay, thank you.
2 Saturday, October 14, 2014 at 1:15 p.m.
3 there's a message LBS 017593 and 594, and the title
4 is concerning Eric in reviewing your text regarding
5 HP it appears --
6 (Pause.)
7 Q. It would appear that there was a
8 disagreement as to your payment in this case, but
9 let me direct your attention to the bottom of the
10 face page where you begin a message to Eric.
11 "Eric, the call kept dropping so I'm
12 sending the e-mail. In reviewing your text
13 regarding HP it appears Labaton is trying to use
14 the fee calculation done as a special consideration
15 for Garrett's 20 percent additional interest in the
16 Colonial Bank settlement since both ATRS and clients
17 via Garrett are in that case, as a precedent to
18 change our fee agreement in all of the pension fund
19 cases in which ATRS is a plaintiff. This is
20 contrary to your express assurance to us that if we
21 agree to that accommodation in Colonial Bank, it
22 would not be used as a precedent in cases where
23 Garrett isn't involved. I acknowledge that we had
24 discussed in the past treating certain cases where

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1 Labaton has multiple fee split obligations to
2 referring firms differently on a case-by-case basis
3 but only after we both discuss and agree with you
4 giving me advanced notice of your intentions so that
5 I can handle it with my partners on my end, not what
6 you have done here in the HP case.
7 I am very concerned that you guys are
8 attempting to significantly, substantially and
9 materially alter our agreement. Our deal with
10 Labaton is straightforward. We got you ATRS as a
11 client after considerable favors, political
12 activity, money spent and time dedicated in
13 Arkansas, and Labaton would use ATRS to seek lead
14 counsel appointments in institutional investor fraud
15 and misrepresentation cases.
16 Where Labaton is successful in getting
17 appointed lead counsel and obtains a settlement or
18 judgment award, we split Labaton's attorney fee
19 award 80/20 period.
20 As I said in my text to you regarding HP
21 and your allocation, I understand the circumstances
22 in this case and am okay with the fee split in this
23 instance. We are not changing our fee split
24 agreement for all the other pension fund cases. You

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[REDACTED]

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1 promised me that you would give me advanced notice
2 of when you guys would seek a modification or
3 accommodation on a given settlement, and I want you
4 to keep that going forward."
5 Then Eric responds: "Damon, unlike
6 Colonial, where there was a modification, here there
7 is not a modification. Arkansas only represented 23
8 percent of the losses. So you are only entitled to
9 receive 23 percent of the 20 percent or 4.6 percent.
10 In Colonial after the fee split we asked you to
11 reduce the percentage below the pro rata split
12 because the case was a loss to us. We could not
13 afford to pay out 20 percent in that case. In this
14 case there were four different Labaton clients that
15 we had obligations on all of them.
16 As indicated to you yesterday, we would
17 not have been appointed lead without those three
18 other clients and our relationship with Motley Rice
19 because their client had a much larger loss. Going
20 forward, you should know that Arkansas is almost
21 never a sole lead so this is going to happen in
22 almost every case. It is not a modification. It is
23 just how the agreement works."
24 And you respond: "This isn't my

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[REDACTED]

Page 302

[REDACTED]

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1 6th writes -- and this goes onto page 4 -- "I spoke
2 with David. Do you think we will have time to
3 process his allocation once he wants it, or will it
4 be a rush? If it will be a rush, then I want to
5 tell accounting to bring the money into our IOLA.
6 Otherwise, it can stay in the settlement fund, but
7 it will take some hoops to get it out." Keller and
8 Larry's signature.
9 You weren't part of those discussions
10 about IOLA or non-IOLA?
11 **A. No, sir.**
12 **Q. Okay.**
13 **THE SPECIAL MASTER:** Didn't matter to
14 you which account it came from?
15 **THE WITNESS:** It did not.
16 **Q.** And looking at the top middle of the third
17 page on a message that began at the bottom half of
18 the second page from Eric Belfi, do you see going
19 onto the third page where it says, "He needs a new
20 undertaking for Damon Chargois, esquire"?
21 And in the middle of page 2 Nicole
22 responds: "David, Damon needs a new undertaking.
23 If you send me a link, I can do it. Eric, does this
24 mean he wants the money now or still wait? If wait,

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[REDACTED]

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1 I need to know when he might want it in broad
2 strokes and his turnaround expectations. Thanks."
3 Are you surprised to hear they were
4 rushing this payment?
5 **A. Yes.**
6 **Q.** It wasn't at your urging or prompting or
7 anything?
8 **A. No.**
9 **Q. Okay.**
10 **A. None of this mattered.**
11 **Q.** And then at the bottom of page 1 Eric
12 writes: "He will want it now. Let me call you at
13 11 when I land so we can discuss."
14 I suppose it's not the worst thing in
15 the world for people wanting to get you your money
16 as fast as possible, is it?
17 **A. I suppose.**
18 **Q.** And then they indicate the issue -- Nicole
19 Zeiss writes: "Name of person/entity giving
20 undertaking must match payee name and wire
21 instructions."
22 Eric responds: "When the undertaking is
23 done, please send to me, and I will have Damon sign
24 it."

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1 Bates number.
2 **MR. MARX:** The date is more helpful.
3 **THE WITNESS:** They aren't in
4 chronological order.
5 **MR. SINNOTT:** They were at one time.
6 They may be in reverse chronological order right
7 now.
8 **THE WITNESS:** Do you have it?
9 **MR. MARX:** Yes.
10 **MS. LUKEY:** The second that will be
11 going with it is September 23, 2016. The first
12 bears the Bates number LBS 017593. The second bears
13 the Bates number LBS 040084.
14 Please let me know when you have those
15 in front of you.
16 **MR. MARX:** Give me the number on the
17 first document again please, Joan.
18 **MS. LUKEY:** The first document front
19 page is LBS 017593.
20 **MR. MARX:** Okay. We have it.
21 **BY MS. LUKEY:**
22 Q. Got 'em? Sir, if you would look at the
23 second page of that document, the October 18, 2014
24 document at the page that is numbered LBS 017594 --

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1 **A. Yes.**
2 Q. -- in it you will see on the second page
3 that you wrote to Mr. Belfi, and your second
4 paragraph reads as follows: "I am very concerned
5 that you guys are attempting to significantly
6 substantially and materially alter our agreement.
7 Our deal with Labaton is straightforward. We got
8 you ATRS as a client after considerable favors,
9 political activity, money spent and time dedicated
10 in Arkansas."
11 And then goes on to talk about
12 circumstances of Labaton being lead counsel.
13 **A. Yes.**
14 Q. Do you see that?
15 **A. Yes, ma'am.**
16 Q. In the second of the documents -- I may have
17 given you the wrong one. Oops, sorry. I gave you
18 the wrong one. It would be September 2, 2016. LBS
19 031137.
20 **MR. MARX:** September 2, 2016?
21 **MS. LUKEY:** Sixteen. Yes.
22 **THE SPECIAL MASTER:** There's several of
23 them with that.
24 **MS. LUKEY:** 1137 is the end of the Bates

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1 number. It's at 2:49 p.m. on second 2nd. It's your
2 e-mail to Chris Keller, a one-page document.
3 **MR. MARX:** Okay.
4 **THE SPECIAL MASTER:** This is on Spectrum
5 and Vocera, Damon.
6 **MS. LUKEY:** Correct.
7 **THE WITNESS:** Okay.
8 **BY MS. LUKEY:**
9 Q. Do you have that in front of you?
10 **A. I do.**
11 Q. In this document in the last paragraph in
12 the penultimate sentence you write: "As you know,
13 we dedicated a ton of money, energy, political
14 favors time and effort to secure ATRS for..." -- I
15 just lost my place -- "...for Labaton at the start
16 of this thing based on the promise of 20 percent of
17 Labaton's attorneys' fees."
18 **A. Yes.**
19 Q. These documents are approximately two years
20 apart both referring to "a ton of money, energy,
21 political favors, time and effort" to secure
22 Arkansas.
23 **A. Yes.**
24 Q. Would you tell us please what ton of money

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1 you expended that you were representing at two year
2 intervals to Labaton?
3 **A. Each time that we went out to meet with or I
4 went up to meet with Eric, that was out of my
5 pocket. Our firm was losing money on the
6 litigation. Money was extremely tight. I believe
7 they were aware of that. But they had a goal.
8 They wanted to meet people in Arkansas
9 and establish their own presence and foothold there,
10 and so I did it anyway.**
11 Q. How many times did you go to visit Eric?
12 **A. In Arkansas? Maybe three or four times.**
13 Q. All right. So you went from Houston to
14 Little Rock? Is that what you're saying?
15 **A. Yes, ma'am.**
16 Q. Did you drive or fly?
17 **A. I flew.**
18 Q. And three or four times; is that right?
19 **A. That's about right.**
20 Q. Would you tell us what you meant by
21 expending energy?
22 **A. Driving around Little Rock, Oklahoma, and
23 when he came to Houston, doing the same.**
24 Q. And what did you mean by political favors?

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1 **A. Introducing him to prominent people that we**
2 **knew.**
3 Q. What did you mean by time and effort to
4 secure Arkansas for Labaton?
5 **A. Followup, trying to educate myself on what**
6 **this litigation was, asking him for pointers. I**
7 **think periodically he'd sort of reroute me and point**
8 **me at different funds, things along those lines.**
9 Q. Now you were paid a fee or agreed to a fee
10 which you would be paid, and in several instances
11 were paid for whatever the services were that you
12 rendered to Labaton in connection with Arkansas,
13 correct?
14 **A. Correct.**
15 **MR. MARX:** Objection.
16 **A. I think.**
17 Q. And I believe that you told us that you
18 didn't consider it a referral fee; is that correct?
19 **A. I did not say I didn't consider it. I said**
20 **I take issue with the word "referral" because I,**
21 **frankly, did not understand what this was.**
22 Q. What did you consider this fee to be, sir?
23 **A. An agreement.**
24 Q. An agreement to be paid for what?

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[REDACTED]

Page 315

[REDACTED]

Page 317

[REDACTED]

Page 322

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
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22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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1 a sunset provision. But I agreed in theory to have
2 a sunset provision.
3 Q. What services, if any, have you provided
4 since the initial introduction with regard to
5 Arkansas?
6 Not in the case in which you are in fact
7 their counsel in the BP matter but otherwise.
8 A. Just the BP matter as far as I can recall.
9 Q. Putting that case aside.
10 With regard to all other cases, what
11 services is it that you contend that you have
12 rendered since the introduction between Labaton and
13 Arkansas?
14 MR. MARX: Objection.
15 A. Nothing else I can think of.
16 Q. Nothing further.
17 MS. LUKEY: Thank you.
18 MR. SINNOTT: Richard.
19 MR. HEIMANN: Yes.
20 CROSS-EXAMINATION
21 BY MR. HEIMANN:
22
23 Q. The payment that related to the State Street
24 matter was made to whom? From Labaton to whom?

Page 326

1 **A. To me.**
2 Q. To you personally?
3 **A. Yes, sir.**
4 Q. Did you in turn share any portion of that
5 payment with any other persons?
6 **A. I did.**
7 Q. Who?
8 **A. Kamran Mashayekh, Elaine Doyal, the IRS,**
9 **lots of debt service.**
10 Q. Let's stick with the individuals.
11 Describe each of the individuals for me.
12 Who are they? Who were they?
13 **A. Kamran Mashayekh, my law partner. Over the**
14 **years he's loaned money to the firm. And Elaine**
15 **Doyal, my legal assistant.**
16 **Those were throughout this time**
17 **period --**
18 Q. How much of the little over four million
19 dollars did you pay to the first of those two
20 people?
21 **A. Kamran Mashayekh, a quarter million dollars.**
22 Q. To the second, your legal assistant?
23 **A. Elaine Doyal, \$50,000.**
24 Q. And what about to your former partner?

Page 328

1 [REDACTED]
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19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 327

1 **A. Nothing.**
2 Q. Nothing to him?
3 **A. No, sir.**
4 Q. And he's the one, from the documents we were
5 looking at, who apparently had a significant amount
6 of contact to the senator that was involved -- the
7 state senator that was involved in the efforts to
8 obtain a position for Labaton with the Arkansas
9 fund, correct?
10 **A. Yes. He was friends with the senator.**
11 Q. And did he ever receive any portion of the
12 payments that were made by Labaton over time
13 relating to that agreement?
14 **A. Maybe in the very beginning.**
15 Q. But not otherwise?
16 **A. No, sir.**
17 Q. All right. Thank you.
18 **MR. SINNOTT:** Okay. On the -- did you
19 have something, Joan?
20 **MS. LUKEY:** Just one question.
21 Does he know about these payments including the four
22 plus million?
23 **MR. MARX:** Objection.
24 **THE WITNESS:** To my knowledge, he does

Page 329

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EX. 126

Message

From: Damon Chargois [damon@cmhllp.com]
Sent: 4/25/2013 1:23:44 AM
To: Garrett J. Bradley [gbradley@tenlaw.com]
CC: Robert L. Lieff [RLIEFF@lchb.com]; Robert L. Lieff [rlieff@lieff.com]; Michael Thornton [MThornton@tenlaw.com]; Belfi, Eric J. [EBelfi@labaton.com]; Keller, Christopher J. [ckeller@labaton.com]; Daniel P. Chiplock [DCHIPLOCK@lchb.com]
Subject: Re: State street fee regarding local counsel

Thank you, Garrett. Agreed.

Sent from my iPhone

On Apr 24, 2013, at 8:08 PM, "Garrett Bradley" <GBradley@tenlaw.com> wrote:

> Bob,
>
> As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% 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%.
>
> We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), 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 on this email so he will have confirmation of this agreement. When we spoke to him he was agreeable to this as well.
>
> Garrett
>
>
>
>
>
>
> This e-mail and any files transmitted with it are confidential and are
>
> intended solely for the use of the individual or entity to whom they are
> addressed. This communication may contain material protected by the
> attorney-client privilege. If you are not the intended recipient or the person
> responsible for delivering the e-mail to the intended recipient, be advised that
> you have received this e-mail in error and that any use, dissemination,
> forwarding, printing, or copying of this e-mail is strictly prohibited. If you
> have received this e-mail in error; please immediately notify us by telephone at
> (800) 431-4600. You will be reimbursed for reasonable costs incurred in
> notifying us.
>
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>
> Please consider the environment before printing this email.

EX. 127

Michael Thornton

1

Volume: 1

Pages: 1-168

JAMS

Reference No. 1345000011/C.A. No. 11-10230MLW

In Re: STATE STREET ATTORNEYS' FEES

BEFORE: Special Master Honorable Gerald Rosen,
United States District Court, Retired

DEPOSITION of MICHAEL P. THORNTON
September 1, 2017, 9:05 a.m.-12:52 p.m.

JAMS

One Beacon Street
Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

Jones & Fuller Reporting
617-451-8900 603-669-7922

Page 18

[REDACTED]

Page 20

1 **A. That's correct.**
2 Q. And also there was Eric Belfi and George
3 Hopkins and I believe -- was Mr. Labaton there as
4 well?
5 **A. No.**
6 Q. Or one of the Labaton employees?
7 **A. I think Harry Bellevue was probably the only**
8 **Labaton employee who attended that.**
9 Q. Okay. And at that time were you aware of
10 Labaton's referral relationship with Damon Chargois
11 on Arkansas Teachers Fund matters?
12 **A. I'm not sure if I was aware of it or --**
13 **relatively early on -- not that early -- I mean not**
14 **at the very beginning, but I was told that there was**
15 **a local, slash, referring counsel for Arkansas**
16 **Teachers that was involved in a referring --**
17 **referral basis.**
18 **THE SPECIAL MASTER:** And that was on
19 this case pending in Boston?
20 **THE WITNESS:** Yes.
21 **THE SPECIAL MASTER:** But not on any
22 previous case that you'd work with Labaton on?
23 **THE WITNESS:** I was unaware of any --
24 any -- no, I had no knowledge of that.

Page 19

1 attorneys as being a sounding board for the client
2 or an intermediary or liaison with the client?
3 **A. Potentially, and I think some of them**
4 **probably do a lot less than that. It varies, you**
5 **know, with the individuals. Some -- sometimes with**
6 **referring attorneys we hear quite a bit from them**
7 **during the course of the case. They want to know**
8 **what's going on, you know, trial, what's the**
9 **settlement about, you know, what's the basis of it.**
10 **Some of them we never hear anything from.**
11 Q. Do they sometimes after referring a case to
12 your firm continue to work on the case?
13 **A. No. I -- there may have been -- we've done**
14 **a lot of these cases. There may have been**
15 **instances, but I don't recall one.**
16 Q. Okay.
17 **A. Like I say, they're referring the case for a**
18 **reason.**
19 Q. All right. Do you know an individual named
20 Damon Chargois?
21 **A. I do not.**
22 Q. Do not. In your deposition you testified on
23 page 44 and 45 that you and Mike Lesser attended a
24 meeting in Chicago with EnnisKnupp?

Page 21

1 **BY MR. SINNOTT:**
2 Q. During that trip, Michael, do you remember
3 Chargois' name or his firm or Herron being
4 mentioned?
5 **MR. KELLY:** Excuse me. Is this the
6 Chicago meeting?
7 **MR. SINNOTT:** Yes.
8 **MR. KELLY:** Do we have a date on that?
9 **MR. SINNOTT:** I don't here. I could
10 look in his transcript and see.
11 **THE SPECIAL MASTER:** Do we have the
12 transcript?
13 **MR. SINNOTT:** Yeah, I've got it.
14 **THE SPECIAL MASTER:** Page 42 -- 44.
15 **THE WITNESS:** It would have been prior
16 to the filing of the complaint in the federal
17 district court because --
18 **THE SPECIAL MASTER:** But it was in
19 connection with the case, even if it was --
20 **THE WITNESS:** We were investigating the
21 case at that point on behalf of the teachers fund.
22 **MR. SINNOTT:** Yeah, the transcript does
23 not indicate the date.
24 **THE WITNESS:** So if we filed in early

Page 34

[REDACTED]

Page 36

1 Q. Well, did you --
2 **A. So there was nothing to tell him about**
3 **Damon.**
4 Q. Were you aware that 4.1 million dollars was
5 being paid to Mr. Chargois as a result of the State
6 Street settlement?
7 **A. I was after the award was made, yes.**
8 Q. You weren't consulted in advance of that
9 arrangement?
10 **A. Well, the arrangement had been made on a**
11 **percentage basis which was the basis of his interest**
12 **in the case with Labaton.**
13 Q. So what did you know about a referral
14 attorney and the fee he would receive during the
15 course of the settlement of this case?
16 **A. I knew that there was a referral/local**
17 **counsel and that that attorney had an agreement with**
18 **Labaton for a percentage of their fee on cases**
19 **involving -- in this case involving Arkansas.**
20 Q. And what did you know with respect to how
21 much of a fee he would get?
22 **A. I didn't know until pretty far down the**
23 **road. And I mean it's hard for me to tell you when.**
24 **I mean I know now because I've been reading this**

Page 35

1 warning you that if the ERISA counsel were made
2 aware of excessive hours or pumping up the load star
3 or whatever you want to characterize it as, that
4 they could cause problems for the case?
5 **A. Well, you know what, if we were, it would**
6 **have caused problems for the case, but we didn't and**
7 **we weren't --**
8 Q. Did you ever tell ERISA about the
9 cost-sharing arrangement?
10 **A. I have no recollection of that one way or**
11 **the other.**
12 Q. Did you or any other firm ever tell the
13 ERISA attorneys about Damon Chargois?
14 **A. I didn't know about Damon Chargois. I -- I**
15 **know I was -- I -- occasionally I was copied on a**
16 **letter. On occasion I'm saying less than five**
17 **probably. His name along with a lot of others. I**
18 **knew there was a local/referring counsel involved,**
19 **but actually his name? Until this most recent**
20 **supplementary interrogatories came in is the first**
21 **time I'd ever -- I think it was a name -- if I had**
22 **had ever a discussion with somebody named Damon**
23 **Chargois, 'cause it's a rather unusual name, I think**
24 **I would have remembered it.**

Page 37

1 **stuff that it was 20 percent of Labaton's net fee**
2 **was his referral or whatever.**
3 **When I got that knowledge precisely I**
4 **can't tell you, but it was well after -- it was**
5 **probably -- it was probably 2013 when the**
6 **discussions first started. So the case had been**
7 **going on for a couple years.**
8 **You know, frankly, when we started this**
9 **case, you know, referral fees and fees were the last**
10 **thing we were worrying about. We were in, you know,**
11 **for the fight of our life.**
12 **THE SPECIAL MASTER:** Could I ask -- and
13 I want you to come back to this, Bill, and I don't
14 mean to interrupt your train of thought, but what is
15 your understanding of what a referral fee is?
16 **THE WITNESS:** Someone has a relationship
17 or a -- with a -- or say in this case an institution
18 or a client of an institution that refers a case to
19 another firm that presumably is capable of
20 conducting a prosecution.
21 **THE SPECIAL MASTER:** Because the
22 referring attorney is not competent himself or
23 herself to handle the case or there's another firm
24 more competent to handle it?

Page 38

1 **THE WITNESS:** I think generally that's
2 the case, yes. Or it's just not their role to do
3 that type of case for the fund.
4 **THE SPECIAL MASTER:** Is your
5 understanding -- is it your understanding that
6 Mr. Chargois or "Chargois" --
7 **THE WITNESS:** Yes.
8 **THE SPECIAL MASTER:** -- was a referring
9 attorney in this case in the way in which you've
10 just defined it?
11 **THE WITNESS:** Yes.
12 **THE SPECIAL MASTER:** How?
13 **THE WITNESS:** Referring -- well, I said
14 referring and local counsel were used intermittently
15 -- they were both used in the discussions --
16 **THE SPECIAL MASTER:** Let's break it down
17 and take either one. Either referring attorney or
18 local counsel.
19 **THE WITNESS:** Okay.
20 **THE SPECIAL MASTER:** In what way was
21 Mr. Chargois either a referring attorney in the way
22 you've just defined it or local counsel?
23 **THE WITNESS:** Well, I know at least that
24 he was in his firm helpful in getting Labaton on the

Page 40

[REDACTED]

Page 39

[REDACTED]

Page 41

[REDACTED]

Page 42

1 counsel is?
2 **THE WITNESS:** Local counsel I guess is a
3 little different in that if a firm in another state
4 wanted to file say in Massachusetts -- let's say in
5 federal court here -- a case and they don't have an
6 office here and they're not Massachusetts lawyers,
7 they would need to get local counsel, Massachusetts
8 lawyers, and you work out whatever arrangement out
9 you would with them to perform those functions, and
10 the functions are -- they vary in how much you have
11 to do.
12 **THE SPECIAL MASTER:** Was Mr. Chargois in
13 any sense local counsel in this case?
14 **THE WITNESS:** With regard to the State
15 Street case?
16 **THE SPECIAL MASTER:** Yes.
17 **THE WITNESS:** Not that I'm aware of.
18 **THE SPECIAL MASTER:** How would you
19 characterize from your knowledge -- how would you
20 characterize Mr. Chargois's relationship to this
21 case?
22 **THE WITNESS:** Well, I will say this:
23 Without Mr. Chargois, I think it is unlikely that
24 Labaton or, for that matter, ultimately we would

Page 44

1 to be filed?
2 **THE WITNESS:** I don't know.
3 **THE SPECIAL MASTER:** What was your
4 understanding -- when you came to an understanding
5 that Mr. Chargois was going to get some percentage,
6 what was your understanding of exactly what he was
7 being compensated for?
8 **THE WITNESS:** I don't know everything he
9 was being compensated for. I do know -- because I
10 don't know all the interaction, but I do know that
11 he was responsible for getting them on the
12 monitoring panel.
13 **THE SPECIAL MASTER:** On Arkansas's
14 monitoring panel?
15 **THE WITNESS:** That's correct.
16 **THE SPECIAL MASTER:** Did you know at the
17 time that because of his facilitation of that
18 arrangement back in we believe 2008 that that
19 therefore entitled him to 20 percent of Labaton's
20 fees in every case in which Arkansas was either lead
21 plaintiff or co-lead plaintiff? Were you aware of
22 it at the time?
23 **THE WITNESS:** I don't think I was aware
24 of that at the time, no.

Page 43

█ [REDACTED]

Page 45

█ [REDACTED]

Page 118
[Redacted text block]

Page 120
[Redacted text block]

Page 119
[Redacted text block]

Page 121
1 A. Yeah. I -- I don't know if we had -- if the
2 agreement at that time had been struck with the
3 ERISA attorneys. I'm not sure the date of that.
4 Bob Lieff --
5 Q. Okay.
6 A. -- could opine on that directly.
7 Q. Let me just ask you a couple of housekeeping
8 questions, Mike.
9 A. Sure.
10 Q. You previously testified on page 81 at your
11 June deposition that you reviewed your own hours;
12 you didn't review the staff attorney hours.
13 Does Thornton Law Firm have billing
14 software?
15 A. We do.
16 Q. Did you then?
17 A. Not during the entire time and some people
18 are better about using it than others is my
19 recollection.
20 Q. Did you use it?
21 A. No.
22 Q. How did you keep your hours?
23 A. Mike Lesser and, more important, Evan
24 Hoffman did a good job keeping my hours. My

1 assistant kept my hours, and I also kept it. I kept
2 calendars but -- probably -- so that's how I kept
3 it.

4 Q. Would you periodically review your hours or
5 anyone else's hours?

6 A. I wouldn't review anybody else's hours. I
7 might glance at 'em occasionally, but I really
8 didn't -- I just tried to keep them as best I could,
9 you know.

10 (Pause.)

11 A. Attorneys at work -- I don't have to tell
12 anybody in this room, because almost everybody's
13 attorneys, some do a better job keeping their hours.
14 It's something that no one likes, but it's a
15 necessary part of the job particularly if you do
16 hourly charging as opposed to contingency.

17 Q. Yep.

18 A. You get contingency you get very sloppy
19 about it normally 'cause you don't have to -- it
20 doesn't make any difference, although some
21 contingency law firms keep track of their hours
22 because they want to see if they're justified --
23 that in the cases they're justified of the time
24 they're putting in.

1 A. Kind of the same way I think.

2 MR. SINNOTT: Did you want to ask
3 something?

4 THE SPECIAL MASTER: Want to come back
5 to the issue of the time keeping.

6 MR. SINNOTT: Yep.

7 THE SPECIAL MASTER: But in fairness to
8 Mike, I want to go back to this issue about whether
9 or not the payments to Mr. Chargois was a separate,
10 independent deal that had any impact at all upon the
11 allocation of fees amongst the attorneys. Okay?

12 You said that you believed it was a
13 separate issue and had no impact at all among the
14 distribution of the fees --

15 THE WITNESS: Right.

16 THE SPECIAL MASTER: -- or to the class.
17 I've provided Brian with a copy of an e-mail chain
18 between Garrett and Damon Chargois. I'd like you to
19 take -- you can read as much of it as you want. It
20 goes on for some time.

21 Because earlier on there are e-mails
22 between other lawyers, Garrett and Bob Lieff, you're
23 on one of them, Eric Belfi is on, Damon Chargois is
24 copied, Chris Keller, Dan Chiplock, discussing

1 I think if I stopped and had a
2 ten-minute meeting with somebody in the hall about
3 the State Street case during the course of the years
4 this thing was pending, I think it's very unlikely
5 that would have made it onto a time sheet. It's
6 just --

7 Q. How did you put your work and hours on the
8 time that was used for the load star here? What
9 sources did you use?

10 A. My calendars. My secretary would help. I
11 tried to say on certain things where the hours were
12 going to be necessary I said stop me at the end of
13 the day and make me say how long I spent on times.

14 I also -- my calendar helped in that I
15 knew if I was doing a conference call, um, with
16 other -- or co-counsel on this case, and there are
17 many, many, many of those -- because I would have
18 that on my calendar, and I may have a notation about
19 the time; I might not, but then I could look at
20 either Lieff Cabraser or Labaton's because they tend
21 to be much more methodical than me. And, like I
22 said, other lawyers in my office like Mike Lesser
23 are very methodical about their time.

24 Q. How did Garrett keep their hours?

[REDACTED]

Page 146

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Page 148

1 **A. Well, it's an accurate figure, but I -- I**
2 **don't know any other referring counsel.**
3 Q. So at least as early as May of 2011 your
4 firm was aware of referring counsel, correct?
5 **THE WITNESS: Pardon?**
6 **A. I -- I -- I don't recall seeing this letter.**
7 Q. Okay. Well, when did you first learn of a
8 referring attorney in this?
9 **A. It could have been as early as this. It**
10 **might have been the next year.**
11 Q. How did you learn about the referring
12 attorney? As best you remember.
13 **A. I think Garrett told me.**
14 Q. Okay. And had Garrett known of this
15 individual a long time before you or
16 contemporaneously or shortly before?
17 **A. He had known him before that I think. If**
18 **I'm not mistaken, he would go to co-counsel meetings**
19 **like once a year that Labaton had, and Mr. Chargois**
20 **would be there, Garrett would be there.**
21 Q. And this was in the State Street case?
22 **A. Not about State Street, no. It was just**
23 **about litigation.**
24 Q. Okay.

Page 147

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Page 149

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EX. 128

JOINT RESPONSE BY LABATON SUCHAROW LLP
AND CHARGOIS & HERRON, LLP

TO THE REQUEST FOR QUALIFICATIONS (“RFQ”) FOR OUTSIDE LEGAL COUNSEL
SECURITIES LITIGATION, CLASS ACTION MONITORING AND ADVICE;
ASSET RECOVERY

July 30, 2008

LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Telephone (212) 907-0700
Facsimile (212) 818-0477

Eric J. Belfi
Partner
Direct Dial (212) 907-0878
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Facsimile (281) 440-0124

Damon Chargois
Managing Partner
Dial (281) 444-0604
damon@cmhllp.com

5. Requested Information

5.2 *If with a firm, provide a description of your law firm, including historical background, number and location of firm offices, number of attorneys, and major areas of practice.*

Response of Labaton Sucharow

Labaton Sucharow LLP was established in 1963 in New York City. At the firm's inception, the majority of the practice was commercial work and less than half the work was contingent litigation. Labaton Sucharow began providing securities litigation consulting services to public pension plans in 1995, the year of the passage of the Private Securities Litigation Reform Act (PSLRA).

Currently, two-thirds of the firm's approximately 55 lawyers are dedicated to the prosecution of securities class actions, institutional investor "opt out" cases, and other shareholder actions. Labaton Sucharow has one office location where the services discussed herein would be performed. The firm is located at 140 Broadway, New York, NY 10005; Tel: (212) 907-0700. Labaton Sucharow currently has approximately 55 attorneys, 17 paralegals and 69 additional support staff. Class action securities litigation and related portfolio monitoring services represent Labaton Sucharow's principal practice area and source of revenue. The firm also maintains an active antitrust class action practice.

Response of Chargois & Herron

Chargois & Herron, LLP was established in 2005 by Timothy P. Herron and Damon J. Chargois after working together and separately in commercial, class action, mass tort and insurance defense litigation for fourteen (14) plus years. Both attorneys, along with partner, Che Williamson are licensed in all federal and state courts in Arkansas and Texas. Chargois & Herron began providing securities litigation services in 2006 and have been pleased to achieve significant monetary results for public pension plans since that time.

Currently, we have offices in Little Rock, Arkansas and The Woodlands, Texas with six full-time practicing attorneys who have held law licenses as follows: (Timothy Herron – 28 years), (Che Williamson – 18 years), (Kamran Masheyekh – 18 years), (Damon Chargois – 14 years), (Carlos Fernandez – 5 years) and (Kirk Chargois – 2 years). Our primary address is 2201 Timberloch Place, Suite 110, The Woodlands, Texas 77380; (281) 444-0604.

5.3 *State whether your response excludes any services contemplated by the RFQ set forth in the scope of services in section 3.2.*

Labaton Sucharow's and Chargois & Herron's responses do not exclude any services contemplated by the RFQ set forth in the scope of services in section 3.2.

5.4 *State whether your firm is able to conduct ongoing client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims) by reviewing the System's portfolio losses on a regular basis, investigating potential claims, preparing detailed reports of findings; and presenting the findings to ATRS.*

Response of Labaton Sucharow

Labaton Sucharow is committed to high-level client service. A major component of the litigation and client services that we propose to the ATRS is our portfolio monitoring program, that utilizes a full compliment of professional analyses as well as our proprietary software system called LPAS®.

We believe that a strong analysis and quick determination of possible financial exposure can be the first line of defense when corporate misconduct and fraud result in investment losses.

Identification In its Case Evaluation Group, Labaton Sucharow has assembled several attorneys and other professionals with decades of combined experience distilling information in the marketplace in an effort to uncover and investigate instances of potential securities fraud on behalf of our clients. Labaton Sucharow subscribes to and monitors sophisticated financial research services, including Bloomberg and Thomson Reuters, the same tools used by analysts at major financial services firms. We use these information services to monitor news coverage and market activity throughout the day to identify potential securities law violations and analyze the impact of the claims on our clients' portfolios. Among the other sources we monitor are: (i) the Federal Securities Law Reports published by CCH; (ii) the Securities Class Action Services database maintained by the Riskmetrics Group; (iii) Stanford Law School's Securities Class Action Clearinghouse; and (iv) other legal journals and newspapers.

The Group includes five attorneys, led by Christopher Keller, who have many years of experience performing this specialized function. The Group also includes two Wall Street analysts, several damages analysts, and private investigators formerly with the Federal Bureau of Investigation. This group has been pivotal to enhancing Labaton's institutional shareholder services by being able to marshal the critical facts necessary to prevail in complex securities class action litigation.

Analysis When a security suffers a significant decline in value or when litigation has been commenced against a company, we commence a multi-tiered analysis of the situation. The analysis includes early identification and assembly of facts, legal and factual analysis and ranking (using a proprietary grading system that allows us to objectively rate the facts), determination of the magnitude of the alleged fraud (in terms of class-wide damages), and investigation of non-public information and sources. This in-depth review yields a "grade" for the case that reflects our analysis of the strengths and weaknesses of the claim. This grade is based upon a number of factors, including the size of the company, evidence of intentional or reckless wrongdoing, the types of issues involved (including any earnings restatements or other accounting issues), whether there is an ongoing governmental investigation, the potential liability of third-party defendants such as auditors or underwriters, the solvency of the defendant, and whether there was a significant stock price decline in reaction to the alleged wrongdoing. The findings are captured in a summary report. An example of such a review is attached as **Exhibit A**.

Review of losses If we discover that the ATRS invested in a company that has engaged in allegedly fraudulent behavior, we quickly can assess the losses incurred. This loss amount is an estimated loss as limited by the PSLRA, which is not the same as your legally compensable damages. To that end, LPAS (further discussed in Section 5.5, below), allows us to quickly quantify our clients' financial exposure to the security at issue so that we may advise our clients on the strength of their position to pursue litigation, either individually or as a lead plaintiff on behalf of a class of investors. This assessment can be made as soon as a situation has been identified, depending on the data that is available to us, and is an essential component of the advice we could provide to the ATRS on the likelihood of its success were the ATRS to move to be appointed Lead Plaintiffs. Whether our advice is to pursue litigation or not, it is based on our client's true financial interest in the litigation and the merits of the case.

Reporting Included in our analysis of the case, is an analysis of the options available to our clients. If a case meets certain criteria, we will inform the ATRS about the issues involved in the case, and we may request that the ATRS research their holdings so that we can provide an analysis of the ATRS's financial exposure. On a case-by-case basis, we will provide a comprehensive legal analysis for the client's review. An example of such a review is attached as **Exhibit B**. Additionally we provide reports each quarter that recite our findings for the cases we have reviewed in prior periods and the results of our research. Please refer to **Exhibit C** for an example of a Quarterly Report.

Many institutional clients expect and receive regular oral or written updates concerning matters of potential interest. Typically, we would first discuss the issues of a specific case that we are analyzing with the ATRS before a report is submitted. However, other reports – primarily our quarterly reports and any urgent/time-sensitive matter that we are bringing to the ATRS's attention – might be transmitted via e-mail to our contact at the ATRS without a formal discussion beforehand. The decision to commence an action and overall litigation strategy are always made after close consultation between Labaton Sucharow and our client, and at a client's request, Labaton Sucharow will circulate drafts of court filings well in advance of filing dates for review and comment. Monitoring services will be handled by partner, Christopher Keller, and the overall relationship would be managed by partner, Eric Belfi. Matters connected to litigation would be managed by Mr. Belfi and chairman, Mr. Lawrence Sucharow. Please see **Exhibit D**, to view the full resume of each attorney.

Recommendation We are protective of our institutional clients and therefore proceed carefully before recommending legal action. Quite often, the results of our analysis indicate that it is not advisable for the client to participate as a lead plaintiff, because the amount of the loss is not significant or participating as a lead plaintiff may not be in the client's best interests for other reasons. If we determine that claims lack merit or are weak, we will so advise. A law firm cannot guarantee success in securities litigation, but according to the annual securities class actions study published by Cornerstone Research, for the past three years Labaton Sucharow, on a percentage basis, recovers more than any other plaintiffs' class action firm.

In any case, our recommendation will be an informed one, suited to the needs of the client. Labaton Sucharow recognizes that clients desire varying levels of involvement with these processes, and the firm certainly can provide training to effectively supervise and assist in these activities.

Response of Chargois & Herron

Chargois & Herron has six attorneys and three paralegals with decades of combined experience in monitoring and researching corporations and the market in analyzing conduct with an eye toward discovering possible impropriety. Additionally, we work closely with counsel in New York, including Labaton Sucharow, and California in order to stay abreast of trends and activities in the market. We are free to utilize their resources and they ours – at any time in an effort to provide the best service to our institutional investor clients.

Chargois & Herron owns an Alabama company called 270 Discovery Solutions which provides document research, indexing and computer inputting of the millions of items of information contained in the documents that are routinely produced – usually under court order – in securities class action litigation. Uniquely, our company is staffed almost entirely by licensed attorneys, numbering in excess of 25 attorneys. This puts Chargois & Herron in a unique and special position to handle any securities litigation matter, regardless of size.

- 5.5 *State whether your firm has the ability to monitor the ATRS portfolio in this regard through access to the ATRS custodial account, rather than requesting ATRS staff for information regarding securities holdings.*

Response of Labaton Sucharow

Yes, Labaton Sucharow has the ability to monitor the ATRS portfolio through access to the ATRS custodial account. We have relationships with all of the major custodial banks in the U.S. and have handled multiple systems when retrieving our clients' data. Therefore, the necessary information is gathered without intrusion into our clients' day-to-day business. At the outset, a minimal effort is required to set up the authorization and permissions for our access to the ATRS portfolio. Beyond that, our team handles the rest of the communications with the custodian and the retrieval of the ATRS portfolio records.

Labaton Sucharow has invested significant resources to develop and maintain an infrastructure and software program to accomplish this for our clients. Labaton Portfolio Analysis System (LPAS) is a unique and proprietary database management and software application that allows us to capture our clients' trading information and over time build a historical record of the transactions, housed in our internal, secure database. In particular, with access to our clients' historic trading records, LPAS allows us to monitor the data and identify eligible losses. When a new situation is identified, LPAS identifies matches between the securities owned by ATRS and will perform an analysis of their financial exposure, using court-approved evaluation models. Please see **Exhibit E** for a description of LPAS.

Additionally, Labaton Sucharow has access to comprehensive information with respect to securities class action settlements. The firm can provide this information to the ATRS's custodian bank at no charge and make all necessary forms available to the custodian.

Response of Chargois & Herron

Chargois & Herron has the ability to monitor the ATRS through access to the ATRS custodial account, rather than requesting ATRS staff for information regarding securities holdings.

- 5.6 *Subject to the consent of clients as required by applicable ethics rules, provide a listing of representative clients. Responses may, with the consent of the clients, include names and phone numbers of specific references. Subject to the clients' consent, identify specifically any pension plans or other major institutional investors, either private or public, to which you render or have rendered significant legal services concerning the relevant subject area(s) during the past year. If no clients consent, or if you elect not to request such consent, please so state and describe the representative clients in general terms to support your firm's qualification and experience to represent ATRS.*

Response of Labaton Sucharow

California Public Employees' Retirement System. The primary contact person is Peter H. Mixon, Esq., General Counsel, 400 Q Street, Suite 3340, Sacramento, CA 95814. Tel: (916) 795-3675.

New York State Common Retirement Fund. The primary contact person is Luke Bierman, Esq., General Counsel, Office of the New York State Comptroller, 110 State Street, Albany, NY 12236. Tel: (518) 474-3444.

New York City Retirement Systems. The primary contact person is Carolyn Wolpert, Esq., Deputy Division Chief, Pensions Division, New York City Law Department, Office of the Corporation Counsel, 100 Church Street, Room 5-147, New York, NY 10007. Tel: (212) 788-0748.

New Mexico Educational Retirement Board. The primary contact person is Gary King, Esq., Attorney General State of New Mexico, 408 Galisteo Street, Villagra Building, Santa Fe, NM 87501. Tel: (505) 827-6000.

Commonwealth of Massachusetts Pensions Reserves Investment Management Board. The primary contact person is Grace H. Lee, Esq., First Deputy Treasurer/General Counsel, Office of the State Treasurer, One Ashburton Place, 12th Floor, Boston, MA 02108. Tel: (617) 367-9333, Ext. 307.

Response of Chargois & Herron

Among others, Chargois & Herron has represented, along with co-counselors, Bristol County Retirement Systems, Inc., Plymouth County Retirement System and merchants in Class Action litigation against credit card companies based on hidden surcharges.

5.7 *Provide a very brief summary resume describing the education, legal or investment experience, recent speaking engagements, and a list of significant, relevant publications of the attorney or attorneys proposed to work as lead attorney(s).*

Response of Labaton Sucharow

The number and identity of the Labaton Sucharow and Chargois & Herron attorneys and other legal professionals who would be assigned to a securities litigation matter on behalf of the ATRS would vary depending on the size, complexity and issues in any given case. Assuming that a particular case involved complex accounting issues, large numbers of documents, and dozens of fact and expert witnesses, the team likely would be comprised of the following attorneys from Labaton Sucharow: Eric J. Belfi, Lawrence A. Sucharow, Thomas A. Dubbs, Christopher J. Keller, Zachary M. Ratzman, Ann E. Gittleman, and Krista T. Rosen; and Damon J. Chargois, Timothy P. Herron, Kamran Mashayekh, and Che D. Williamson from Chargois & Herron. To view the full resume of each attorney, please see **Exhibit D**.

Eric J. Belfi, a partner with the firm, 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, New York. As a prosecutor, Mr. Belfi investigated and prosecuted numerous white-collar criminal cases, including securities law violations. 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 surrounding securities litigation, with a focus on international institutional investors. He was invited to speak at the prestigious Euroshareholders Annual Conference, in Brussels, in February 2008. Most recently, he spoke regarding securities class actions at the William H. Bowen School of Law at the University of Arkansas in June of 2008. Mr. Belfi is the co-author of *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,” *Investments & Pensions Europe*, 2005.

He received a B.A. from Georgetown University in 1992 and a J.D. from St. John’s University School of Law in 1995.

Lawrence A. Sucharow, a nationally and peer recognized leader of the class action bar, is the chairman of Labaton Sucharow. In his capacity as chairman, he participates in developing the litigation and settlement strategies for virtually all 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 is the co-author of “Executive Compensation -- Despite Reforms, Pay Is Less Transparent and Shareholder-Friendly Than in the Past,” *New York Law Journal*, March 20, 2008, and “FIFO vs LIFO, Different ways to calculate shareholder losses for purposes of appointing lead plaintiff lead to different results,” *Investment & Pensions Europe*, May 2006.

Mr. Sucharow earned a B.B.A., *cum laude*, from the 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.

Thomas A. Dubbs, a senior partner with the firm, 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. He was formerly Senior Vice President and Senior Litigation Counsel for Kidder, Peabody & Co. Incorporated (“Kidder”) for seven years, where he represented Kidder in a variety of matters, including in many class actions. He is the only member of the plaintiffs’ bar who has held a senior position at a major investment bank, and is, thus, uniquely able to advise on issues involving the underwriting process and due diligence requirements. Also, he is able to understand and anticipate the perspective and strategy of defense counsel in securities cases, a substantial tactical advantage in determining the proper approach to take in litigating, settling or trying a particular action.

Mr. Dubbs is the co-author of “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 of Public Employee Retirement Systems and the Council of Institutional Investors. In March 2008, Mr. Dubbs participated in a roundtable discussion hosted by The Law Society in London regarding class actions lawsuits.

Mr. Dubbs received a B.A. and a J.D. from the University of Wisconsin in 1969 and 1974, respectively. In 1971, he earned an M.A. from the Fletcher School of Law and Diplomacy of Tufts University.

Christopher J. Keller, a partner with the firm, leads the firm’s Case Evaluation Group and has been involved in investigating and initiating numerous securities class actions. He 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. Most recently, 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 a securities options backdating class action.

Mr. Keller is the co-author of “Tellabs’: PSLRA Pleading Test Comparative, Not Absolute,” *New York Law Journal*, October 3, 2007, and “FIFO vs LIFO, Different ways to calculate shareholder losses for purposes of appointing lead plaintiff lead to different results,” *Investment & Pensions Europe*, May 2006. Mr. Keller is a regular speaker at institutional investor gatherings. In June 2008, he spoke at a Continuing Legal Education course on subprime and mortgage related claims.

Mr. Keller received a B.S. from Adelphi University in 1993 and a J.D. from St. John’s University School of Law in 1997.

Zachary M. Ratzman, Of Counsel to the firm, has been practicing in the area of securities fraud litigation for five years. Since early 2005, he has litigated the case *In re American International Group, Inc. Securities Litigation*, on behalf of three Ohio pension funds and a class of defrauded investors, and has played key roles in other noteworthy actions, including *In re Bristol-Myers Squibb Securities Litigation*. Prior to joining Labaton Sucharow, Mr. Ratzman practiced white-collar criminal defense and complex commercial litigation as an associate in the New York offices of Skadden Arps Slate Meagher & Flom LLP and Patterson Belknap Webb & Tyler LLP.

Mr. Ratzman received a B.A. from Ohio University, where he graduated *summa cum laude* and with Phi Beta Kappa honors. He earned a J.D. from the University of Michigan Law School, where he graduated, *magna cum laude*, and as a member of the Order of the Coif.

Ann E. Gittleman, an associate with the firm, is a Certified Public Accountant. Before becoming an attorney, she worked for PricewaterhouseCoopers LLP for more than two years, where she performed audits and interacted with governmental organizations, such as the SEC, IRS and Attorney General Office, in coordinating and facilitating investigations. As such, she is uniquely qualified to analyze complex fact patterns and utilize various principles of the accounting and auditing profession in actions involving accounting fraud.

Ms. Gittleman earned a B.S. and a B.A., both *magna cum laude*, from Bryant University in 1999, and received her J.D. from Brooklyn Law School in 2004, where she was a member of both the Moot Court Honor Society and the Securities Law Association.

Krista T. Rosen, an associate with the firm, focuses her practice in the area of securities class action litigation. She is a member of the team litigating the federal securities fraud class action against AIG, representing as Lead Plaintiff several Ohio pension funds.

Ms. Rosen earned a J.D. from the Benjamin N. Cardozo School of Law in 2006. During law school, she was selected to participate in the Securities Arbitration Clinic, where she represented investors in arbitration actions against securities brokers. Additionally, she served as the Articles Editor of the *Cardozo Law Review*. In March 2006, she was awarded third place in the 2005-2006 national writing competition sponsored by the Association of Securities and Exchange Commission Alumni (ASECA) for her Note entitled, *Staying in Court While Staying Discovery: Finding Exceptions for Government-Produced Documents Under the PSLRA*.

Damon J. Chargois was born on December 26, 1966. He was admitted to the Texas Bar on November 4, 1994, and the Arkansas Bar in 2006. Mr. Chargois received his undergraduate degree in English Literature in 1991 and received his Doctor of Jurisprudence from the University of Houston Law Center in May 1994. Mr. Chargois is licensed to practice in all Texas and Arkansas Courts, as well as Federal District Courts and the U.S. 5th Circuit Court of Appeals. Additionally, he has successfully tried a federal case to unanimous positive verdict that was subsequently affirmed by the 5th Circuit Court of Appeals and, then, had writ of certiorari denied by the U.S. Supreme Court, resulting in a final ruling affirming Mr. Chargois' verdict.

Mr. Chargois has handled a variety of class action and mass tort litigation cases, including a commercial, occupational, mass torts, including business transactions, products liability, pharmaceutical, class action, asbestos and benzene chemical exposures.

Upon graduating as class captain from his law school, Mr. Chargois worked as a corporate and insurance defense attorney in Dallas, Texas, with the law firm Cowles & Thompson, P.C., while also serving as criminal prosecutor for the townships of Rockwall, Rowlette, and Heath, Texas. In 1996, he became a mass tort plaintiff's trial lawyer, ultimately rising to Head of Litigation for national law firm Foster & Sear, L.L.P.

In 2004, the law firm Chargois & Herron was founded with Damon Chargois and Timothy P. Herron. In 2006, Chargois, Mashayekh & Herron was formed to specialize in commercial and class action lawsuits, and expand the firm's commercial and financial business interests. Mr. Chargois' practice is multi jurisdictional and he oversees litigation in several states on the federal and state level. He is a member of the State Bar of Texas Litigation Section, the American Association for Justice, and Texas Trial Lawyers Association. Chargois, Mashayekh & Herron has offices in the Woodlands, Texas; Little Rock, Arkansas; and New York, New York.

Mr. Chargois is a member of the Board of Directors for the University of Houston Law Alumni Foundation. Additionally, he is a member of the Advisory Board of Directors for Houston Achievement Place, a charity specializing in caring for the needs of at risk foster children. He has also served as a guest lecturer on a number of legal topics, including mass tort litigation and bankruptcy to the University of Arkansas—Little Rock Law School.

Timothy P. Herron was born in Hot Springs, Arkansas, on October 18, 1952. He was admitted to the Texas Bar in 1980. Mr. Herron did his undergraduate and graduate education at Texas Christian University receiving a Bachelor of Fine Arts in Speech and Communication in 1974 and a Master of Science in Speech and Communication in 1975. He taught as a professor at Samford University before being awarded a Fulbright Scholarship to attend Baylor Law School in Waco, Texas where he obtained his Juris Doctor Degree in 1980 (*cum laude*).

In law school, he was voted the most outstanding trial advocate in the nation and was on Baylor's national winning mock trial team. Mr. Herron began as an attorney with Baker & Botts in Houston in the employment litigation section. He left Baker Botts, to become a partner in the firm of Hope & Mays and later Crews & Herron in Conroe, Texas. In 1990, along with Don Wetzel, he formed the law firm of Wetzel & Herron which specialized in insurance defense and commercial litigation.

After representing mainly defense and commercial clients for eighteen years, Mr. Herron changed his practice to handle only plaintiffs' mass torts. In 1998, he started the law firm of Hissey Kientz &

Herron with Rob Kientz, and Mike Hissey, which since that time continues to handle mass tort litigation. Their cases include a wide range of occupational and mass torts, including asbestos and pharmaceutical litigation.

In 2004, the law firm Chargois & Herron was founded with Damon Chargois and Timothy P. Herron. In 2006, the firm expanded to specialize in commercial and class action lawsuits, and expand the firm's commercial and financial business interests. Mr. Herron's practice is multi jurisdictional and he oversees litigation in several states on the federal and state level. He is licensed in Texas and Arkansas. He is board certified in Civil Trial Litigation since 1989, is licensed to practice in the Federal Courts of Texas, and is a member of the State Bar of Texas in the Litigation Section and the AAJ and TTLA. In addition, he is chairman of the Unauthorized Practice of Law Committee of the State Bar of Texas, Region 5A. Chargois & Herron has offices in the Woodlands, Texas; Little Rock, Arkansas; and New York, New York.

Mr. Herron has expanded his business interests to include commercial banking and real estate. He was also involved in the founding of Post Oak Bank in Houston in 2003. He has been involved in the development and funding of commercial property development for the past four years in Texas, Oklahoma and Alabama.

Tim Herron has resided in Montgomery County, Texas for the past 26 years and has six children and one grandchild.

Kamran Mashayekh was admitted to the Texas State Bar on November 11, 1990. Mr. Mashayekh received his undergraduate degree in Political Science from Rice University in 1987 and received his Doctor of Jurisprudence from South Texas College of Law in August 1989.

In 2006, Kamran Mashayekh joined the law firm of Chargois & Herron to specialize in commercial and class action lawsuits and expand the firm's commercial and financial business interest. Mr. Mashayekh is fluent in English, Arabic, French and Spanish.

Che D. Williamson was born on November 25, 1964. She is married to Tim Herron and has 2 children and one grandchild. Ms. Williamson earned her Juris Doctor degree from South Texas College of Law in 1989. She has practiced law with her husband, Tim Herron since 1989. Ms. Williamson teaches mass torts at the William H. Bowen Law School at the University of Arkansas. She is also board certified in Civil Trial Litigation and holds a Ph.D. degree in criminal justice from Sam Houston State University and an L.L.M. in environmental law and policy from the University Houston Law School.

5.8 *Provide a very brief summary general description of your firm's practice in the subject matter areas covered by this RFQ, including the size and scope of the practice and any other resources of your firm which are relevant to your practice in those areas.*

Response by Labaton Sucharow

Labaton Sucharow has developed its expertise in prosecuting securities class actions over decades, and litigation on behalf of injured institutional and individual investors represents the firm's principal practice area. Since passage of the PSLRA, the firm has been appointed lead counsel on numerous occasions, including cases involving the largest investor losses and most egregious frauds, such as the current *Countrywide*, *American International Group* and *HealthSouth* litigations.

As noted above in response to question 5.4, Labaton Sucharow has a dedicated Case Evaluation Group comprised of attorneys and non-attorney professionals, who identify and evaluate cases of possible fraud, and who have developed proprietary criteria to rate such cases.

Labaton Sucharow has cultivated a specific expertise in enforcing accountability on the part of underwriters and accounting firms – entities that play an important role in the financial markets and, we believe, have special responsibility to ensure its proper functioning. One partner of the firm, who practiced for many years in the financial services sector, has made litigation against underwriters a principal focus of his practice with the firm. Two attorneys at Labaton Sucharow are certified public accountants, both with significant auditing experience. Their expertise in both law and accounting provides the firm a special capacity to identify and analyze accounting-related fraud, coordinate expert testimony, and effectively depose financial personnel.

The firm also highly values its non-attorney professionals, and believes that the close integration of their financial and investigative expertise with the firm's legal work provides Labaton Sucharow an unusual ability to build well-developed, thoroughly researched, and analytically rigorous cases and present them effectively to judges and juries.

Distinctively, the firm has a demonstrated willingness to go to trial when necessary. Since 2000, partners of the firm have served as lead or co-lead counsel in several major securities trials including, *In re Real Estate Associates Limited Partnerships Litigation*, No. 98-7035 (C.D. Cal.) and *Koppel v. 4987 Corp.*, 167 F.3d 125 (2d Cir. 1999). In the *Real Estate Associates* litigation, Lawrence Sucharow co-led a month-long jury trial that resulted in a \$92 million compensatory award and a \$92 million punitive damages award (later reduced to the maximum allowed under California law). In *Koppel*, the firm established a significant corporate governance precedent. We see our record of taking cases to trial as critical to our ability to negotiate credibly and forcefully on behalf of the institutions and classes we represent.

Finally, Labaton Sucharow strongly believes that shareholder litigation provides important public benefits by insuring fair and efficient public markets, regulating corporate governance, and controlling other deceptive conduct by public companies. The firm's senior partner, Edward Labaton, is a recognized authority on corporate governance issues, and is a member of the Advisory Committee of the University of Delaware's Weinberg Center for Corporate Governance and the New York City Bar Association's Task Force on the Role of Lawyers in Corporate Governance. He has also been President of the Institute for Law and Economic Policy since its founding.

Response by Chargois & Herron

Chargois & Herron has offices in Little Rock, Arkansas and The Woodlands, Texas, in addition to counsel affiliations with Labaton Sucharow in New York, Friedman Law Group in New York and Markun, Zussman & Compton in Los Angeles, California for the primary purpose of investigating and pursuing class action securities, commercial and consumer litigation which includes cases involving large investor losses and egregious fraud. Chargois & Herron has an attorney who dedicates a major portion of his work week watching the market, scouring financials and personally speaking with clients, financial experts and business leaders in our continuing effort to discover and root out fraud and misrepresentations by corporate wrongdoers.

- 5.9 *Provide a very brief summary description of not more than ten (10) significant transactions or cases in which your firm has provided extensive legal services involving pension funds or other institutional clients relating to the subject matter areas covered by this RFQ.*

Response by Labaton Sucharow

With respect to securities litigation, Labaton Sucharow has obtained substantial recoveries for institutional clients and associated classes in dozens of cases, and is recognized today as one of a small number of firms with the expertise and resources to prosecute the largest and most complex cases.

In one of the largest cases involving the recent subprime mortgage crisis, Labaton Sucharow serves as lead counsel representing Lead Plaintiffs the State of New York and the New York City Pension Funds (collectively, “the New York Funds”) in *In re Countrywide Securities Litigation*, No. CV-07-5295 MRP (MANx) (C.D. Cal.), pending before U.S. District Judge Mariana R. Pfaelzer in the U.S. District Court for the Central District of California. This case is a consolidated class action asserting claims under the Securities Act of 1933 and the Securities Exchange Act of 1934 against Countrywide Financial Corporation, certain of its current and former directors and officers, outside accountants, and underwriters of public offerings of Countrywide securities.

In *In re American International Group Inc. Securities Litigation*, Civ. No. 04-8141 (LTS) (S.D.N.Y.), Labaton Sucharow is lead counsel on behalf of Lead Plaintiffs the Ohio Public Employees Retirement System, and certain other Ohio state pension funds. Defendants include AIG, and its present and former senior executives, underwriters, auditor, and parties to various fraudulent transactions. In 2006, the court denied defendants’ numerous motions to dismiss in substantially all respects. The document review will likely be one of the largest in the history of securities litigation; to date, we have reviewed more than 37 million pages of 40 million that defendants produced. Both fact depositions and class certification depositions have begun.

In *In re Mercury Interactive Corp. Securities Litigation*, Master File No. 05-3395, pending in the United States District Court for the Northern District of California, Labaton Sucharow is acting as co-lead counsel representing Lead Plaintiffs the Steamship Trade Association/International Longshoremen’s Association Pension Fund, the City of Sterling Heights General Employees Retirement System, the City of Dearborn Heights Police and Fire Retirement System, and the Charter Township of Clinton Police & Fire Pension System. The allegations in Mercury concern backdated option grants used as unreported compensation to 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 reached an agreement in principle that will compensate injured plaintiffs in the total sum of \$117.5 million, a figure representing the second largest known settlement or judgment in an options backdating suit to date. 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.

In *In re Bristol-Myers Squibb Securities Litigation*, Civ. No. 00-1990 (GEB) (D.N.J.), Labaton Sucharow, as sole lead counsel, prosecuted class claims on behalf of Lead Plaintiff, Longview Collective Fund of the Amalgamated Bank. The firm reviewed more than 5 million pages of documents, took 44 factual depositions and 18 expert depositions and defended 8 experts. The case settled in January 2006 for \$185 million. The settlement also included the important public benefit of an agreement

by Bristol-Myers Squibb to post results of its clinical trials, including all adverse events, for a period of ten years.

In *In re HealthSouth Corp. Stockholder Litigation*, No. CV-03-BE-1501-S (N.D. Ala.), Labaton Sucharow represents Lead Plaintiffs the New Mexico State Investment Council and the New Mexico Educational Retirement Board and serves as co-lead counsel. The litigation alleges a broad scheme by the company's former senior managers in the largest securities fraud in the healthcare industry. In January 2007, the court approved a settlement valued at \$445 million with HealthSouth Corporation and several of the Company's former officers and directors. The partial settlement, comprised of cash and HealthSouth securities, is one of the largest in history. Lead Plaintiffs continue their prosecution of the litigation against HealthSouth's former CEO, Ernst & Young, and UBS.

In *In re Waste Management, Inc. Securities Litigation*, Civ. No. H-99-2183 (S.D. Tex.), Labaton Sucharow was retained by the Connecticut Retirement Plans and Trust Funds. The litigation resulted in a \$457 million settlement, one of the largest securities class action recoveries ever obtained. On behalf of its client and the Class, Labaton Sucharow secured substantial corporate governance enhancements, including measures designed to strengthen the role and independence of the defendant's audit committee, declassify its board of directors, and encourage and safeguard whistleblowers among the company's employees.

In *In re Real Estate Associates Limited Partnerships Litigation*, No. 98-7035 (C.D. Cal.), Labaton Sucharow litigated and tried this case to a jury verdict in federal court in California in late 2002. The firm obtained a precedent setting award of \$92 million in compensatory damages under various legal theories, including violations of Section 14(a) of the Exchange Act. The jury also awarded an additional \$92 million for punitive damages on a breach of fiduciary duty claim (which was later reduced by the court on a motion for remittitur). The case was eventually settled for more than 100% of claimed damages.

Labaton Sucharow also represents institutional investors in a number of individual securities actions. For example, in *In re Adelfphia Communications Corp. Securities & Derivative Litigation*, Civ. No. 03 MD 1529 (LMM) (S.D.N.Y.), the firm 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 Adelfphia'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 *In re WorldCom Inc. Securities Litigation*, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.), Labaton Sucharow secured a substantial settlement in an individual action brought by our clients SunTrust Bank and Trusco Capital Management, Inc. against the former underwriters, auditors, and directors of WorldCom, Inc. In *In re Qwest Communications International Securities Litigation*, 01-cv-01451 (D. Col.), after a class action settlement was announced in September 2006, Labaton Sucharow was engaged by CalPERS to pursue all appropriate opt-out securities claims in connection with CalPERS' securities holdings in Qwest Communications Int'l Inc. We drafted complaints for use in both federal and state courts, obtained and extension of pre-existing polling agreement (which made it unnecessary for us to file complaints), represented CalPERS at two mediation sessions with Qwest and related defendants, and negotiated the final settlement

which was far greater than what CalPERS would have obtained in the class action and was proportional to the largest other opt-out settlement obtained against Qwest that we know of.

Response by Chargois & Herron

Chargois & Herron has represented a number of plaintiffs against corporations who have been proven to have acted fraudulently with respect to their shareholders or consumers.

In *Bristol County Retirement System vs. HCC Insurance Holdings, Inc.*, we served as liaison counsel representing the Massachusetts Public Pension Funds against HCC Holdings, Inc. arising out of its fraudulent options backdating practices we alleged. After almost two years of litigation, we are finalizing a significant settlement for our clients.

In *Holloway v. Countrywide*, we have co-counseled with Markun, Zussman & Compton against Countrywide arising out of its fraudulent subprime mortgage practices. Recently, our case received class certification status for the State of California.

Chargois & Herron owns an Alabama company called 270 Discovery Solutions which provides document research, indexing and computer inputting of the millions of items of information contained in the documents that are routinely produced – usually under court order – in securities class action litigation. Uniquely, our company is staffed almost entirely by licensed attorneys, numbering in excess of 25 attorneys. This puts Chargois & Herron in a unique and special position to handle any securities litigation matter, regardless of size.

5.10 Please describe proposed billing arrangements, including contingency fees, for securities litigation. If other than contingency fees are contemplated, please state the range of hourly billing rates, by timekeeper status (paralegal, 1st to 3rd year associate, etc., staff attorney, shareholder or partner, of counsel, etc.), of all attorneys and paralegals proposed for assignment to ATRS matters. State what discount, if any, to these rates the firm proposes to provide to ATRS. While this RFQ primarily seeks the services of one lead attorney, the involvement of other firm attorneys may be required from time to time, depending on the matter.

Response of Labaton Sucharow

Labaton Sucharow confirms that monitoring and evaluating services provided under this Proposal would be carried out at no cost to the ATRS.

The range of contingency fees that Labaton Sucharow proposes with respect to securities class actions (and individual actions) that we successfully resolve as litigation counsel for the ATRS is dependent on several factors anticipated at the beginning of the case, including the likelihood of success, the likely size of any settlement or judgment from any or all defendants. For example, in a case involving a solvent company, hundreds of millions of dollars in damages, and a defendant company that has admitted wrongdoing and/or filed a restatement, the proposed contingency fee would be at the low end of the proposed range. In a case involving smaller damages, no admission, no restatement, and potential difficulties in funding a settlement or a judgment, the risks of litigation would be greater and therefore the proposed attorneys' fees would be at the higher end of the range.

On the basis described above, Labaton Sucharow proposes a range of fees generally conforming to the following:

| | | STAGE OF LITIGATION | | | |
|--------------------|---|--|--|--|--|
| | | Initiation of action to completed briefing of motion to dismiss (or, if no such motion, initiation of discovery) | Thereafter, to completed briefing of motion for summary judgment (or, if no such motion, to completion of discovery) | Thereafter, to trial and entry of judgment | Thereafter (including appellate proceedings), to ultimate resolution |
| AMOUNT OF RECOVERY | Up to \$150 million | 5-7% | 12-17% | 18-22% | 21-24% |
| | Greater than \$150 million, up to \$250 million | 4-6% | 7-10% | 10-12% | 12-14% |
| | Greater than \$250 million | 4-6% | 6-8% | 8-9% | 10% |

Labaton Sucharow would offer legal services to the ATRS outside the scope of the “evaluation counsel” and “litigation counsel” functions discussed in the RFQ at the discounted hourly rates set forth below. These rates represent a discount of 40%-60% of the Firms’ standard billing rates for their attorneys.

| | | | | | |
|-----------------------|---|-------|--------------------|-------|------------------|
| Eric J. Belfi | } | \$350 | Zachary M. Ratzman | } | \$300 |
| Lawrence A. Sucharow | | | Other Of Counsel | | |
| Thomas A. Dubbs | | | } | \$250 | Ann E. Gittleman |
| Christopher J. Keller | | | | | Krista T. Rosen |
| Other Partners | | | | | Other Associates |

Response by Chargois & Herron

Chargois & Herron, LLP confirms that monitoring and evaluating services provided under this Proposal would be carried out at no cost to the ATRS.

The range of contingency fees that Chargois & Herron proposes with respect to securities class actions (and individual actions) that we successfully resolve as litigation counsel for the ATRS is dependent on several factors anticipated at the beginning of the case, including the likelihood of success, the likely size of any settlement or judgment from any or all defendants. For example, in a case involving a solvent company, hundreds of millions of dollars in damages, and a defendant company that has admitted wrongdoing and/or filed a restatement, the proposed contingency fee would be at the low end of the proposed range. In a case involving smaller damages, no admission, no restatement, and potential difficulties in funding a settlement or a judgment, the risks of litigation would be greater and therefore the proposed attorneys’ fees would be at the higher end of the range.

On the basis described above, Chargois & Herron proposes a range of fees generally conforming to the following:

| | | STAGE OF LITIGATION | | | |
|--------------------|---|--|--|--|--|
| | | Initiation of action to completed briefing of motion to dismiss (or, if no such motion, initiation of discovery) | Thereafter, to completed briefing of motion for summary judgment (or, if no such motion, to completion of discovery) | Thereafter, to trial and entry of judgment | Thereafter (including appellate proceedings), to ultimate resolution |
| AMOUNT OF RECOVERY | Up to \$150 million | 5-7% | 12-17% | 18-22% | 21-24% |
| | Greater than \$150 million, up to \$250 million | 4-6% | 6-10% | 10-12% | 12-14% |
| | Greater than \$250 million | 4-6% | 4-6% | 7-8½% | 8-9½% |

Chargois & Herron would offer legal services to the ATRS outside the scope of the “evaluation counsel” and “litigation counsel” functions discussed in the RFQ at the discounted hourly rates set forth below. These rates represent a discount of 40%-60% of the Firms’ standard billing rates for their attorneys.

| | | | | | | |
|---|---|-------|---|---|---|-------|
| Damon J. Chargois Tim Herron Kamran Mashayekh Che Williamson (Partners) | } | \$350 | } | Kirk A. Chargois Carlos A. Fernandez (Associates) | } | \$250 |
|---|---|-------|---|---|---|-------|

5.11 *State any inability to comply with terms of the engagement described in Section 3.3 of this RFQ. If any inability exists, be specific.*

For both Labaton Sucharow and Chargois & Herron, there are no inability to comply with the terms of the engagement described in Section 3.3 of this RFQ.

5.12 *Identify any known relationship, either business or personal, which you or a member of your firm has with any ATRS Board member, investment consultant, investment manager, or key employee. If aware of none, state "None." (A list of ATRS Board members, investment consultants, investment managers, and key employees can be provided upon request. A formal conflicts check will be required prior to contracting.)*

Labaton Sucharow and Chargois & Herron are not aware of any known relationships.

5.13 *Identify any relationship, either business or personal, which you or a member of your firm has with a person known to you to have substantial business dealings with ATRS or its real estate title-holding corporation.*

To the best of our knowledge, Labaton Sucharow and Chargois & Herron do not have any relationships, either business or personal, with a person who has substantial dealings with the ATRS or its real estate title-holding corporation.

- 5.14 *State whether you or any firm attorney proposed to provide services for this engagement has ever had a formal grievance or complaint lodged against him or her pursuant to the applicable disciplinary rules or has ever been sued for malpractice or any civil or criminal regulatory enforcement action in connection with any type of legal representation, and whether any such attorneys have been sued individually with respect to any type of personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, investment company, securities broker-dealer, insurer, real estate transaction, or a lending institution.*

Response by Labaton Sucharow

Labaton Sucharow (and its predecessor firms) have been in business for more than 45 years. For much of that time, the firm had a substantial general billable corporate practice as well as its contingent class action litigation practice. Labaton Sucharow currently has a very small general billable corporate practice. Throughout its existence, from time to time, issues have arisen which required notification of our malpractice insurance carrier. At the present time, the firm has provided notice of the following matters to its malpractice insurance carrier. (None of the matters of which our carrier has been notified involves class action litigation).

Labaton Sucharow is a defendant in a legal malpractice case brought by a former client who asserts the firm and others committed malpractice in representing him in civil and criminal matters, and that the firm inappropriately failed to compensate him in connection with a qui tam proceeding. The claim is for an unspecified amount of damages.

In a separate action, on March 19, 2008, the preliminary executors of the estate of Jack Maurer commenced an action in the Supreme Court of the State of New York against Labaton Sucharow, charging that the firm had committed malpractice in connection with estate planning services rendered in 2001. The firm has moved to dismiss and the motion is currently pending before the court.

Labaton Sucharow's attorneys have never been sued individually with respect to any type of personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, investment company, securities broker-dealer, insurer, real estate transaction, or a lending institution.

Response by Chargois & Herron

Chargois & Herron has never been sued for malpractice, nor had a formal grievance or complaint lodged against it nor had any civil or criminal regulatory enforcement action brought against it; however, Damon J. Chargois, individually has had a grievance in the Dillard's discrimination litigation and a grievance in asbestos litigation brought against him, but both have been and were dismissed

- 5.15 *For your response to this RFQ, please indicate the firm's or attorney's professional liability insurance limits within the following ranges, and the name of the carrier or carriers.*

Response of Labaton Sucharow
\$5 million to \$ 10 million

Labaton Sucharow's malpractice insurer is Lloyd's of London. Labaton Sucharow maintains professional malpractice insurance coverage in the amount of \$10 million, representing both the

aggregate and per-claim annual policy limits and it is applied to the firm as a whole. Labaton Sucharow also maintains a fiduciary policy with a \$2 million limit.

Response of Chargois & Herron
Under \$5 million

Chargois & Herron's malpractice insurer is Texas Lawyers Insurance Exchange (TLIE). Chargois & Herron maintains professional malpractice insurance coverage in the amount of \$1 million.

Indicate below the range or the deductible or any self-insured retention with respect to the foregoing insurance.

Response of Labaton Sucharow
Between \$500,001 and \$1 million

Labaton Sucharow's deductible is \$1 million.

Response of Chargois & Herron
Between 0 and \$100,000

Chargois & Herron's deductible is \$25,000.

EX. 129

From: Keller, Christopher J. </O=GOODKIN LABATON RUDOFF
SUCHAROW/OU=FIRST ADMINISTRATIVE
GROUP/CN=RECIPIENTS/CN=KELLERC>
Sent: Monday, October 13, 2008 3:38 PM
To: Belfi, Eric J. <EBelfi@labaton.com>; Bankston, Jennifer S.
<jbankston@labaton.com>
Cc: Sucharow, Lawrence <LSucharow@labaton.com>; Dubbs, Thomas
<TDubbs@labaton.com>
Subject: Arkansas Teachers RFQ 2008-2

Great news.

Christopher J. Keller, Esq.
Partner
Labaton Sucharow LLP
140 Broadway
New York, NY 10005
Phone: (212) 907-0853
Fax: (212) 883-7053
e-mail: ckeller@labaton.com
www.Labaton.com

-----Original Message-----

From: Belfi, Eric J.
Sent: Monday, October 13, 2008 1:57 PM
To: Keller, Christopher J.; Bankston, Jennifer S.
Cc: Sucharow, Lawrence; Dubbs, Thomas
Subject: Fw: Arkansas Teachers RFQ 2008-2

Please see communication from ATRS below.

I have reached out to Damon & Tim - it should not be an issue.

Eric J. Belfi
Partner
Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
Telephone: +1.212.907.0878
Facsimile: +1.212.883.7078
ebelfi@labaton.com
www.labaton.com

----- Original Message -----

From: Christa Clark <christac@artts.gov>
To: Belfi, Eric J.
Cc: Tamara Henderson <tamarah@artts.gov>
Sent: Mon Oct 13 12:20:49 2008
Subject: Arkansas Teachers RFQ 2008-2

I am pleased to inform you that subject to final approval of the Attorney General's office, ATRS has selected Labaton Sucharow as an additional monitoring counsel for our system.

I would like to speak with you regarding the additional firm on your submission Chargois & Herron. This is a little awkward, but since your firms are not legally affiliated, we are unable to process the state contract form with both firms listed.

If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm or utilize them as independent contractors, if you deem is appropriate, on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case. I don't know how to best handle this point but the state procurement process is not conducive to a joint proposal.

Upon approval of the Attorney General, ATRS will send you a request for a form W-9, Arkansas Professional Services contract form, and State grant/contract disclosure form for your completion.

Please call me if you have a minute to discuss.

Regards,

--

Christa S. Clark
Chief Counsel
Arkansas Teacher Retirement System
1400 W. 3rd St.
Little Rock, AR 72201
(501) 682-1266 Direct
(501) 682-6326 Fax
(501) 590-2869 MOBILE
email: christac@artts.gov

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Thank you.

NOTICE: Any federal tax advice contained in this communication can not be used, or is not intended, for the purpose of avoiding penalties under the IRS Code, or promoting or recommending to another party any tax-related matters herein.

EX. 130

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,)
on behalf of itself and all others similarly situated)
) No. 11-cv-10230 MLW
Plaintiffs,)
)
v.)
)
STATE STREET BANK AND TRUST COMPANY,)
)
Defendant)

ARNOLD HENRIQUEZ, MICHAEL T. COHN,)
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND)
and those similarly situated,) No. 11-cv-12049 MLW
)
v.)
)
STATE STREET BANK AND TRUST COMPANY,)
STATE STREET GLOBAL MARKETS, LLC and)
DOES 1-20)
)
Defendants.)

THE ANDOVER COMPANIES EMPLOYEES SAVINGS)
AND PROFIT SHARING PLAN, on behalf of itself and)
JAMES PEHOUSHEK-STRANGELAND, and all others)
similarly situated,)
) No. 11-cv-11698 MLW
v.)
)
STATE STREET BANK AND TRUST COMPANY,)
)
Defendant.)
_____)

DECLARATION OF GEORGE HOPKINS

I, George Hopkins, hereby declare under penalty of perjury:

1. Since December 29, 2008, I have served as Executive Director of the Arkansas Teacher Retirement System ("ATRS"). I am also a lawyer, and I understand the importance of a sworn declaration.
2. ATRS is the class representative in the above-captioned matter.
3. At all times during this matter, in ATRS' role as class representative I have been the primary contact between ATRS and attorneys for Labaton Sucharow ("Labaton") who represent ATRS. The majority of my communication with Labaton has been through Labaton partner Eric Belfi.
4. Labaton has done an outstanding job representing ATRS in this matter. I am very pleased with the result that Labaton helped obtain for the class. Personally, I am not aware of another law firm that could have worked as tenaciously or produced as good a result on behalf of the class as Labaton did.
5. Labaton has also represented ATRS in several other matters. In my opinion, Labaton's attorneys are talented and hard-working.
6. The fee awarded by the Court to the attorneys representing the class in this matter, including Labaton, was about 25% of the total \$300 million settlement fund. Given the excellent result that Labaton helped obtain in this case, and Labaton's exceptional work representing the class throughout this case, I believe that 25% of the total settlement fund was a fair and reasonable fee award. I strongly believe that Labaton earned it.
7. I myself was not aware of Labaton's fee-sharing agreement with the Chargois & Herron law firm, or with Damon Chargois, until approximately August or September 2017.

8. I now understand that Labaton has had a fee-sharing agreement with Chargois & Herron for a number of years. I understand that, according to this agreement, Chargois & Herron believes that it is entitled to up to 20% of any fee Labaton earns as class counsel when representing ATRS as named Plaintiff. I further understand that this agreement was reached between Labaton and Chargois & Herron largely because attorneys at Chargois & Herron facilitated an introduction between ATRS and Labaton. This occurred prior to my service as Executive Director of ATRS.

9. I understand that, in the context of this matter, the “Customer Class Law Firms” – Labaton and the two other firms representing the “Customer Class,” Lief Cabraser Heimann & Bernstein, LLP and the Thornton Law Firm LLP – agreed that the three firms would fund from their respective fee awards Chargois & Herron’s portion of the fee, equivalent to 5.5% of the total fee award, rather than Labaton paying 20% of its portion of the fee. I understand that, as a result of this agreement, Chargois & Herron received \$4.1 million in connection with this matter.

10. In the past, Eric Belfi expressly offered to discuss with me how the plaintiffs’ lawyers divide up the attorneys’ fees awarded by the court. I told Mr. Belfi that I did not want to know the specifics of fee allocations between Labaton and other attorneys. I also told Mr. Belfi that if I ever wanted to know the details of Labaton’s fee-sharing agreements, I would ask him. Those were my instructions, and I believe that a lawyer should follow the client’s instructions.

11. My primary focus was, and has been, the amount awarded to the class, and the aggregate amount of attorney’s fees. Once the aggregate attorney’s fee award has been established by the Court, I am not concerned with how that aggregate fee is distributed among lawyers or law firms, because – in my view – those distributions do not affect the class.

12. Moreover, I have no interest in becoming a referee between various law firms, including local counsel. I believe that my knowledge of and involvement with fee agreements between attorneys would inevitably distract from my focus, which is protecting the class.

13. My time on this matter was extensive, and it was appropriately spent on staying very involved, including throughout the lengthy mediation process, in matters that helped protect the interests of the class.

14. Because of my instructions to Mr. Belfi regarding my desire not to know or otherwise be involved with the specifics of Labaton's fee agreements, I do not feel misled by the fact that I was unaware of Labaton's agreement with Chargois & Herron. In fact, I believe that Mr. Belfi and Labaton were following my express instructions.

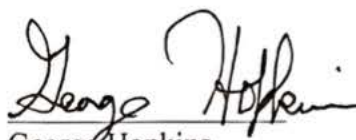
15. In my view, this payment had no effect on the interests of the class. Moreover, because Labaton believed that it had an obligation to share its fee with Chargois & Herron, I understand that the Labaton lawyers would feel the need to fulfill that obligation. Although I'm sorry to see Labaton and the other Customer Class Law Firms lose any portion of their own fee, I do not object to the \$4.1 million payment, paid by the Customer Class Law Firms from their own fee award, to Chargois & Herron in this matter.

16. Given my clear instructions to Mr. Belfi, I have no problem with the fact that the details of Labaton's agreement with, and payment to, Chargois & Herron were not explained to me. I am now aware of that specific agreement, the parameters of which I describe above. I now ratify that agreement, with full knowledge of it.

17. I am ratifying Labaton's fee-sharing agreement with Chargois & Herron because I do not object to it. My ratification of Labaton's agreement with Chargois & Herron is not a result of pressure from anybody, nor is it a result of any desire to avoid: inconvenience in

obtaining new counsel; alienating ATRS' current counsel; any change in the quality of ATRS' representation in this matter; ATRS' position in this matter being affected; or any other reason.

I declare under the pains and penalties of perjury under the laws of the United States of America and the State of Arkansas that the foregoing is true and correct. Executed this 15th day of March, 2018 in Little Rock, Arkansas.


George Hopkins

EX. 131

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/10/2010 12:59:55 PM
To: 'Tim Herron' [tim@cmhllp.com]; Damon Chargois [damon@cmhllp.com]
Subject: FW: Goldman Sachs
Attachments: Goldman Sachs Blue Ribbon Report (ATRS).pdf; Exhibit Nos. 1-9.pdf

From: Belfi, Eric J.
Sent: Monday, May 10, 2010 8:39 AM
To: 'George Hopkins'
Subject: RE: Goldman Sachs

Dear George:

Please find our Blue Ribbon Report for Goldman Sachs.

If you have any questions, do not hesitate to contact us.

Best regards,

Eric

From: Belfi, Eric J.
Sent: Thursday, April 22, 2010 9:54 AM
To: 'George Hopkins'
Subject: Goldman Sachs

George:

Please find our case report on Goldman Sachs. [REDACTED]

Since there are a number of outstanding issues with ATRS, please let us know if it would be beneficial for us to come down and met with you to go over everything.

Best regards,

Eric J. Belfi
Partner || Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
Telephone: +1.212.907.0878
Facsimile: +1.212.883.7078
ebelfi@labaton.com
<<http://www.labaton.com/>> www.labaton.com

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EX. 132

From: Belfi, Eric J. </O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE>
Sent: Thursday, May 6, 2010 7:59 AM
To: George Hopkins <georgeh@artrs.gov>
Bcc: 'Tim Herron' <tim@cmhllp.com>
Subject: The Hartford - ATRS - REVISED
Attach: HIG Litigation Update.pdf; The Hartford Investigative Update #1.pdf

Dear George:

Attached please find a memorandum summarizing the fruits of our internal research to date, particularly regarding evidence of scienter and areas of exploration into which our insurance and accounting experts are delving. Also attached hereto is our first investigative update, summarizing information provided by two confidential witnesses. We have a number of additional promising confidential witness leads, and look forward to providing ATRS with another progress update shortly, together with the initial findings of our experts.

Please do not hesitate to let me know if you have any questions relating to The Hartford securities class action -- or any other matters.

Best regards,

Eric J. Belfi
Partner | | Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
Telephone: +1.212.907.0878
Facsimile: +1.212.883.7078
ebelfi@labaton.com
www.labaton.com

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EX. 133

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/17/2010 2:31:39 PM
To: tim@cmhllp.com; 'damon@cmhllp.com' [damon@cmhllp.com]
Subject: FW: Follow up

This is one, now we need [REDACTED]

-----Original Message-----

From: George Hopkins [mailto:georgeh@artrs.gov]
Sent: Sunday, May 16, 2010 3:51 PM
To: Brad Beckworth
Cc: Belfi, Eric J.; ATRS Laura Gilson
Subject: Re: Follow up

I think this is a great plan with a great team. Ghop -----Original Message-----

From: Brad Beckworth
To: Ghop
Cc: Eric J. Belfi
Cc: ATRS Laura Gilson
Cc: Ghop
Subject: Re: Follow up
Sent: May 16, 2010 2:37 PM

Thanks George.

Eric and I talked and we are willing to work together. We will get the papers prepared and be in touch.

Have a nice rest of the weekend.

Brad Beckworth
Nix, Patterson & Roach LLP
205 Linda Drive
Daingerfield, Texas 75638
(903) 645-7333

On May 15, 2010, at 9:33 AM, "George Hopkins" <georgeh@artrs.gov> wrote:

> I think the decision is so close that I cannot make a choice between
> NP and Labaton. The strengths of both firms vary and the combined
> firms has great coverage of all concerns. So I have decided to ask
> the two firms to seek a joint filing on behalf of ATRS. I have added
> both contacts by this email. Let me know if each of you are willing
> to work with the other. Ghop -----Original Message-----
> From: Brad Beckworth
> To: Ghop
> Subject: Follow up
> Sent: May 15, 2010 9:23 AM
>
> Hi George,
> It was good seeing you Wednesday. I know you had a busy day and
> appreciate you taking time out for us.
> I wanted to follow up and see where things stand regarding Hartford.
> We are a couple weeks out on the lead plaintiff deadline, so I want to
> make sure we are ready.
> I am available to talk this weekend if you'd like (903-235-7709)----I
> didn't want to call and bother you on a weekend.
>
> Otherwise, I will try you Monday.
>
> Take care,
> Brad
>
>
> Brad Beckworth
> Nix, Patterson & Roach LLP
> 205 Linda Drive
> Daingerfield, Texas 75638

- > (903) 645-7333
- >
- >
- >
- > ATRS Executive Director

ATRS Executive Director

EX. 134

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/17/2010 6:41:39 PM
To: 'damon@cmhllp.com' [damon@cmhllp.com]; tim@cmhllp.com
Subject: Colonial
Attachments: 20100514163957.PDF

Here was the letter to George

From: Johnson, James
Sent: Friday, May 14, 2010 5:39 PM
To: Johnson, James
Subject:

**Labaton
Sucharow**

Eric J. Belfi
Partner
212 907 0878 direct
212 883 7078 fax
email ebelfi@labaton.com

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May 14, 2010

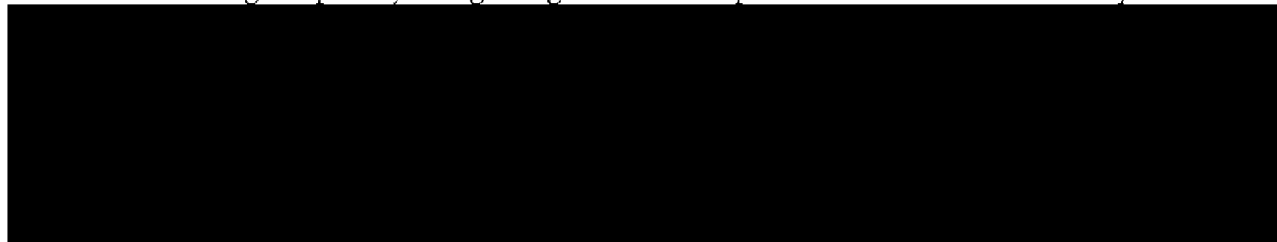
Via Email

George Hopkins, Executive Director
Arkansas Teachers Retirement System – Domestic
1400 West Third Street
Little Rock, AR 72201

Re: In re Colonial BancGroup, Inc. Sec. Litig.
Our File No. 016486.0001

Dear George:

I am writing to update you regarding recent developments in the *Colonial BancGroup* action.



Sincerely yours,



Eric J. Belfi



EX. 135

Message

From: /o=Goodkin Labaton Rudoff Sucharow/ou=First Administrative Group/cn=Recipients/cn=belfie [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/2/2013 9:03:50 PM
To: George Hopkins (georgeh@artrs.gov) [georgeh@artrs.gov]
BCC: Damon Chargois (damon@cmhllp.com) [damon@cmhllp.com]
Subject: Facebook Motion to Dismiss - Email 2 of 2
Attachments: 2013-04-30 DECLARATION of Andrew B. Clubok in Support MOTION to Dismiss Dkt 91.pdf

George:

Attached is the Declaration in support of the motion to dismiss.

Eric

EX. 136

Message

From: /o=Goodkin Labaton Rudoff Sucharow/ou=First Administrative Group/cn=Recipients/cn=belfie [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 10/23/2013 7:36:59 PM
To: Damon Chargois (damon@cmhllp.com) [damon@cmhllp.com]
Subject: In re Facebook Securities Litigation
Attachments: October 23, 2013 Ltr to ATRS.pdf; PowerPoint Presentation - Lead Plaintiffs' Opposition to the Motion to Dismiss.pdf; 2013-10-08 HEARING TRANSCRIPT Motion to Dismiss (WORD file) (1082701_1).DOC; Law 360 Article.pdf

Here is the letter to George Hopkins together with all the attachments.

EX. 137

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 7/24/2013 11:06:56 AM
To: George Hopkins [georgeh@artrs.gov]
BCC: Damon Chargois [damon@cmhllp.com]
Subject: Goldman

George:

We have been following the trial - some interesting testimony.

Share us on:

<<http://twitter.com/share?text=Player%20In%20Goldman%20Deal%20Says%20She%20Was%20Misled%20About%20Abacus&url=http://www.law360.com/securities/articles/459453>> Twitter
 <<http://www.facebook.com/share.php?u=http://www.law360.com/securities/articles/459453>> Facebook
 <<http://www.linkedin.com/shareArticle?mini=true&url=http://www.law360.com/securities/articles/459453&summary=A+key+government+witness+in+the+fraud+trial+against+former+Goldman+Sachs+Group+Inc.+trader+Fabrice+Tourre+said+Tuesday+that+she+was+mised+about+the+allegedly+built-to-fail+Abacus+transaction%2C+though+stopped+short+of+saying+that+Tourre+himself+lied.&title=Player+In+Goldman+Deal+Says+She+Was+Misled+About+Abacus&source=Law360>> LinkedInBy Richard Vanderford
 <http://www.law360.com/securities/articles/459453?nl_pk=e815b2bc-ec37-4835-b586-99356fa52f10&utm_source=newsletter&utm_medium=email&utm_campaign=securities#comments> 0 Comments

Law360, New York (July 23, 2013, 7:25 PM ET) -- A key government witness in the fraud trial against former Goldman Sachs Group Inc <<http://www.law360.com/companies/goldman-sachs-group-inc>> . trader Fabrice Tourre said Tuesday that she was misled about the allegedly built-to-fail Abacus transaction, though stopped short of saying that Tourre himself lied.

Laura Schwartz, a former senior managing director at ACA Management LLC, said she was not told that a hedge fund that helped structure the Abacus transaction, Paulson & Co., had actually bet against it. ACA was formally in charge of picking a bundle of residential mortgage-backed securities that formed Abacus 2007-AC1, a collateralized debt obligation.

Paulson, which allegedly had significant influence on what RMBS were put into Abacus, made about \$1 billion when the CDO collapsed along with the housing market, according to the U.S. Securities and Exchange Commission <<http://www.law360.com/agencies/securities-and-exchange-commission>> . The commission claims Tourre, the alleged "deal captain" for the Abacus deal, defrauded investors by failing to disclose Paulson's intention to go short and also tricked ACA.

Schwartz, though, said she was not directly lied to and did not explicitly blame Tourre for her misperception.

"I believed Paulson would be the equity investor in that transaction," Schwartz said.

But when asked where she got that belief, Schwartz responded that her early knowledge of the structure of the deal came from a meeting with Gail Kreitman, a Goldman salesperson when the Abacus deal was being worked out.

Kreitman, another SEC witness, has already testified that she believed Paulson was long on Abacus. She said she did not know who in particular at Goldman gave her that impression.

Schwartz stressed under SEC questioning that, whatever the source of her belief about Paulson's role in the transaction, ACA was allowed to maintain its misperception. No one at Goldman corrected Schwartz after, in an email to Krietman, she referred to Paulson's "equity perspective" on Abacus, Schwartz testified.

She added that Paulson was referred to as "transaction sponsor" in an email from Tourre, though later conceded that term has no specific definition in the financial world.

Schwartz told jurors that Paulson was given the opportunity to put forward RMBS for inclusion in Abacus. ACA would not have gone forward with the deal had it known the fund was an intended short investor, Schwartz said.

"If somebody only wanted to go short that means it was designed to fail and that was not something we would have done," Schwartz said.

Schwartz's testimony on that point echoed <http://www.law360.com/articles/459149/short-on-goldman-deal-kept-quiet-tourre-jury-told> that of her former boss, ex-ACA CEO Alan Roseman, who said knowledge of Paulson's intention to short would have stopped the transaction in its place.

On cross-examination, Schwartz conceded that ACA had detailed standards for deciding what RMBS were worthy of inclusion in a portfolio and would not have changed those standards based on input from a prospective investor.

"What if Joe had recommended it," Tourre's lawyer John P. Coffey asked, referring to the courtroom deputy. "would that have affected whether it met the standards of being on the approved list?"

"No," Schwartz said.

"What if it's a long investor," Coffey said.

"No," she said.

Schwartz testimony is scheduled to resume Wednesday morning. Tourre is slated to testify Wednesday afternoon, according to U.S. District Judge Katherine B. Forrest, who is presiding over the case.

Goldman in 2010 agreed to pay \$550 million to settle an SEC suit related to Abacus.

Tourre's lawyers have argued that he was one of many Goldman employees who had a hand in Abacus and that disclosures to clients were looked over by Goldman professionals.

Tourre is represented by Pamela R. Chopiga and Andrew Rhys Davies of Allen <http://www.law360.com/firms/allen-overey> & Overy LLP and the Law Office of John P. Coffey.

The case is SEC v. Goldman Sachs & Co. et al., case number 1:10-cv-03229 <http://www.law360.com/cases/4d43f5345002d10782000062>, in the U.S. District Court for the Southern District of New York.

--Editing by Andrew Park.

Related Articles

* http://www.law360.com/articles/458711/tourre-did-nothing-wrong-goldman-exec-testifies?article_related_content=1 Tourre Did Nothing Wrong, Goldman Exec Testifies

Eric Belfi
Partner
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New York, N.Y. 10005
o: 1.212.907.0878
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EX. 138

Labaton Sucharow

Eric J. Belfi
Partner
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212 883 7078 fax
ebelfi@labaton.com

February 8, 2011

VIA E-MAIL

Mr. George Hopkins
Arkansas Teacher Retirement System
1400 West Third Street
Little Rock, AR 72201

Re: State Street Corporation

Dear Mr. Hopkins:

We are pleased that the Arkansas Teacher Retirement System (“Arkansas Teacher” or the “System”) has agreed to retain Labaton Sucharow LLP (“Labaton Sucharow” or the “Firm”) in connection with the pursuit of claims against the System’s custodian, State Street Corporation (“State Street”), as a result of State Street’s misconduct as it relates to the pricing of foreign currency (“FX”) transactions. The Firm’s representation includes the commencement of class litigation against State Street and certain of its subsidiaries and/or officers or directors for, among other potential viable claims, breaches of fiduciary and other duties (the “Litigation”). The following confirms our arrangement with respect to the Litigation.

Labaton Sucharow will prosecute this Litigation on a wholly contingent fee basis. In addition, any fee request will be based upon customary and ordinary fees for class actions and our lodestar and submitted to the Court for its approval. Labaton Sucharow will be entitled to receive only such fees as the Court determines to award, plus expenses, which will be advanced by the Firm. Expenses will include, among other things, expert witness fees, photocopying, computer research, long distance telephone charges, fax charges, court fees, travel expenses, and delivery charges. Labaton Sucharow will also advance any Arkansas Teacher’s out-of-pocket costs relating directly to the Litigation, *e.g.*, travel costs.

Labaton Sucharow

Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting with the prosecution of the Litigation. Any division of fees among counsel will be Labaton Sucharow's sole responsibility and will not increase the fees payable by Arkansas Teacher or the Class upon a successful resolution of the Litigation.

Labaton Sucharow will keep Arkansas Teacher timely apprised of significant developments and, on a regular basis, will provide periodic written reports and will notify the System as to court appearances, depositions, and other significant proceedings in advance thereof. Labaton Sucharow will consult with Arkansas Teacher to discuss legal issues and strategies and will seek prior approval regarding significant decisions; specifically, decisions concerning settlement and fee proposals. Labaton Sucharow agrees to provide Arkansas Teacher with copies of all pleadings pertaining to the Litigation and will provide the System with significant pleadings in advance of submission to the court. Labaton Sucharow agrees to meet with the representatives of Arkansas Teacher to discuss this matter, from time to time as required.

Arkansas Teacher hereby provides Labaton Sucharow with authority to execute documents and agreements on its behalf relating directly to the Litigation. Arkansas Teacher also agrees to cooperate fully with the Firm in its handling of the Litigation. Arkansas Teacher will make its representatives available for consultation and legal proceedings, promptly supply information and documents requested in a truthful and complete fashion, refrain from negotiating and settling the matter without the participation of the Firm, and will notify Labaton Sucharow of any change of address and other administration changes relevant to the Firm's representation.

In the event that the Court does not certify the class and the Litigation is prosecuted individually, on behalf of Arkansas Teacher, Labaton Sucharow's fee will be negotiated in good faith based upon customary and ordinary fees for individual actions and our lodestar (the "Negotiated Fee"). Labaton Sucharow acknowledges that the Negotiated Fee will be subject to approval by the Arkansas Teacher's Board.

If the terms of this engagement letter meet with Arkansas Teacher's approval, please sign below where indicated on the enclosed copy. Please return one fully executed copy to us, and retain the second copy for the System's files.

We are grateful for the opportunity to represent Arkansas Teacher in this matter, and look forward to the prospect of a favorable resolution.

**Labaton
Sucharow**

Very truly yours,

Eric J. Belfi

Eric J. Belfi

AGREED TO AND ACCEPTED

this ____ day of _____, 2011

George Hopkins
Executive Director



EX. 139

Robert Lieff

1

Volume: 1

Pages: 1-114

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 ROBERT L. LIEFF

September 11, 2017, 12:13-2:57 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

Jones & Fuller Reporting
617-451-8900 603-669-7922

Page 14

[REDACTED]

Page 16

1 Q. And if you'd take a look at that thread, and
2 I'd ask that you begin from the oldest, which
3 appears to be a message from you on page 4, being at
4 2:05 p.m.
5 (Pause.)
6 **A. I've looked through it quickly.**
7 Q. Okay, thank you.
8 If you look on page 4 with that message
9 that begins about a fifth of the way down on August
10 28, 2015 at 2:05 p.m., Lief, Robert wrote.
11 It would appear that you are responding
12 to Garrett Bradley's back and forth with
13 Mr. Chiplock. Is that your recollection?
14 **A. From glancing at this briefly, yes.**
15 Q. All right. And what are you telling Garrett
16 in that message with respect to the splits or the
17 percentages?
18 **A. Well, I'm saying that we should have a**
19 **meeting. Then I make reference to the November 9,**
20 **2010 get-together that I had, apparently, with Chris**
21 **Keller and Mike Thornton.**
22 **I mean you want me to read it?**
23 Q. No. No. I'm just directing your attention
24 to the percentages there.

Page 15

1 **THE SPECIAL MASTER:** Would that have
2 specific been Garrett Bradley of the Thornton firm?
3 **THE WITNESS:** Yes.
4 **BY MR. SINNOTT:**
5 Q. Now let me ask you to look at -- excuse me.
6 **MR. SINNOTT:** I'm sorry.
7 Q. Let me ask you to look at the document
8 before you that's dated August 30, 2015 from Dan
9 Chiplock to Michael Thornton and Garrett Bradley,
10 and you are CC'd on this message. And that was at
11 12:50 p.m.
12 And the designation of this message is
13 TLF-SST-038574 through 038579. Do you have that in
14 front of you, sir?
15 **A. Yes.**
16 Q. Okay.
17 **MR. WOLOSZ:** Do you have another copy of
18 this one?
19 **MR. SINNOTT:** Yes, I do, Justin.
20 **MR. WOLOSZ:** Thank you.
21 **MR. SINNOTT:** Do you want a copy,
22 Richard?
23 **MR. HEIMANN:** Thank you.
24 **BY MR. SINNOTT:**

Page 17

1 Where does that break down -- that
2 breakout of percentages come from?
3 **A. The 20/20/20?**
4 Q. Yeah. The 33, 26.5, what are those figures
5 based on?
6 **A. Oh, I see here.**
7 **(Pause.)**
8 **A. I think those were numbers that I must have**
9 **discussed with Garrett Bradley.**
10 Q. Okay. And the Arkansas local, 5.0, is a
11 reference to?
12 **A. The Arkansas local, at the time I didn't**
13 **know anything really other than the fact that it was**
14 **the Arkansas local. That's how he was referred to.**
15 **I now see he has a name.**
16 Q. Okay. But --
17 **THE SPECIAL MASTER:** Did you know his
18 name at the time?
19 **THE WITNESS:** No. Although it appeared
20 in some e-mails, but I hadn't remembered that.
21 **BY MR. SINNOTT:**
22 Q. And if you go to the bottom of the previous
23 page, page 3, it would appear that Garrett Bradley
24 responds within minutes and, in fact, he says:

Page 34

[REDACTED]

Page 36

1 Q. Okay. All right. Let me direct your
2 attention to -- well, let me first ask you how would
3 you characterize your relationship and the
4 relationship of other customer class counsel with
5 the ERISA firms?
6 **A. My relationship particularly with Lynn Sarko**
7 **of Keller Rohrback was extremely close. We were and**
8 **are very good friends.**
9 As to the other two, Carl Kravitz and
10 **Brian McTigue, I only knew them through this**
11 **litigation. In Brian's case, both State Street and**
12 **the Bank of New York. And I think I had a -- I**
13 **think I and my firm had a decent relationship with**
14 **the two of them as well.**
15 Q. All right. And had you worked with Lynn
16 Sarko professionally before?
17 **A. I've worked with Lynn Sarko going back to**
18 **1989 when we were both involved representing the**
19 **fishermen in the Exxon Valdez spill.**
20 Q. Okay. So you had some history with him and
21 some trust of him?
22 **A. Absolutely.**
23 Q. And let me direct your attention to an
24 August 21, 2015 e-mail at 9:17 a.m.

Page 35

[REDACTED]

Page 37

[REDACTED]

Page 42

[REDACTED]

Page 44

[REDACTED]

Page 43

[REDACTED]

Page 45

1 minutes for lunch?
2 **THE SPECIAL MASTER:** Let's do that,
3 break now for 15, 20 minutes.
4 **MS. HARLAN:** How long are we breaking?
5 **MR. SINNOTT:** Fifteen to 20 minutes.
6 (A lunch recess was taken.)
7 **CONTINUED EXAMINATION BY MR. SINNOTT:**
8 Q. Hi, Bob. Welcome back.
9 Let me direct your attention to a e-mail
10 from September 2, 2015, and it was at 10:25 a.m.,
11 and the Bates stamp is TLF-SST-054014 through 54016.
12 And if I could ask you to look at the --
13 just for background -- on the second page.
14 **MR. HEIMANN:** Do you have an extra copy?
15 **MR. SINNOTT:** I do.
16 **MR. HEIMANN:** Thank you.
17 **MR. SINNOTT:** Sure.
18 Q. So, Bob, if I could direct your attention to
19 the top of the second page.
20 And, as you can see, there's a message
21 from Larry at 11:07 p.m., and he says, "Lynn, you
22 and I should discuss how best to handle Brian. I
23 completely agree with you perhaps a side letter from
24 me as lead counsel saying I intend to abide by the

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1 agreement entered into between class counsel and
2 ERISA counsel dated whatever would satisfy him?"
3 Do you remember what prompted this
4 exchange?
5 **A. Perhaps it was one of the e-mails we read**
6 **before, but I don't remember the date or anything.**
7 **But I remember something from Brian that may have**
8 **prompted this.**
9 Q. Is it fair to say that you and other counsel
10 looked to Lynn to kind of troubleshoot among the
11 ERISA attorneys or to kind of smooth things over in
12 addition to, you know, what you expected he'd do
13 with the government regulatory agencies?
14 **A. Definitely, yes.**
15 Q. All right. If I could ask you to look at
16 the document dated July 25, 2016 at 5:29 p.m.
17 And, as you can see from the back, Bob,
18 there's several pages, and they begin on
19 TLF-SST-051653 through 657.
20 **MR. HEIMANN:** Thank you.
21 **MR. SINNOTT:** Sorry.
22 **MR. WOLOSZ:** Thank you.
23 Q. And the topic is State Street revised POA
24 language.

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1 (Pause.)
2 **MR. HEIMANN:** I think we're waiting for
3 a question.
4 Q. Oh, I was waiting for you to put your head
5 up.
6 **A. I wait for you to read it, and then I**
7 **respond.**
8 Q. Okay. Well, now that I know that, Bob --
9 **A. Yeah, don't waste time.**
10 Q. -- I'll save us both some time.
11 **A. Absolutely.**
12 Q. Okay. I won't read the original message
13 from Nicole other than to ask you would you agree
14 that Nicole Zeiss of Labaton is putting out some
15 draft language for purposes of the settlement; is
16 that correct?
17 **A. Yes.**
18 Q. And there's an exchange about some language
19 that she's put out there from several attorneys
20 including Mike Lesser and David Goldsmith.
21 And then ultimately at the top of page
22 2, Dan Chiplock in a message to you and to other
23 customer class counsel says, "The real premium here
24 was demanded/earned by DOL, not ERISA counsel, whose

Page 48

1 claims offered no greater benefit than our claims.
2 That's why I wouldn't have bothered including that
3 first highlighted sentence below. By doing so we
4 are saying that the private ERISA claims added extra
5 heft to ERISA plaintiffs' damages. They didn't.
6 The only reason ERISA plaintiffs are
7 getting more money is to keep the DOL from filing
8 its own lawsuit; in other words, to settle the DOL's
9 claims. We didn't have this language in the BNY
10 notice. That's why I was wondering who wanted this
11 language inserted."
12 My question to you on that, Bob, is are
13 you in agreement with Dan's assessment that the
14 private ERISA claims did not add heft to the
15 plaintiffs' damages?
16 **A. I agree with him in saying that the DOL was**
17 **the one that was adding heft, and we had to deal**
18 **with the DOL.**
19 Q. Okay. And --
20 **MR. HEIMANN:** I'm sorry, are you saying
21 you had "to" deal with the DOL?
22 **THE WITNESS:** Yes.
23 **THE SPECIAL MASTER:** By that you mean
24 because State Street was insisting on a global

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1 release and wanted a global settlement, you had to
2 deal with the DOL.
3 **THE WITNESS:** That's correct.
4 **BY MR. SINNOTT:**
5 Q. Okay. And directing your attention, Bob, to
6 the next to newest e-mail at 5:27 p.m. Dan writes to
7 you and others on the list: "Yes, the premium is
8 obvious by virtue of the math just as it was in BNY
9 and where we didn't include any narrative in the
10 plan of allocation like the one in the first
11 highlighted section below.
12 If we feel compelled to explain the
13 premium, that can be done at the hearing or in
14 response to an objection, but we shouldn't be
15 attributing it to claims asserted by ERISA plans as
16 opposed to a lawsuit that the DOL could have brought
17 because it isn't so. And it's too easy to
18 discredit. They had standing problems, never got
19 past a motion to dismiss, didn't offer treble
20 damages, etcetera."
21 Was that your take on things as well?
22 You know, Dan seems to be downplaying the strength
23 of the ERISA case.
24 **A. I don't know that I would have stated it the**

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1 same way, but he's right that their claims had not
2 been tested.
3 Q. Okay.
4 A. Yes.
5 Q. Because there never was a motion to dismiss
6 hearing on the case?
7 A. Right.
8 Q. All right. Did you feel that the ERISA
9 counsel and claims were subject to greater
10 government scrutiny than the customer class claims?
11 A. Greater government scrutiny by the
12 appropriate agency meaning the Department of Labor,
13 yes.
14 Q. Okay. And that's pretty much par for the
15 course in an ERISA case, correct?
16 A. Yes.
17 Q. Okay. Let me direct your attention to
18 August 6 e-mail at 2:30 p.m.
19 MR. HEIMANN: I'm having a little
20 trouble finding that one.
21 MR. SINNOTT: Okay.
22 MR. HEIMANN: I've got an August 6th
23 at --
24 MR. SINNOTT: There are two August 6th

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1 ones. This is the one at 2:30 p.m.
2 MR. HEIMANN: Okay.
3 MR. SINNOTT: Do you just have one copy?
4 MR. HEIMANN: Thank you.
5 MR. SINNOTT: Sure.
6 BY MR. SINNOTT:
7 Q. If you'd take a look at that.
8 A. Go ahead and read whatever part you want me
9 to respond to.
10 Q. So at the bottom of the page Lynn Sarko
11 indicates that he's trying to put a call together
12 with DOL.
13 And then he adds just above it that he
14 did have a call with DOL with Nate Goldstein, and he
15 talks about it and talks about the rather firm
16 approach, perhaps aggressive, approach DOL is taking
17 with respect to the fee percentages.
18 Then there's a -- top of the message
19 there's a response from Garrett, and you're one of
20 the CCs on the message. "They have done nothing but
21 come in at the end and try and hold us up. It's
22 time to go over his head."
23 And who did you interpret "they" to
24 refer to there, Bob?

Page 52

1 A. Department of Labor.
2 Q. Okay. "We are asking for 25 percent. I'm
3 getting a little tired of the tail wagging the dog.
4 ERISA is a small piece here of the overall
5 settlement. There was a lot of talk about the ERISA
6 counsel ability to guide them to see how good this
7 settlement is. I think it's time to do that."
8 So I guess it would be fair to say that
9 Garrett is frustrated and that shows in this
10 exchange?
11 A. Yes, he so expresses himself. Yes.
12 Q. And would you also agree that he's
13 challenging the ERISA counsel?
14 A. He's saying that they should do what they're
15 supposed to be doing, yes.
16 Q. Okay. And one of the things that they're
17 supposed to be doing is interacting or helping with
18 the Department of Labor?
19 A. Yes.
20 Q. Okay. Let me ask you to look at August 10,
21 2016 e-mail, and this is at 4:27 p.m.
22 MR. SINNOTT: And, Richard, I'll give
23 you a copy.
24 MR. HEIMANN: Thank you.

Page 53

1 MR. WOLOSZ: Thank you.
2 BY MR. SINNOTT:
3 Q. And, Bob, let me just direct your attention
4 to the first page, the message from David Goldsmith
5 to a number of parties including State Street and
6 Department of Labor.
7 I don't believe that you're mentioned on
8 this, unless I'm missing it --
9 A. I'm not.
10 Q. You're not. Well, you are at the top of the
11 message.
12 A. Okay.
13 Q. But in that middle message, which is what I
14 was I'm making reference to, you're not, but I
15 believe this is forwarded to you by David.
16 And in that message David says, "After
17 hearing back from the DOL, I'm suggesting the
18 following and hopefully final language for this
19 paragraph of the notice. The ERISA settlement
20 allocation was negotiated directly among lead
21 counsel, ERISA counsel and representatives of the
22 DOL.
23 The ERISA settlement allocation, even
24 without the 10.9 million dollar cap on attorneys'

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1 fees described above, provides a premium per dollar
2 of indirect FX trading volume for ERISA plans and
3 eligible group trusts in comparison to the
4 allocations to other settlement class members.
5 The precise size of the premium is not
6 known at this time because the amount of ERISA
7 assets within group trusts is currently undetermined
8 as is the amount of attorneys' fees the Court may
9 award. The premium recognizes the relative strength
10 of the fiduciary duty and other claims available to
11 ERISA plans and eligible group trusts under the
12 federal ERISA laws as ERISA counsel and the DOL have
13 contended and as described in question 2 above. The
14 10.9-million-dollar cap on attorneys' fees was
15 agreed to by lead counsel and ERISA counsel
16 separately with the DOL after the class settlement
17 amount was agreed to by the parties.
18 The ERISA settlement allocation of 60
19 million dollars and the 10.9-million-dollar cap on
20 attorneys' fees were final essential conditions for
21 the DOL's support of the settlement and the
22 conclusion of its own investigation of SSBT. These
23 conditions must be met for the settlement to be
24 concluded."

Page 55

1 What is the significance of the cap,
2 Bob? And why that is an essential term?
3 **A. My recollection of the origin of this 10.9**
4 **cap was the position by the Department of Labor that**
5 **they did not think attorneys' fees should be greater**
6 **than -- I thought it was 18 percent, but somehow I'm**
7 **doing the math, and it's like 18.17.**
8 **But I thought it was 10.8 -- maybe I**
9 **missed something here but in any event -- which**
10 **would be 18 percent. But, in any event, they**
11 **insisted upon the cap.**
12 Q. Okay.
13 **MR. SINNOTT:** Just bear with me for a
14 second.
15 (Pause.)
16 **BY MR. SINNOTT:**
17 Q. Let me direct your attention to July 8, 2016
18 e-mail from Garrett Bradley to Christopher Keller.
19 And this is Bates stamp LBS 039936 and 37.
20 **THE WITNESS:** I think we're looking for
21 it.
22 **MR. HEIMANN:** Yeah, I don't see it.
23 **MR. SINNOTT:** Oh, okay.
24 **MR. HEIMANN:** Sorry. The date again was

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1 July?
2 **MR. SINNOTT:** July 8, 2016.
3 **MR. HEIMANN:** I'm sorry, it's from July
4 8 at 7:06?
5 **MR. SINNOTT:** Yes. It's from Garrett --
6 **MR. HEIMANN:** Okay, I got that.
7 Although it doesn't look like the one you're looking
8 at.
9 **MR. SINNOTT:** It's not at 7:06. It's at
10 9:36.
11 **THE SPECIAL MASTER:** 039936.
12 **MR. HEIMANN:** Don't have it. Sorry.
13 **MR. STOCKER:** I think this is it.
14 **MR. SINNOTT:** Oh, thanks.
15 **BY MR. SINNOTT:**
16 Q. And keeping up the technique that we've
17 perfected here, Bob --
18 **A. Yes, please.**
19 Q. -- let me direct your attention to the
20 message in the lower part of the e-mail.
21 On July 8, 2016 at 9:06 p.m. Garrett
22 Bradley wrote: "Gentlemen, as we discuss how to
23 distribute the fee between ourselves and, of course,
24 the ERISA attorneys, I have had discussion with

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1 Damon Chargois, the local attorney in this matter
2 who has played an important role. Damon and his
3 firm are willing to accept 5.5 percent of the total
4 fee awarded by the Court in the State Street class
5 case now pending before Judge Wolf.
6 As you know, we had a prior deal with
7 him that his fee would be off the top. He
8 understands that ERISA counsel is now in the same
9 pool of money. He has agreed to come down to this
10 number with a guarantee that it will be off the
11 Court-awarded fee number. Please reply if you all
12 agree.
13 Given that it is off the total number,
14 there is no need to add the ERISA counsel to this
15 e-mail chain."
16 And it appears that you responded, "Bob,
17 we, LCHB, are in agreement with the 5.5 to Chargois.
18 Now let's continue to resolve the split among us."
19 And Christopher Keller says "great work
20 getting this done." And Garrett says "thanks."
21 Let me ask you this, Bob: When did you
22 first learn about Chargois?
23 **A. I first actually learned about his name**
24 **about four weeks ago.**

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1 Q. Okay. Prior to that how did you know him?
2 **A. With the benefit of prior e-mails that I**
3 **have been directed to read, I see his name showing**
4 **up as early as 2013. But I had no recollection of**
5 **that until I was told to look at it.**
6 **So that's when I saw his name after I**
7 **heard about it a month or so ago.**
8 Q. But when you first heard about him, either
9 his name was not associated with him, or the name
10 didn't register with you?
11 **A. Exactly.**
12 Q. Okay.
13 **A. I saw the -- I knew about the so-called**
14 **local counsel, but I didn't know his name.**
15 Q. Okay. And did he fit the description of
16 what you think of as a "local counsel" based on what
17 you knew about him?
18 **A. Well, what I knew in 2013 or what I know**
19 **now?**
20 **MR. HEIMANN:** No. 2013. 2015.
21 **A. 2013 -- 15? It was so represented, yes, by**
22 **Garrett Bradley that he was local counsel, and it**
23 **sounded like he was taking care of the situation in**
24 **Arkansas as typically a local counsel would do. So**

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1 **that was my understanding.**
2 Q. At some point, Bob, did you find out that he
3 didn't do anything?
4 **A. Yes.**
5 Q. All right. And what was your reaction to
6 that news?
7 **A. Well, it was recently.**
8 Q. Okay.
9 **A. I mean during the course of all this**
10 **investigation.**
11 Q. What was your reaction recently?
12 **A. I was surprised, disappointed and offended**
13 **even, yeah.**
14 Q. And when you say you were offended, why?
15 **A. Hm hm. I wished that I had known more or**
16 **had been told more than what I was told back in**
17 **2013, 2015.**
18 Q. In that e-mail that we first read at the
19 bottom of the page, Bob, where Garrett says he
20 understands that ERISA counsel is now in the same
21 pool of money; he's agreed to come down to this
22 number knowing it will be off the court-awarded fee
23 number. Please reply if agree.
24 And then the final sentence, "Given that

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1 it is off the total number, there is no need to add
2 ERISA counsel to this e-mail chain."
3 Did you have any misgivings about
4 keeping this information from ERISA counsel?
5 **A. I never looked at this as an attempt to keep**
6 **information away from ERISA counsel. What I read**
7 **into this was the fact that finally people are**
8 **understanding how to do the math. And if somebody**
9 **has 5.5 percent of a number off the top, it doesn't**
10 **impact someone else who might have 9 percent off the**
11 **top.**
12 **Any number of people could have**
13 **percentages off the top, although it was my**
14 **understanding that some people misunderstood it and**
15 **thought it would impact the second and third fourth**
16 **people.**
17 **So the answer is this was a math issue**
18 **as far as I was concerned, and it makes sense.**
19 Q. Did it -- you know, obviously, experienced
20 counsel and, you know, earlier you told us how
21 uncomfortable you were with the blending of
22 different cases in discussion.
23 Did you have any concerns about --
24 beyond the financial aspect which appears to you to

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1 be non-problematic -- that there might be other
2 issues, ethical issues or client issues or class
3 issues that the ERISA attorneys might suffer?
4 **MR. HEIMANN:** Relative to what?
5 Relative to the local counsel question? The
6 Chargois question? Is that what you're asking?
7 **MR. SINNOTT:** Yes. Yes. Thank you,
8 Richard.
9 **A. Again, it's hard to answer this without**
10 **reference to the timeframe. Back in the early days**
11 **when I first heard about it, as I now know it was**
12 **April 2013 I believe, and then again 2015, I didn't**
13 **think too much about it because we had a very**
14 **similar situation in the companion -- I call it the**
15 **companion but in the Bank of New York we had local**
16 **counsel in Ohio dealing with the fund. I thought**
17 **this was local counsel in Arkansas dealing with the**
18 **fund.**
19 **It wasn't until all this investigation**
20 **came about that it came to my attention that this**
21 **was a different situation.**
22 Q. Okay.
23 **THE SPECIAL MASTER:** How much -- if I
24 could ask, in fairness, I think -- Rich, do you have

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1 the 2013 e-mail from Garrett Bradley to Bob and to
2 Mike Thornton and Eric Belfi?
3 **MR. HEIMANN:** Hm hm, I do.
4 **THE SPECIAL MASTER:** Can you show that
5 to him?
6 **MR. HEIMANN:** Sure.
7 **THE WITNESS:** I'm familiar with this
8 one.
9 **THE SPECIAL MASTER:** Okay. At the time
10 -- this is an e-mail -- for the record, it's an
11 e-mail from Garrett Bradley to Bob Lief, Mike
12 Thornton and Eric Belfi with copies to Damon
13 Chargois, Chris Keller and Dan Chiplock. And the re
14 on it is State Street fee regarding local counsel.
15 And we're familiar with it?
16 **THE WITNESS:** Yes, you don't have to
17 read it.
18 **THE SPECIAL MASTER:** I don't have to
19 read it. It's in the record.
20 **THE WITNESS:** Right.
21 **THE SPECIAL MASTER:** This is 2013, and
22 it refers to -- it's addressed to you, and it refers
23 to a meeting in Dublin last week, i.e., back in 2013
24 -- specifically April of 2013.

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1 And in that e-mail Garrett Bradley
2 refers to the obligation to the counsel Damon
3 Chargois of 20 percent of the net fee to Labaton on
4 the State Street case before Judge Wolf.
5 How much did you know at this time
6 during this -- I don't know if I should call it a
7 meeting; I don't know what it was -- but this
8 session in Dublin, how much did you know about the
9 Labaton relationship with Chargois?
10 **THE WITNESS:** The meeting in Dublin was
11 a meeting of the Global Justice Network which is an
12 entity that I had put together maybe 15 years ago of
13 lawyers from around the world who come together --
14 plaintiff side lawyers -- to discuss common issues.
15 This was one of maybe 30 different meetings we've
16 had over the years, most of which are in Europe.
17 This happened to be in Dublin.
18 I invited some people to this meeting.
19 I invited Mike Thornton. I invited Lynn Sarko. I
20 can't remember if I specifically invited Garrett
21 Bradley or whether Mike Thornton invited Garrett
22 Bradley, but nonetheless we were there --
23 **THE SPECIAL MASTER:** But you invited
24 Mike Thornton?

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1 **THE WITNESS:** I definitely invited Mike
2 Thornton, yes. And spouses, by the way. So we were
3 there and we're basically dealing with our group,
4 our Global Justice Network.
5 I do not remember this conversation in
6 Dublin. It doesn't mean it did not exist. There
7 was just too much on my mind, and I wasn't there to
8 talk about this case.
9 **MR. HEIMANN:** Now answer the question.
10 **THE WITNESS:** What was the question?
11 **THE SPECIAL MASTER:** Thank you, Richard.
12 **THE WITNESS:** That was my longest answer
13 and --
14 **THE SPECIAL MASTER:** It's good
15 background.
16 And the question was how much did you
17 know about Mr. Chargois and Labaton's relationship
18 with Mr. Chargois at the time of this Dublin meeting
19 and conversation concerning Mr. Chargois?
20 **THE WITNESS:** At the time of this
21 meeting, which I don't remember, I knew nothing.
22 **THE SPECIAL MASTER:** Did anybody from
23 Labaton at the time -- and by anybody, it looks like
24 it would have been Eric Belfi because he apparently

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1 was there --
2 **THE WITNESS:** In Dublin?
3 **THE SPECIAL MASTER:** In Dublin.
4 **THE WITNESS:** No, he wasn't there.
5 **THE SPECIAL MASTER:** Chris Keller?
6 **THE WITNESS:** No, he wasn't there.
7 **MR. SINNOTT:** Were you there?
8 **THE SPECIAL MASTER:** Wasn't there. I'm
9 sorry, yeah. As you, Mike and I -- all right. So
10 it was you, Mike and Garrett.
11 **THE WITNESS:** And Lynn.
12 **THE SPECIAL MASTER:** And --
13 **THE WITNESS:** Lynn Sarko.
14 **THE SPECIAL MASTER:** He's not even
15 listed.
16 **THE WITNESS:** I didn't write the e-mail.
17 **THE SPECIAL MASTER:** Yeah, but you
18 believe he was at this meeting?
19 **THE WITNESS:** Of course, he was there.
20 So was his wife --
21 **THE SPECIAL MASTER:** I don't mean the
22 global meeting --
23 **THE WITNESS:** Oh, oh.
24 **THE SPECIAL MASTER:** I mean the

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1 discussion that has been referred to.
2 **THE WITNESS:** As I testified, I don't
3 remember this particular discussion. I remember
4 that we were in Dublin, but this was not something
5 that I remember or I was interested in.
6 **THE SPECIAL MASTER:** What were you told
7 at the time about Mr. Chargois?
8 **THE WITNESS:** Nothing. To my
9 recollection, nothing.
10 **MR. HEIMANN:** And when you say "told,"
11 you mean orally as opposed --
12 **THE SPECIAL MASTER:** Yeah, orally.
13 **MR. HEIMANN:** -- the followup e-mail.
14 **THE SPECIAL MASTER:** Yes. Nothing.
15 **THE WITNESS:** Nothing.
16 **MR. HEIMANN:** That you recall --
17 **THE WITNESS:** Yeah, nothing I recall I
18 just testified.
19 **THE SPECIAL MASTER:** And the Labaton
20 folks at no time told you anything more about the
21 larger context of the relationship with
22 Mr. Chargois?
23 **THE WITNESS:** No.
24 **THE SPECIAL MASTER:** Other than he was

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1 local counsel?
2 **THE WITNESS:** And other than later it
3 was 5.5 percent that he was getting. There was
4 another e-mail -- well, I think we just looked at --
5 about the 5.5 percent.
6 **THE SPECIAL MASTER:** Hm hm. What was
7 your understanding of what the relationship was
8 between Mr. Chargois and Labaton?
9 **THE WITNESS:** I thought he was local
10 counsel for Labaton in this particular case I
11 assumed dealing with the Arkansas fund because
12 that's what local counsel will do. That was my
13 understanding.
14 **THE SPECIAL MASTER:** Did you know he was
15 in Texas?
16 **THE WITNESS:** I found that out a couple
17 weeks ago. I did not know at that -- no.
18 **THE SPECIAL MASTER:** Do you have the
19 e-mail from Garrett Bradley to Damon Chargois?
20 **MR. SINNOTT:** I think that's part of the
21 same --
22 **MR. HEIMANN:** No, it's a different.
23 **THE SPECIAL MASTER:** This is the June
24 21, 2016.

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1 **MR. HEIMANN:** So the first e-mail is a
2 reproduction of the April 13 --
3 **THE SPECIAL MASTER:** Yeah, right.
4 **MR. HEIMANN:** -- e-mail, and there's a
5 subsequent e-mail from --
6 **THE SPECIAL MASTER:** Right.
7 **MR. HEIMANN:** -- Bradley to Chargois --
8 **THE SPECIAL MASTER:** Yeah.
9 **MR. HEIMANN:** -- that's not copied to
10 anybody else.
11 **THE WITNESS:** And which I have not seen.
12 **THE SPECIAL MASTER:** But you've seen it
13 now.
14 **THE WITNESS:** I haven't read it. I just
15 saw it. But I'd like your counsel to read it to me
16 if you want to ask a question.
17 **THE SPECIAL MASTER:** Okay. I'll be
18 happy to read it.
19 **MR. SINNOTT:** I think he likes it when I
20 read it.
21 **THE WITNESS:** I do like it when he
22 reads.
23 **THE SPECIAL MASTER:** Yeah, except I'm
24 giving him a break and letting him eat his cough

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1 drops.
2 **MR. SINNOTT:** Thank you.
3 **THE SPECIAL MASTER:** Damon -- again
4 Garrett Bradley to Damon Chargois, Tuesday, June 21,
5 2016, 3:26 p.m.
6 "As always, it was a pleasure to speak
7 with you today. As requested, I am laying out to
8 you where we are on the State Street matter, and
9 below is the e-mail that we referenced in the call.
10 That e-mail established that Lieff,
11 Thornton and Labaton would share your obligation
12 whatever it turned out to be. The status of the
13 case has gotten better yet more confusing when it
14 comes to fees.
15 We have reached a settlement in
16 principle for 300 million dollars with the
17 defendant, but it involves not just our consumer
18 class but also obligations to the SEC and DOL as
19 well as the ERISA class which was merged with ours
20 by the judge for settlement discussions.
21 The DOJ also has a separate agreement
22 that is timed to be announced with ours. As we
23 spoke this morning, a few matters got screwed up
24 today, but we are hoping to have a status conference

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1 with the Court on Thursday -- (he is on vacation in
2 all of July) -- with a preliminary approval hearing
3 sometime in August.
4 Given that we have to do a CAFA notice,
5 we are still hoping for a final date late this year.
6 We also have to post bonds or wait the 30-day appeal
7 period to take fees as [REDACTED]
8 [REDACTED] It's
9 going to be tight.
10 Since our last conversation, things have
11 changed. The fee we will apply for is \$70,900,000.
12 This will be for Lieff, Thornton, Labaton, you and
13 now three ERISA firms. We are attempting to hold
14 the ERISA firms to 10 percent because that is what
15 they agreed to several years ago, but the ERISA part
16 of the settlement is now 20 percent. I think we can
17 hold them to 10 percent.
18 Also, at one point in the litigation it
19 became clear that State Street was going to try and
20 pick off..." -- it says 'of,' but I think it means
21 off -- "...pick off Arkansas as the class rep so we
22 got the [REDACTED] to agree to come in.
23 We never formally had to bring them, but we let the
24 defendants know that it would be a waste to settle

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1 out with Arkansas.
2 We have not finalized the balance of the
3 fee between us, Lieff and Thornton, but I think it
4 is the right time for me to propose what I think
5 would be a fair and reasonable fee for you. It was
6 my firm that originated the idea and put the firms
7 together.
8 Also, as we discussed, this is not a
9 securities case and is complicated by all of the
10 above factors. We have always been direct with each
11 other, and I am not trying to negotiate but rather
12 give you a set percentage. I would propose that you
13 be paid 5 percent of the fee that the Court awards.
14 As you know, he may award what we ask but could also
15 trim our request.
16 My firm, Lieff, and Labaton have put
17 extensive man hours into the case and looked at
18 millions of pages of documents so I think we have a
19 good chance of getting our request.
20 I have not put anyone else on this
21 e-mail, but if you agree, I will flip this around
22 and get everyone's written assent. Please let me
23 know your thoughts."
24 And then subsequent e-mails indicate

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1 that it actually became 5.5 percent, and everybody
2 signed off on it.
3 My question to you is this: What did
4 you know, and when did you know it about this
5 agreement with Mr. Bradley?
6 **THE WITNESS:** About the five --
7 **THE SPECIAL MASTER:** About the agreement
8 with Mr. Chargois.
9 **THE WITNESS:** The agreement referenced
10 here or, as you point out, it became 5.5 percent --
11 **THE SPECIAL MASTER:** Yeah, the
12 relationship and the agreement that culminated in
13 this agreement to pay Mr. Chargois 5.5 percent of
14 the total fee received, almost 75 million dollars.
15 **THE WITNESS:** When did I find out about
16 the relationship between --
17 **THE SPECIAL MASTER:** Yes.
18 **THE WITNESS:** -- Chargois --
19 **THE SPECIAL MASTER:** What did you know
20 and when did you know it?
21 **THE WITNESS:** In the last year or so of
22 the case I found out that Garrett Bradley was not
23 only a partner in Thornton, but he was of counsel as
24 well to Labaton. I didn't know that at the

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1 beginning. So then I realized when Garrett Bradley
2 was speaking in e-mails, he was wearing two
3 different hats.
4 Of course, I didn't see this e-mail. So
5 all I knew was what I saw in 2013 and then in 2015,
6 which was the same as the 2013 one, that was when
7 Dan Chiplock didn't remember the original --
8 **THE SPECIAL MASTER:** The agreement?
9 **THE WITNESS:** Yeah, and then Garrett
10 sent him another copy. Then in 2016 we started to
11 hear a little bit more about him, but I didn't know
12 about the relationship between them other than what
13 I just said.
14 **THE SPECIAL MASTER:** Did you know about
15 the actual agreement itself between Labaton and
16 Mr. Chargois?
17 **THE WITNESS:** No --
18 **MR. HEIMANN:** Well, when you say "actual
19 agreement," you mean what we know now?
20 **THE SPECIAL MASTER:** No. No, no. When
21 I say "did you know," I meant did you know anything
22 about it at the time?
23 **THE WITNESS:** Well, Richard's question
24 is the agreement as we now know it to be?

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1 **THE SPECIAL MASTER:** Yes.
2 **THE WITNESS:** No, I didn't -- I didn't
3 know anything about that until just recently. And I
4 don't know very much about it now because my counsel
5 won't let me see some of the depositions.
6 **THE SPECIAL MASTER:** Wise counsel.
7 **THE WITNESS:** Yes.
8 **MR. SINNOTT:** Not much to look at but
9 smart.
10 **THE SPECIAL MASTER:** I don't want you to
11 speculate, but you're a very experienced lawyer --
12 one of the most experienced lawyers in this case.
13 I'm going to ask you to accept what
14 we've seen so far as the state --
15 **THE WITNESS:** As the?
16 **THE SPECIAL MASTER:** -- as the state of
17 play, state of the relationship.
18 **THE WITNESS:** Okay.
19 **THE SPECIAL MASTER:** What we have seen
20 so far is that Labaton and Chargois and other -- a
21 firm made a joint application back in 2008 to be
22 monitoring counsel for the Arkansas Teachers
23 Retirement System.
24 That application ultimately was accepted

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1 in part and rejected in part. It was rejected -- it
2 was accepted that Labaton would become monitoring
3 counsel. It was rejected as to Mr. Chargois.
4 In a letter from corporate counsel from
5 counsel -- the general counsel I should say at
6 Arkansas to Labaton -- I believe the letter was to
7 Mr. Belfi -- the general counsel indicated that they
8 only wanted to deal with the Labaton firm. If
9 Labaton wanted to have some other relationship, it
10 could do so as necessary and appropriate to a case.
11 I'm summarizing.
12 People can add whatever they want to
13 that letter, but that's the burden of the letter.
14 Subsequent to that in 2009 Labaton
15 entered into a contract, an agreement with
16 Mr. Chargois pursuant to which the Chargois firm
17 would have a 20 percent interest in every case that
18 Labaton served as either lead counsel or co-lead
19 counsel and Arkansas was either lead plaintiff or
20 co-lead plaintiff.
21 That was an agreement entered into -- I
22 don't have exactly the date, but I believe it was
23 February of 2009 perhaps? Sometime earlier in 2009
24 at any rate -- I'm sorry, it's May.

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1 **MR. SINNOTT:** 2011.
2 **THE SPECIAL MASTER:** No, that's not the
3 one. No, hang on. The original agreement. But, at
4 any rate, that was the agreement.
5 We have learned that since that time
6 Mr. Chargois has received payment pursuant to this
7 agreement in approximately ten cases including this
8 case. I've characterized it as a floating lien.
9 I've invited people to correct it.
10 But, at any rate, he has, obviously, had
11 an ongoing interest in every case, and we are
12 attempting to find out -- and I hope as we continue
13 our investigation that we will find out --
14 particularly Mr. Chargois who we're deposing on the
15 20th, whether he's done any work on any of these
16 cases.
17 I'm sorry, it was later in 2009. It was
18 September of 2009. We're attempting to find out if
19 he's done any work in any of the cases.
20 **THE WITNESS:** This is with Arkansas
21 only?
22 **THE SPECIAL MASTER:** With Arkansas only,
23 although, apparently, there's a couple of other
24 cases we need to understand that did not involve

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1 Arkansas, but the agreement is primarily in which
2 Arkansas serves as lead plaintiff or co-lead
3 plaintiff
4 And he has an interest of 20 percent of
5 Labaton's fee in every case that they either settle
6 or try to successful conclusion that they get a fee
7 in
8 **THE WITNESS:** Could I ask a question?
9 Is he required to do any work in this contract?
10 **THE SPECIAL MASTER:** I don't know.
11 We're still looking, but we don't believe so far
12 that he's done -- he may have in one or two cases
13 entered an appearance as local counsel
14 But in the vast majority he's not
15 appeared before the Court. We're unaware of any
16 work that he's done. But, you know, we're waiting
17 to be informed.
18 Certainly in this case we have not seen
19 any work that he did, and, you know, we're waiting
20 to be informed. As you saw in one of the e-mails,
21 Garrett Bradley said he played an important role.
22 **THE WITNESS:** Yes.
23 **THE SPECIAL MASTER:** We'll ask what that
24 important role was.

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1 In your experience have there been any
2 such agreements like this that gave a lawyer who
3 began a relationship years before who has a
4 continuing interest in the fees of another lawyer
5 that it had years facilitated a relationship with a
6 client?
7 **MR. WOLOSZ:** Objection to the question
8 and to the preamble leading up to it.
9 **THE WITNESS:** In my 50 plus years
10 practicing law almost all in this field, the answer
11 is no, and I have seen some language about
12 forwarding attorneys, referring attorneys, local
13 attorneys only from the three depositions I've been
14 allowed to read. The Charles deposition, Chiplock's
15 deposition and Thornton's deposition. That's all I
16 know.
17 **THE SPECIAL MASTER:** So there's another
18 description that was in a response to an
19 interrogatory. I believe it was a private fee
20 arrangement.
21 **THE WITNESS:** I haven't seen that.
22 **THE SPECIAL MASTER:** We don't know how
23 to characterize this, and we're asking all the
24 witnesses in their experience if they know how to

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1 characterize it.
2 Mr. Sucharow did characterize it as a
3 forwarding fee arrangement.
4 **THE WITNESS:** I saw that. I would say,
5 first of all, we have to be talking about class
6 actions only.
7 **THE SPECIAL MASTER:** Yes.
8 **THE WITNESS:** That's what we're talking
9 about. And in the context of class actions there is
10 no such thing as a referral lawyer. You cannot
11 refer a class action and be compensated. It just --
12 it's not the way it works.
13 If you have a great idea and you say
14 your mother-in-law had french fries at McDonald's
15 and she got sick and you want us to bring a class
16 action for everybody -- millions of people who got
17 sick from McDonald's, that's not a referral fee.
18 You're not going to get a referral fee, okay?
19 That's one thing.
20 Likewise, forwarding fee. I don't know
21 what that means. But if it's a referral fee,
22 there's no such thing in class actions. Okay.
23 Local counsel there definitely is, and
24 there's no question about the use of local counsel,

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1 but you choose local counsel in each of your cases.
2 Now that doesn't mean that if it's not
3 the same counsel -- I know, for example, we have
4 represented funds in Ohio, and we have a law firm in
5 Columbus, Ohio chosen by the attorney general, Mike
6 DeWine, of Ohio, and he wants them to be our local
7 counsel, and they work, and they get paid, and we
8 get time records.
9 **THE SPECIAL MASTER:** So one kind of
10 local counsel is exactly as you've described it. A
11 local counsel who works with the client, works on
12 the case and presumably submits at the appropriate
13 time in the case a fee petition.
14 **THE WITNESS:** Right.
15 **THE SPECIAL MASTER:** Is there another
16 kind of local counsel?
17 **THE WITNESS:** Not that I can think of.
18 **THE SPECIAL MASTER:** There might be let
19 me suggest --
20 **THE WITNESS:** Okay.
21 **THE SPECIAL MASTER:** -- a local counsel
22 in the venue in which the case is brought in which
23 some courts, as you know -- many courts -- have
24 rules that require local counsel to act as a local

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1 liaison to national firms.
2 **THE WITNESS:** That could happen,
3 although it's not a necessity. If you bring a case
4 in a court in which you do not have an office, you
5 can be admitted for --
6 **THE SPECIAL MASTER:** Pro hac vice.
7 **THE WITNESS:** Exactly, but often you
8 want to have a local counsel.
9 So, you're right, there it's having the
10 counsel in a case that's in a venue where the case
11 is brought with local counsel working where the
12 client is.
13 **THE SPECIAL MASTER:** Mr. Chargois seems
14 to be neither of these would you agree?
15 **MR. WOLOSZ:** Objection.
16 **THE SPECIAL MASTER:** From what we know
17 now.
18 **THE WITNESS:** From what I just heard,
19 that's correct.
20 **THE SPECIAL MASTER:** That being the
21 case, should the relationship with Mr. Chargois and
22 the fact that he was getting 5.5 percent of the
23 total fee not have been disclosed to the Court in
24 the context of the larger fee petition?

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1 **MR. WOLOSZ:** Objection.
2 **THE WITNESS:** Given the nature of the
3 relationship as described by you, I would say, yes,
4 it should have been disclosed to the Court.
5 **THE SPECIAL MASTER:** Should it have been
6 described and disclosed to ERISA counsel -- the
7 three ERISA firms? Or at least to Lynn Sarko who
8 was acting sort of as the liaison to the customer
9 class lawyers?
10 **THE WITNESS:** I don't know if there's a
11 rule requiring that, but I think better judgment and
12 discretion would be to tell in this case Lynn Sarko.
13 **THE SPECIAL MASTER:** The e-mails reflect
14 you've heard -- you've seen one of 'em; there's a
15 couple of others at least. The e-mails reflect that
16 there was a decision made not to disclose this
17 information to ERISA counsel.
18 **MR. HEIMANN:** Well --
19 **THE WITNESS:** That's not correct.
20 **MR. WOLOSZ:** Objection.
21 **THE WITNESS:** That's not correct. Could
22 I answer?
23 **MR. HEIMANN:** You go ahead.
24 **THE WITNESS:** What I read and what I

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1 responded to with respect to the question was that
2 it was suggested by the writer of the e-mail,
3 Garrett Bradley, that ERISA counsel not be advised
4 and the inference was because -- as I read it -- the
5 math. They weren't impacted so they need not be
6 advised.
7 This was not some conspiracy to withhold
8 from ERISA counsel the fact we didn't even know
9 about -- about Chargois. We didn't know anything
10 about him. At least I didn't. And I don't think
11 anyone else did. Lynn, Brian, Carl -- they didn't
12 know either I'm sure.
13 **THE SPECIAL MASTER:** They didn't.
14 That's the point.
15 **THE WITNESS:** I believe they didn't
16 know.
17 **THE SPECIAL MASTER:** That's the point.
18 **THE WITNESS:** And they were not told.
19 **THE SPECIAL MASTER:** And they were not
20 told.
21 **THE WITNESS:** Right.
22 **THE SPECIAL MASTER:** You may have a
23 different take on the e-mails that we've seen, but
24 it looks like that there was a decision made not to

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1 tell them.
2 **MR. WOLOSZ:** Objection.
3 **THE WITNESS:** I haven't seen that. I
4 have not seen that in the e-mails. The one e-mail
5 that you've shown me does not convince me that that
6 was a decision that was made.
7 **THE SPECIAL MASTER:** Do you think it was
8 an accident that they weren't told?
9 **THE WITNESS:** An accident? I think
10 nobody even bothered to think that they should be
11 told.
12 (Pause.)
13 **THE WITNESS:** I mean if I can finish the
14 answer.
15 **THE SPECIAL MASTER:** Yes, please.
16 **THE WITNESS:** I wasn't told. So why
17 should they --
18 **THE SPECIAL MASTER:** Well, you were told
19 of the split?
20 **THE WITNESS:** I was told of the split,
21 but I wasn't told about this material that you gave
22 me today.
23 **THE SPECIAL MASTER:** The ERISA counsel
24 weren't even told that Chargois was going to get

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1 anything.
2 **THE WITNESS:** I don't know what they
3 were told. I only know what you read from --
4 **THE SPECIAL MASTER:** They testified
5 uniformly they were not told. And, in fairness,
6 we've got some other documents that I want you to
7 look at --
8 **THE WITNESS:** Okay.
9 **THE SPECIAL MASTER:** -- that you may not
10 have seen.
11 Richard, do you have the e-mails with
12 Eric Belfi, David Goldsmith, Larry Sucharow, Garrett
13 Bradley and Chris Keller and then a November 22,
14 2016 e-mail, David Goldsmith responding to Larry
15 Sucharow, and Larry Sucharow's e-mail November 22,
16 2016 to Goldsmith, Garrett Bradley, Chris Keller and
17 Eric Belfi? It's TLF-SST-021779.
18 **MR. HEIMANN:** No, I don't have it.
19 **THE SPECIAL MASTER:** We've referred to
20 it many times.
21 **MR. HEIMANN:** Right, I know you have,
22 but I just don't have it with me. What I have is
23 stuff we produced, and we didn't produce that
24 apparently.

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1 **THE SPECIAL MASTER:** Okay. Let me read
2 it to you in fairness.
3 **MR. HEIMANN:** Give us the --
4 **THE SPECIAL MASTER:** -- the Bates stamp?
5 **MR. HEIMANN:** No, no. The author and
6 recipients, if you would, please.
7 **THE WITNESS:** And the date.
8 **THE SPECIAL MASTER:** And the date, yeah.
9 There's a long chain. You probably have it with
10 Eric Belfi at the top. Tuesday, November 22, 2016.
11 **MR. HEIMANN:** Unless it's one of the
12 ones you all gave us before we just began --
13 **THE SPECIAL MASTER:** No.
14 **MR. HEIMANN:** -- I don't have it.
15 Sorry.
16 **THE SPECIAL MASTER:** All right. It
17 actually goes back to a series of e-mails in which
18 Lynn Sarko --
19 **MR. HEIMANN:** Wait a minute. I got it.
20 **THE SPECIAL MASTER:** You got it? Do you
21 have the whole --
22 **MR. HEIMANN:** Well, the ones I have are
23 Bates stamped 72 through 74. Three pages.
24 **THE SPECIAL MASTER:** No. The Bates

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1 stamp would be 279 through 282.
2 **MR. HEIMANN:** I just have a different
3 version then. But it ends with the e-mail from
4 Larry Sucharow to Goldsmith, Bradley, Keller, Belfi,
5 those folks.
6 **MR. SINNOTT:** Close enough.
7 **THE SPECIAL MASTER:** You probably have
8 that. Then there's a chain before that in which
9 Lynn Sarko had been copied on the chain and had been
10 -- they had -- the e-mails before that are
11 discussing fees and --
12 **MR. HEIMANN:** Yep, it's here.
13 **THE SPECIAL MASTER:** Okay.
14 **MR. HEIMANN:** At least one of them.
15 **THE SPECIAL MASTER:** Then the only one I
16 think you don't have is the last one, the Belfi one.
17 You probably have that though, too.
18 **MR. HEIMANN:** He just agrees.
19 **THE SPECIAL MASTER:** Yes. He needs to
20 speak to him first.
21 But, at any rate, this is about what has
22 been referred to as a claw-back letter. This is
23 after the -- this is after the inadvertent double
24 billing was discovered, and Dave Goldsmith wrote a

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1 letter to the Court.
2 And the parties are discussing that if
3 there is a reduction of fees, everybody should
4 participate in that reduction basically evenly.
5 So the discussion is the correspondence
6 about this and the letters and how they should go.
7 On Tuesday, November 22, 2016 at 12:01
8 Larry Sucharow writes to David Goldsmith, Garrett
9 Bradley, Chris Keller and Eric Belfi. "Need two
10 letters with breakdown. The ERISA just gets sent to
11 ERISA counsel with 10 percent off the top and then
12 one third each. Class co-counsel gets one with
13 ERISA..." -- class co-counsel meaning the customer
14 class -- "...gets one with ERISA 10 percent off the
15 top, Damon's percentage also off the top, then each
16 of class counsel split with percentages agreed to.
17 In short, no reason for ERISA to see
18 Damon's split. They only need to see their 10
19 percent and then split three ways."
20 **MR. HEIMANN:** Is there a question?
21 **THE SPECIAL MASTER:** Yeah.
22 **THE WITNESS:** What's the question?
23 **THE SPECIAL MASTER:** Does that change
24 your view as to whether there was a decision made

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1 not to disclose the Chargois payment and the
2 Chargois relationship to ERISA counsel?
3 **MR. WOLOSZ:** Objection.
4 **THE WITNESS:** It looks like a decision
5 was made by the Labaton people. And -- well,
6 Garrett Bradley is a Labaton person, too, even
7 though he's a Thornton person as well. He's of
8 counsel to Labaton.
9 **THE SPECIAL MASTER:** So your point is
10 you believe you and nobody at Lief agreed to not
11 tell the ERISA counsel about the Chargois payment?
12 **THE WITNESS:** Well, first of all, you're
13 referencing these e-mails. We're not in the
14 e-mails.
15 **THE SPECIAL MASTER:** I understand that.
16 **THE WITNESS:** Okay, okay. Aside from
17 that and aside from receiving an e-mail from Garrett
18 Bradley -- I don't know the number, but we looked at
19 it earlier where he says no reason to advise those
20 people because it comes off the top -- that's all we
21 know about it.
22 No, I don't think we're in agreement to
23 do any of this; that is to say, not notify these
24 people.

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1 I know that's what you're thinking, but
2 I don't agree with you.
3 **THE SPECIAL MASTER:** No, no, I'm asking
4 you.
5 **THE WITNESS:** No. My answer's no. I
6 don't even know if I ever discussed any of this with
7 Lynn 'cause Lynn and I would talk all the time. I'm
8 not suggesting I did, but it's possible. I don't
9 think I would have discussed it with Brian or Carl.
10 But if Lynn were to say I discussed it
11 with him, I'd say I probably did. I don't remember.
12 **THE SPECIAL MASTER:** Actually, he said
13 the first he heard about anything with Damon
14 Chargois, a payment to Damon -- his testimony was
15 the first he heard about it was during this
16 investigation.
17 **THE WITNESS:** Well, then he has a good
18 memory. He's right. I don't know.
19 **THE SPECIAL MASTER:** That's the first he
20 heard about it.
21 **THE WITNESS:** Yeah. It's the first I
22 heard of it.
23 **THE SPECIAL MASTER:** So -- well, you
24 knew that there was going to be a payment --

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1 **THE WITNESS:** I knew there was going to
2 be a 5.5 percent payment, yes.
3 **THE SPECIAL MASTER:** So that I
4 understand your testimony, what you didn't know was
5 the background of the relationship between the
6 Labaton firm and Mr. Chargois?
7 **THE WITNESS:** Exactly right.
8 **MR. HEIMANN:** Well, to put it
9 differently, maybe it's not my turn -- that's what
10 he didn't know. What he did know is what he's
11 already testified --
12 **THE WITNESS:** I think he said that's
13 what I knew --
14 **MR. HEIMANN:** No, he doesn't --
15 **THE WITNESS:** Oh, then maybe you better
16 say that again. I thought you said that's what I
17 did not know.
18 **THE SPECIAL MASTER:** You knew that there
19 was going to be a payment to Mr. Chargois?
20 **THE WITNESS:** Yes.
21 **THE SPECIAL MASTER:** Okay. What you did
22 not know was the background of the relationship
23 between Mr. Chargois and the Labaton firm?
24 **THE WITNESS:** That's correct, I did not

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1 know that.
2 **THE SPECIAL MASTER:** And, further, you
3 did not know how that relationship evolved?
4 **THE WITNESS:** Did not know that, no.
5 **THE SPECIAL MASTER:** And how it may have
6 informed the agreement to have all three firms share
7 in the payment --
8 **MR. WOLOSZ:** Objection.
9 **THE SPECIAL MASTER:** -- to Mr. Chargois?
10 **THE WITNESS:** I don't know any effect
11 that that history may have had 'cause I didn't know
12 the history.
13 **THE SPECIAL MASTER:** But your firm did
14 agree to share in the payment to Mr. Chargois?
15 **THE WITNESS:** Yes. But we didn't know
16 the history.
17 **THE SPECIAL MASTER:** Okay, I understand
18 that. But what was the basis of your firm's
19 agreement to share in the payment then?
20 **THE WITNESS:** Lead counsel said to the
21 other two class firms that we have a local counsel
22 in Arkansas helping us in Arkansas -- later saying I
23 think they were doing a good job or something -- and
24 that we have to compensate them for what they've

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1 done.
2 **THE SPECIAL MASTER:** And based on
3 that --
4 **THE WITNESS:** -- I agreed.
5 **THE SPECIAL MASTER:** -- you agreed.
6 **THE WITNESS:** Very common to do this,
7 yeah.
8 **THE SPECIAL MASTER:** And that was all
9 you knew about this local counsel at the time?
10 **THE WITNESS:** That was all I knew about
11 the local counsel. I testified I didn't even know
12 his name, although it's apparently in the e-mail,
13 but I didn't remember his name.
14 **THE SPECIAL MASTER:** Did 5.5 percent
15 seem to be a large number for a local counsel of 75
16 million dollars?
17 **THE WITNESS:** I'd have to look up, for
18 example, what our local counsel in the Bank of New
19 York case got, what percentage. I don't remember.
20 But it doesn't seem on the face of it to be unusual.
21 I think perhaps our local counsel got
22 something similar to that, but I'd have to look it
23 up.
24 **THE SPECIAL MASTER:** Would it depend on

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1 how much work the local counsel did?
2 **THE WITNESS:** Well --
3 **THE SPECIAL MASTER:** Among other
4 factors.
5 **THE WITNESS:** Yes. In the Bank of New
6 York case it was easy because we had their time
7 records. And we were lead counsel. When I'm lead
8 counsel, I look at this differently than when I'm
9 not lead counsel.
10 **THE SPECIAL MASTER:** Had you been lead
11 counsel here in this case and Labaton had been in
12 the position that your firm was in, would you have
13 proposed a sharing arrangement?
14 **MR. WOLOSZ:** Objection.
15 **THE WITNESS:** With Chargois?
16 **THE SPECIAL MASTER:** With the other two
17 firms.
18 Would you have proposed a sharing
19 arrangement of a obligation to this sort of -- to
20 Mr. Chargois on this case?
21 **MR. WOLOSZ:** Objection.
22 **THE WITNESS:** No, because of what I know
23 now, but why don't you ask me would I have proposed
24 a sharing arrangement to legitimate local counsel

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1 that we would have had in the case, okay?
2 **THE SPECIAL MASTER:** You can answer that
3 question.
4 **THE WITNESS:** And then -- it's my
5 question and my answer.
6 And then I would say, yes, because that
7 local counsel would have given us his time records.
8 I would have known what he had done. I would have
9 given him the assignments. Yes.
10 And in a sense it's taken off the top --
11 it's a funny way to put it, but everybody's taken
12 off the top. You begin with one hundred percent,
13 and then all the components add up to one hundred
14 percent. So everybody's off the top.
15 **THE SPECIAL MASTER:** Had you been fully
16 informed of the nature of the fee arrangement or the
17 payments I should say to Mr. Chargois, would you
18 have agreed to share in the Labaton obligation?
19 **MR. WOLOSZ:** Objection.
20 **THE WITNESS:** Informed as you informed
21 me today?
22 **THE SPECIAL MASTER:** Yes.
23 **THE WITNESS:** No.
24 **THE SPECIAL MASTER:** What would you have

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1 done?
2 **THE WITNESS:** I would have attempted to
3 sit down with the Labaton people starting with Larry
4 Sucharow, and I would have said, Larry, I think
5 you've got a problem here. I just found out -- if
6 this is what happened -- that this guy in Arkansas
7 is not your local counsel.
8 This guy is somebody with whom you
9 people have had a long-term relationship and
10 apparently, from what I just found out, at least
11 maybe in ten cases have participated sharing fees
12 with him. I think that's a problem.
13 And I think we have to do something
14 about it. That's if I had found this out -- if you
15 had told me this.
16 **THE SPECIAL MASTER:** Would you have
17 suggested, among other things, that it be disclosed
18 to the Court as part of a fee petition?
19 **MR. WOLOSZ:** Objection.
20 **THE WITNESS:** I would -- first of all, I
21 would have said let's get rid of this guy; he's not
22 getting anything. I would have cut him out in which
23 case I would not have to go to the Court. I mean
24 he's gone. If he's gone, he's gone.

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1 And then even then there's a question of
2 whether somebody should have gone to the Court. At
3 some time. Even after the case. It doesn't matter.
4 I would have gotten him out because
5 after all we were all paying -- I mean we? -- Lief
6 Cabraser was paying approximately 20 percent of that
7 and so forth.
8 Labaton for 40 --
9 **THE SPECIAL MASTER:** Yeah.
10 **THE WITNESS:** -- whatever it is. The
11 percentages were what the percentages were.
12 **THE SPECIAL MASTER:** Yeah.
13 **THE WITNESS:** No, I would not have paid,
14 and I think it would have been appropriate to
15 convince Larry or his firm to go to the Court and
16 tell the Court what they have here.
17 **THE SPECIAL MASTER:** Anything else?
18 **MR. SINNOTT:** Just a couple of docs.
19 **BY MR. SINNOTT:**
20 Q. Richard, this is May 23, 2011 e-mail from
21 Keller to Garrett, and it's got a letter attached --
22 or at least a draft letter attached. And the Bates
23 stamp is TLF-SST---
24 **MR. HEIMANN:** Got it --

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1 **MR. SINNOTT:** 033910 through 913. Do
2 you have two copies?
3 **MR. HEIMANN:** No, I just have the one
4 copy you gave me. Thank you.
5 **BY MR. SINNOTT:**
6 Q. What I'm interested in in here, Bob, is the
7 letter more than the e-mail from Keller to Bradley.
8 Just take a look at that May 4, 2011
9 unsigned letter. It appears to be addressed to
10 Richard and Lexi --
11 **A. Right.**
12 Q. At the firm. Let me know if you've seen it
13 before.
14 **A. This unsigned letter I do not believe I saw**
15 **it either in an unsigned or signed form. It's not**
16 **addressed to me either.**
17 Q. Right. It's your able counsel. And who's
18 Lexi?
19 **A. She's a young woman lawyer now partner at**
20 **Lieff Cabraser.**
21 Q. But --
22 **A. I don't know how they got this combination,**
23 **frankly.**
24 Q. Well, it looks like Labaton put it together.

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1 **A. Yeah.**
2 Q. And albeit an unsigned letter, there is a
3 statement there is a, quote/unquote, off the top
4 obligation to referring counsel of 6 percent of the
5 fees awarded. In addition, we agree to exchange on
6 a quarterly basis our then-current Iodestar report
7 showing quarterly aggregate billings in this matter.
8 Can I assume that that didn't happen?
9 **A. You could assume that if I had seen this, I**
10 **would say, hold it, there's no such thing as a**
11 **referring counsel.**
12 Q. Right.
13 **A. It doesn't happen in class actions.**
14 **MR. SINNOTT:** Richard, I have an e-mail
15 from Garrett Bradley to Michael Thornton, and Larry
16 and Bob, Dan Chiplock, Christopher Keller and Eric
17 Belfi dated July 8, 2016 at 7:06 p.m.
18 This is LBS 040924.
19 **MR. HEIMANN:** Give me the date and time
20 again.
21 **MR. SINNOTT:** Sure. It's 7/8/2016 at
22 7:06 p.m.
23 **MR. HEIMANN:** Got it. Okay, got it.
24 Q. And --

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1 **A. You don't have to read this one, sir.**
2 Q. Okay.
3 (Pause.)
4 **BY MR. SINNOTT:**
5 Q. I don't know if we've questioned you on it,
6 Bob --
7 **A. I believe you have.**
8 Q. We have?
9 **A. Especially the last sentence.**
10 Q. Yeah, I --
11 **THE SPECIAL MASTER:** I don't think so.
12 It's a different one.
13 Q. There was a variation of this.
14 **A. Oh.**
15 Q. The timing of this is different than the
16 other ones --
17 **A. Okay.**
18 Q. -- July 8th.
19 But you'd agree that Garrett is
20 informing the addressees again of Damon Chargois
21 who's willing to accept 5-and-a-half percent.
22 And then what I want to question you
23 about is the statement: "He understands..." -- he
24 being Damon -- "...understands that ERISA counsel is

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1 now in the same pool of money. He has agreed to
2 come down..." -- it says 'done' but think it's
3 'down' I'm assuming -- "...to this number with a
4 guarantee that it will be off the Court-awarded fee
5 number. Please reply all if you agree. Given that
6 it is off the total number, there is no need to add
7 the ERISA counsel to this e-mail chain."
8 So whether from today or from another
9 occasion, this is familiar to you, correct?
10 **A. Yes. I believe you asked me some questions**
11 **about it already but go ahead.**
12 Q. You may be right, but I thought it was a
13 different -- a variation.
14 **THE SPECIAL MASTER:** The time is
15 different on it.
16 **MR. HEIMANN:** But the text is identical
17 to the one you showed us earlier, and you questioned
18 him about.
19 **THE WITNESS:** Right.
20 **MR. SINNOTT:** Maybe that was included in
21 another message.
22 **BY MR. SINNOTT:**
23 Q. Let me just then ask the obvious question.
24 Do you remember hearing in July of 2016

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1 about Damon and his deal of 5-and-a-half percent?
2 **A. Excuse me. This appears to be -- it's the**
3 **same e-mail. Okay. It's already been asked and**
4 **answered. You want to answer it again --**
5 Q. Bear with me today. I'm kind of slow today.
6 **A. Okay.**
7 Q. You recall his deal of 5-and-a-half percent,
8 and the statement "he understands that's ERISA
9 counsel is now in the same pool of money," what does
10 that mean?
11 **A. I believe it's his somewhat inartful way of**
12 **saying both the 5.5 and what turned out to be 10 --**
13 **it was 9 but it became 10 -- those two are coming**
14 **out of the same pool of money meaning one hundred**
15 **percent minus 10 and then one hundred percent minus**
16 **5.5. That's what I believe he's saying.**
17 Q. Okay.
18 **A. As best as he can.**
19 Q. Finally, Bob, that last sentence.
20 "Given that it is off the total number,
21 there is no need to add the ERISA counsel to this
22 e-mail chain." Why not?
23 **A. Only because again of the math implications;**
24 **that is to say, there's no reason to tell each other**

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1 **recipient that that recipient is getting some**
2 **percentage of one hundred percent. That's what he's**
3 **saying.**
4 **Now you might think there's some**
5 **conspiracy here, but, no, to me this is very simple**
6 **-- or maybe I missed what he's doing. I don't know.**
7 **That's what I thought he meant.**
8 Q. We have multiple e-mails, the claw-back
9 e-mail, this one and another one where it appears
10 that there's a conscious effort to keep ERISA from
11 learning about Damon Chargois.
12 And my question is what's the big deal?
13 These are co-counsel. These are folks that have
14 their own clients and stake in the game. Why the
15 secrecy?
16 **MR. WOLOSZ:** Objection to the question.
17 **A. I can't imagine -- I can't imagine what the**
18 **secrecy is. Frankly, the only explanation I've been**
19 **able to come up with each time I've been asked is he**
20 **thinks it's a mathematical exercise.**
21 **If Bradley did not want ERISA counsel to**
22 **know about this, I wish he had said it a little more**
23 **clearly. This was not a good way to communicate**
24 **that.**

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1 **And I had no reason whatsoever not to**
2 **share this with ERISA counsel, and I believe, as I**
3 **testified, I may have done so. Not in writing. But**
4 **I may have done so. If only with Lynn -- my good**
5 **friend, Lynn Sarko, with whom I speak all the time.**
6 **And if I had to question myself about**
7 **whether I ever shared any knowledge about this weird**
8 **situation as it evolved with respect to this guy at**
9 **Arkansas, I would have spoken to Lynn. But he says**
10 **no, and I believe that's his present recollection**
11 **that I never said anything about it.**
12 **I cannot say I did.**
13 **MR. SINNOTT:** Anything else?
14 **THE SPECIAL MASTER:** No.
15 **MR. SINNOTT:** Richard, anything?
16 **MR. HEIMANN:** A few questions.
17 **CROSS-EXAMINATION**
18 **BY MR. HEIMANN:**
19
20 Q. I hope I can do this without documents.
21 Towards the end of this litigation were
22 there negotiations among the class -- the three
23 class counsel, for want of a better term, about how
24 to allocate the attorneys' fee among those three

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1 firms?
2 **A. Yes.**
3 Q. And were there writings exchanged in the
4 form of e-mails, among others, that reflected
5 negotiations and those discussions?
6 **A. Yes.**
7 Q. And when there was a final agreement with
8 respect to that allocation, were there writings
9 circulated amongst the counsel about that
10 allocation?
11 **A. Yes.**
12 Q. Was any of that shared with ERISA counsel?
13 **A. I believe it all was but --**
14 Q. Listen to me.
15 Was any of those -- the discussions --
16 shared with ERISA counsel?
17 **A. The discussions or the result?**
18 Q. No. Let's talk about discussions first.
19 **A. Okay. Discussions? Probably not.**
20 Q. All right.
21 **A. I don't remember. They did see the result**
22 **I'm sure.**
23 Q. How -- why do you say that?
24 **A. If they didn't see it, I certainly spoke**

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1 about it.
2 Q. Spoke about it with whom?
3 A. Lynn, if anyone.
4 Q. All right.
5 A. Yeah.
6 Q. And explain to me what you mean by that.
7 Did you talk with him about how -- what
8 percentages of the fees the various three class
9 counsel were going to share meaning each one?
10 A. I don't know if I mentioned numbers, but it
11 was always clear to me that we better work hard to
12 hang on to the 20 percent that we were agreed to
13 have from the beginning 'cause I was always
14 concerned whether we would have that chipped away
15 at.
16 And as it turned out, we got our -- I
17 think it's 20.4 percent of the total fee, Lief
18 Cabraser got.
19 Q. All right.
20 MR. HEIMANN: That's all I have.
21 THE WITNESS: Thank you.
22 MR. SINNOTT: Mike, Justin?
23 MR. WOLOSZ: Could we just have one
24 moment?

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1 MR. SINNOTT: Sure.
2 MR. WOLOSZ: Just a few questions.
3 CROSS-EXAMINATION
4 BY MR. WOLOSZ:
5
6 Q. Sir, does Lief Cabraser pay referral fees
7 in any circumstances?
8 A. Yes.
9 Q. And does it ever pay them in class cases
10 such as antitrust cases?
11 A. Not to my knowledge.
12 Q. Does Lief Cabraser have local counsel
13 arrangements with client-handling firms?
14 A. Yes.
15 Q. And is the existence of such an arrangement
16 disclosed to the Court in all class cases?
17 A. I believe so in the fee application.
18 MR. WOLOSZ: That's all I have.
19 THE SPECIAL MASTER: May I follow up?
20 Actually following up both Richard's question and
21 Justin's question.
22 Richard asked you if the negotiations on
23 the payments between the three firms was made known
24 to ERISA. All three of the firms did substantive

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1 work on the case, right?
2 THE WITNESS: Yes.
3 THE SPECIAL MASTER: Right.
4 THE WITNESS: The three firms that were
5 customer --
6 THE SPECIAL MASTER: Thornton --
7 THE WITNESS: Yes.
8 THE SPECIAL MASTER: Thornton Lief?
9 THE WITNESS: Yeah.
10 THE SPECIAL MASTER: Mr. Chargois did no
11 work on the case --
12 THE WITNESS: So I understand.
13 THE SPECIAL MASTER: -- and yet got 5.5
14 percent.
15 THE WITNESS: That's -- I understand
16 that's right.
17 THE SPECIAL MASTER: In your mind is
18 that a distinction about why it should have been
19 told to the ERISA lawyers?
20 THE WITNESS: That he got 5.5 rather
21 than .5 or 55.5 or --
22 THE SPECIAL MASTER: 5.5 percent for
23 doing no work.
24 THE WITNESS: If we all knew that,

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1 perhaps. But we didn't know that -- you're kind of
2 telling me now, and I've been hearing in the last
3 few weeks.
4 Because I -- and I believe my firm --
5 never saw the fee application breakdown meaning who
6 did what, the hours and so forth, for the other two
7 principle firms.
8 THE SPECIAL MASTER: Hm hm.
9 THE WITNESS: I certainly never saw any
10 of that. So whether Mr. Chargois' name was on there
11 or not, I haven't the slightest idea.
12 Now I've seen it, but I had not seen --
13 that was not shared with us for whatever reason.
14 THE SPECIAL MASTER: Okay.
15 MR. SINNOTT: Okay. On the phone, Brian
16 Kelly, any questions?
17 (No response.)
18 MR. SINNOTT: Brian McTigue, any
19 questions?
20 (No response.)
21 MR. McTIGUE: I have a question. It has
22 to do with a piece of an e-mail. The e-mail
23 referring to a call with Goldstein of DOL. I think
24 I've heard that correctly.

Page 110

1 The "time to go over his head" was a
2 phrase I believe used in that e-mail. Is that an
3 e-mail dated August 6, 2016?
4 **MR. SINNOTT:** It sounds about right, but
5 give me a second, Brian --
6 **MR. McTIGUE:** I will.
7 **MR. SINNOTT:** -- and I'll track it down.
8 (Pause.)
9 **MR. SINNOTT:** I believe so, but hang on.
10 I've got another one on August 6th that --
11 **THE SPECIAL MASTER:** 2015. Is that the
12 one?
13 **MR. WOLOSZ:** Yeah, I think it's 2015.
14 **MR. SINNOTT:** Yes. August 6, 2015.
15 **THE SPECIAL MASTER:** 2:43 p.m.
16 **MR. SINNOTT:** 2:43 p.m.
17 **MR. McTIGUE:** Okay. That's the one --
18 that's an e-mail referring to a call with Goldstein?
19 **THE SPECIAL MASTER:** Nate Goldstein.
20 **MR. SINNOTT:** Yes. In response to a
21 call with Goldstein -- a conversation with Lynn
22 Sarko.
23 **THE SPECIAL MASTER:** That Lynn -- Lynn
24 Sarko describes that conversation in an e-mail of

Page 111

1 August 6, 2015 at 3:17 p.m.
2 **MR. SINNOTT:** And that same --
3 **MR. McTIGUE:** Where does the phrase --
4 go ahead.
5 **MR. SINNOTT:** That same e-mail, Brian,
6 resulted in another response from Garrett at 2:30
7 p.m. where he said I think it's about time for ERISA
8 counsel to -- to get down to work or words to that
9 effect and with the government regulators.
10 **THE SPECIAL MASTER:** In answer to your
11 question, Brian, the e-mail from Garrett Bradley to
12 Lynn, Thursday, August 6, 2015, 2:43 p.m., in that
13 e-mail Garrett Bradley says, "Nate should be
14 concerned about objections to the fact that ERISA is
15 being allocated far too much here. He is
16 overreaching, and every time he moves the goal post
17 we say okay. It is time to go over his head and let
18 his superiors know he is overreaching. What did DOL
19 say about fees in Mellon? Anyone disagree because
20 I'm happy to call DOL in D.C. myself." Signed
21 Garrett.
22 I think that's the e-mail you're
23 referring to.
24 **MR. McTIGUE:** That's the e-mail I was

Page 112

1 asking about. In that e-mail the phrase is "time to
2 go over his head."
3 **THE SPECIAL MASTER:** Yes. Do you have a
4 question?
5 **MR. McTIGUE:** I do. To Bob Lieff.
6 **CROSS-EXAMINATION**
7 **BY MR. McTIGUE:**
8
9 Q. Bob, are you aware of any efforts to go over
10 this person mentioned here -- I think his name is
11 Goldstein of DOL -- to go over his head?
12 A. **No, I am not.**
13 **MR. McTIGUE:** Thank you. I'm finished.
14 **MR. SINNOTT:** All right, thanks, Brian.
15 Lynn?
16 **MR. SARKO:** No questions.
17 **MR. SINNOTT:** Emily?
18 **MS. HARLAN:** No questions.
19 **MR. SINNOTT:** All right. Is Brian Kelly
20 on there?
21 (No response.)
22 **MS. HYLENSKI:** I believe he is.
23 **MR. SINNOTT:** Brian, any questions?
24 (No response.)

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1 **MR. SINNOTT:** Okay. Any other counsel
2 on the line that has a question?
3 (No response.)
4 **MR. SINNOTT:** All right. Seeing none,
5 this is concluded. Thank you, Bob. It was a
6 pleasure reading to you.
7 **THE WITNESS:** You did a great job.
8 **THE SPECIAL MASTER:** Thank you, Bob.
9 (Whereupon the proceedings
10 adjourned at 2:57 p.m.)
11
12
13
14
15
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18
19
20
21
22
23
24

1 CERTIFICATE
2 COMMONWEALTH OF MASSACHUSETTS)
3 SUFFOLK, SS.)
4

5 I, Paulette M. Cook, Registered Merit Reporter
6 and Notary Public in and for the Commonwealth of
7 Massachusetts, do hereby certify that ROBERT L.
8 LIEFF, the witness whose deposition is hereinbefore
9 set forth, was duly sworn by me and that such
10 deposition is a true record of the testimony given
11 by the witness.

12 I further certify that I am neither related to
13 or employed by any of the parties in or counsel to
14 this action, nor am I financially interested in the
15 outcome of this action.

16 In witness whereof, I have hereunto set my hand
17 and seal this 13th day of September, 2017.

18

19

20

21 Notary Public

22

23 My commission expires:

24 February 5, 2021

EX. 140

Message

From: Damon Chargois [damon@cmhllp.com]
Sent: 4/25/2013 1:23:44 AM
To: Garrett J. Bradley [gbradley@tenlaw.com]
CC: Robert L. Lieff [RLIEFF@lchb.com]; Robert L. Lieff [rlieff@lieff.com]; Michael Thornton [MThornton@tenlaw.com]; Belfi, Eric J. [EBelfi@labaton.com]; Keller, Christopher J. [ckeller@labaton.com]; Daniel P. Chiplock [DCHIPLOCK@lchb.com]
Subject: Re: State street fee regarding local counsel

Thank you, Garrett. Agreed.

Sent from my iPhone

On Apr 24, 2013, at 8:08 PM, "Garrett Bradley" <GBradley@tenlaw.com> wrote:

> Bob,
>
> As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% 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%.
>
> We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), 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 on this email so he will have confirmation of this agreement. When we spoke to him he was agreeable to this as well.
>
> Garrett
>
>
>
>
>
>
> This e-mail and any files transmitted with it are confidential and are
>
> intended solely for the use of the individual or entity to whom they are
> addressed. This communication may contain material protected by the
> attorney-client privilege. If you are not the intended recipient or the person
> responsible for delivering the e-mail to the intended recipient, be advised that
> you have received this e-mail in error and that any use, dissemination,
> forwarding, printing, or copying of this e-mail is strictly prohibited. If you
> have received this e-mail in error; please immediately notify us by telephone at
> (800) 431-4600. You will be reimbursed for reasonable costs incurred in
> notifying us.
>
>
>
> Please consider the environment before printing this email.

EX. 141

AGREEMENT

Agreement dated as of January 1, 2015, between Labaton Sucharow LLP, a New York limited liability partnership with an address at 140 Broadway, New York, New York 10005 ("Labaton" or "the Firm"), and the Thornton Law Firm LLP ("Thornton"), which has an address of 100 Summer Street, Boston, Massachusetts 02110, and Garrett J. Bradley ("Bradley"), a Thornton partner. Labaton and Bradley are each sometimes referred to individually as a party and collectively are referred to as the parties.

PREAMBLE

The Labaton firm and Thornton firm have, for over 10 years, been working cooperatively to develop clients and matters and have done this in a mutually beneficial way. It is with that background, that the parties have determined that Garrett Bradley should become "of counsel" to Labaton so that he, and the Thornton firm, can better develop clients and cases with Labaton, which will benefit both firms.

WITNESSETH

WHEREAS, Labaton desires to engage Bradley to provide professional legal services on behalf of the Firm, and Bradley desires to provide such services to Labaton;

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions contained herein, Labaton, Bradley and Thornton agree as follows:

1. **ENGAGEMENT**

Labaton shall engage Bradley, and Bradley agrees to be engaged by Labaton, effective as of January 1, 2015 (the "Commencement Date"), as Counsel to Labaton, upon the terms and conditions set forth herein. Bradley shall assist Labaton partners in identifying and seeking retention by clients for securities, and antitrust matters. Bradley will also assist Labaton partners with the maintenance of relationships with existing clients as well as the development of new matters.

2. **TERM**

The term (the "Term") of this Agreement shall begin on the Commencement Date and continue until terminated by either party in accordance with Section 9 hereof.

3. **SERVICES; LOCATIONS**

(a) Bradley shall render professional legal services to Labaton as may be agreed to between Bradley and Labaton from time to time. There is no amount of fixed time which Bradley must devote to services for Labaton. Bradley shall perform such services principally out of his separately maintained offices, utilizing his own personnel and equipment at his own cost and expense, subject to the provisions regarding reimbursable expenses set out in

Section 6 below. He will also be given an office at Labaton at 140 Broadway in New York City, from which he can work when in New York.

(c) Nothing contained herein shall preclude Bradley from engaging in the practice of law on matters for Thornton. In the event a conflict or potential conflict of interest arises between Bradley or Thornton and Labaton with respect to any services Bradley is rendering to Labaton, the parties will engage in good faith efforts to resolve it.

(d) Consistent with all applicable ethical rules, Thornton and Labaton agreed to run all necessary conflict checks between the two firms.

4. RELATIONSHIP OF THE PARTIES.

(a) Bradley shall not have any authority to assume or create any obligation, express or implied, on behalf of Labaton, and neither Bradley nor any personnel he assigns to Labaton matters shall have any authority to represent as its agent, employee, or in any other capacity of Labaton under the meaning or application of any federal or state unemployment or insurance laws or workers' compensation laws, or otherwise.

(b) If any liability is imposed on Labaton based upon intentional wrongdoing or willful or reckless misconduct by Bradley, Thornton shall indemnify Labaton and hold Labaton harmless from and against any and all losses, costs, liabilities, claims, damages, expenses and the like in connection therewith, including, without limitation, reasonable attorneys' fees and expenses and court costs, penalties and fines.

(c) Labaton shall secure an appropriate clause in, or endorsement upon, its malpractice insurance policy (a certificate of which shall be provided to Bradley upon request), and which shall evidence limits of not less than \$10,000,000.00, with a deductible of not greater than \$500,000.00.

(d) Bradley and Thornton agree that securities and antitrust clients Bradley develops during the Term shall be clients of Labaton. Thornton shall indemnify and hold Labaton harmless against any and all claims against Labaton relating to Bradley's work for Labaton during the Term.

5. EXPENSE ALLOWANCE

In each year during the Term, Labaton will pay up to \$100,000.00 in the aggregate for out-of-pocket expenses related to Bradley's business development activities, including business development-related travel and entertainment expenses

6. VACATION AND BENEFITS

As an independent contractor, Bradley shall not be entitled to any payment for vacation, holidays, sick time or be entitled to receive any other benefits typically afforded to employees.

7. TERMINATION

This agreement may be terminated by the Firm at any time for Cause. For purposes of this agreement, Cause shall be determined in the sole discretion of the Firm. Either party may terminate this agreement without Cause on 90 days' written notice to the other.

8. ARBITRATION

(a) Any and all claims arising between any of the parties shall be brought in binding arbitration before the Honorable Layn Phillips ("Phillips") of Phillips ADR of Corona del Mar, California. In the event Mr. Phillips is not available, the parties may file for arbitration before Professor Eric D. Green of Resolutions, LLC in Boston, Massachusetts. In the event that neither of these arbitrators are available, then the party intending to arbitrate shall initiate a proceeding with the American Arbitration Association in New York City. The intent of this provision is to be as broad as possible, specifically including within this mandatory arbitration provision any and all claims that may be asserted as between any partners of Labaton and any partners of Thornton in connection with any matter connected to Bradley's service as of counsel to Labaton.

(b) Both parties agree to be bound by the result of the arbitration, and acknowledge that this arbitration provides the exclusive remedy for any claim by any of the parties, and their respective partners, regarding compensation or any other claim arising from this Agreement and that such arbitration shall be strictly confidential.

9. REPRESENTATIONS, WARRANTIES & COVENANTS

(a) Labaton warrants and represents that it is a limited liability partnership duly organized and validly existing pursuant to the laws of the State of New York.

(b) Bradley warrants and represents that he is an attorney duly licensed and authorized to practice law in New York State and the Commonwealth of Massachusetts; and that to the best of his knowledge, he is not subject to any investigation or any proceeding (whether administrative or otherwise), and that no investigation or proceeding (whether administrative or otherwise) has been threatened or commenced against him by any federal, state or county agency, department, tribunal or regulatory body (including any legal society or association). Bradley covenants and agrees that if, at any time, he becomes aware of the existence of any investigation or proceeding (whether administrative or otherwise), by any federal, state or county agency, department, tribunal or regulatory body (including any legal society or association), he shall promptly notify Labaton of same and provide Labaton with all information that Labaton may reasonably require in connection therewith.

(c) Thornton warrants that to the extent the Thornton Law Firm partnership agreement contains any applicable restrictive covenants that could potentially limit Bradley's ability to serve as of counsel to Labaton, such covenants are hereby waived for the purposes of this Agreement. Bradley agrees to observe and comply with all rules, regulations and policies of Labaton reasonably related to the business and operations of Labaton as adopted from time to time and communicated to Bradley.

10. RESTRICTIVE COVENANT

Bradley agrees to be bound by any restrictive covenant and confidentiality provision by which Labaton is bound pursuant to any of the legal matters or cases on which Bradley is working.

11. MISCELLANEOUS

(a) This Agreement shall not be changed, modified or amended except by written agreement of the parties.

(b) This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained herein, and merges and supersedes all prior discussions, agreements, and understanding of every kind and nature among them. No party shall be bound by any condition, definition, warranty, or representation other than as expressly provided for in this Agreement.

(c) This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, executors, legal representatives, successors and permitted assigns; provided, however, that this Agreement may not be assigned by either party except on the prior written consent of the other party.

(d) All notices, requests, demands and other communications provided for in this Agreement shall be in writing and shall be deemed to have been given at the time when personally delivered, or mailed at any general or branch United States Post Office, enclosed in a registered or certified postpaid envelope, return receipt requested, addressed to the address of the party stated at the beginning of this Agreement or to such other address as such party may have fixed by notice; provided, however, that any notice of change of address shall be effective only upon receipt.

(e) If any provision of this Agreement or the application of any provision hereof to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provision to the persons or circumstances shall not be affected thereby.

(f) This Agreement shall be governed by and construed under the laws of the State of New York.

(g) The headings of the sections hereof are inserted for convenience only and in no way define, limit or prescribe the intent of this Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

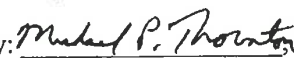
Labaton Sucharow LLP

By: 
_____, Partner

Garrett J. Bradley

By: 

The Thornton Law Firm

By: 
_____, Partner _____

EX. 142

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/6/2013 11:50:34 AM
To: Robert L. Lieff [RLIEFF@lchb.com]; Garrett J. Bradley [gbradley@tenlaw.com]; =SMTP:rlieff@lieff.com; Michael Thornton [MThornton@tenlaw.com]
CC: =SMTP:damon@cmhllp.com; Keller, Christopher J. [ckeller@labaton.com]; Daniel P. Chiplock [DCHIPLOCK@lchb.com]
Subject: RE: State street fee regarding local counsel

We are in full agreement.

Eric

-----Original Message-----

From: Lieff, Robert L. [mailto:RLIEFF@lchb.com]
Sent: Wednesday, April 24, 2013 9:18 PM
To: Garrett J. Bradley; Robert L. Lieff; Michael Thornton; Belfi, Eric J.
Cc: Damon Chargois Esq.; Keller, Christopher J.; Daniel P. Chiplock
Subject: RE: State street fee regarding local counsel

I am in full agreement. Bob

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: Wednesday, April 24, 2013 6:07 PM
To: Lieff, Robert L.; Robert L. Lieff; Michael Thornton; Eric Belfi
Cc: Damon Chargois Esq.; Christopher J. Keller Esq.; Chiplock, Daniel P.
Subject: State street fee regarding local counsel

Bob,

As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% 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%.

We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), 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 on this email so he will have confirmation of this agreement. When we spoke to him he was agreeable to this as well.

Garrett

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intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by the attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error; please immediately notify us by telephone at (800) 431-4600. You will be reimbursed for reasonable costs incurred in notifying us.

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This message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 143

From: Keller, Christopher J. <ckeller@labaton.com>
Sent: Monday, May 23, 2011 6:36 PM
To: Garrett Bradley
Subject: #755904 v1 - Letter Agreement -- State Street
Attachments: G79C01!.DOC

What do you think of this?



Please consider the environment before printing this email.

Privilege and Confidentiality Notice

This electronic message contains information that is (a) LEGALLY PRIVILEGED, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) intended only for the use of the Addressee(s) named herein. If you are not the Addressee(s), or the person responsible for delivering this to the Addressee(s), you are hereby notified that reading, copying, or distributing this message is prohibited. If you have received this electronic mail message in error, please contact us immediately at 212-907-0700 and take the steps necessary to delete the message completely from your computer system. Thank you.

Christopher J. Keller
Partner
212 907 0853 direct
212 883 7053 fax
email ckeller@labaton.com

May 4, 2011

VIA ELECTRONIC MAIL

Michael P. Thornton, Esq. (MThornton@tenlaw.com)
Garrett J. Bradley, Esq. (GBradley@tenlaw.com)
Thornton & Naumes LLP
100 Summer Street, 30th Floor
Boston, MA 02110

Steven E. Fineman, Esq. (sfineman@lchb.com)
Daniel P. Chiplock, Esq. (dchiplock@lchb.com)
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413

Richard M. Heimann, Esq. (rheimann@lchb.com)
Lexi J. Hazam, Esq. (lhazam@lchb.com)
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339

Re: *Arkansas Teacher Retirement System v. State Street Corporation*
Civil Action No. 11-cv-10230-MLW (D. Mass.)

Dear Counsel:

I am pleased we were able to come to terms and will be working together in this matter. I have outlined below the terms of the agreement we have reached.

Arkansas Teacher Retirement System (“Arkansas Teacher”) will be represented in the action by Labaton Sucharow LLP (“Labaton Sucharow”) as Lead Counsel, and Thornton & Naumes LLP (“Thornton & Naumes”) and Lieff Cabraser Heimann & Bernstein, LLP (“Lieff Cabraser”) will serve as additional counsel for Arkansas Teacher in this action.

Arkansas Teacher has made an application to the Court for appointment of its selection of Labaton Sucharow as Interim Lead Counsel. In the event that the Court appoints Labaton Sucharow as interim Lead Counsel and subsequently as Lead Counsel, we agree as follows:

May 4, 2011
Page 2

We agree that our firms will act in good faith to divide the work so that each of the firms performs at least 20% of the work and each will receive at least 20% of the fees awarded in this matter. The remaining 40% of the fees awarded shall be allocated in good faith at the conclusion of the case based on each firms' actual time spent on this matter..

There is an "off the top" obligation to referring counsel of 6% of the fees awarded. In addition, we agree to exchange on a quarterly basis our then current lodestar reports showing quarterly and aggregate billings in this matter.

We also agree that any dispute arising under this agreement or in this case may not be litigated in court and that all such disputes or claims shall be resolved, upon election of any party, through binding arbitration conducted pursuant to the applicable rules of the American Arbitration Association in any jurisdiction in which any of the firms reside.

Please sign below indicating your agreement to these terms.

Very truly yours,

Christopher Keller, Esq.

Accepted and agreed by:

Thornton & Naumes LLP

Michael P. Thornton, Esq.

Date: _____

Lieff Cabraser Heimann & Bernstein, LLP

May 4, 2011
Page 3

Steven E. Fineman, Esq.

Date: _____

EX. 144

From: Bradley, Garrett J.
Sent: Tuesday, June 21, 2016 11:13 AM
To: Stocker, Michael W.
Cc: Belfi, Eric J.; Keller, Christopher J.
Subject: Re: State Street

I think they should be two separate conversations by different people. I'll take a run at state street.

Garrett

On Jun 21, 2016, at 11:10 AM, Stocker, Michael W. <MStocker@labaton.com> wrote:

So we are talking about have a global conversation at the same time as dealing with state street? Or start with state street, talk about how fact specific it is, and then reach future deals later (but soon)? I think that's risky, and that he will use state street for leverage.

From: Belfi, Eric J.
Sent: Tuesday, June 21, 2016 11:06 AM
To: Keller, Christopher J.; Stocker, Michael W.
Cc: Bradley, Garrett J.
Subject: RE: State Street

I agree on the historical stuff but for the future cases, I think we discussed something lower like 5% of lodestar and 10%. I also think we need to be a time limit on the agreement so we can reevaluate the situation.

From: Keller, Christopher J.
Sent: Tuesday, June 21, 2016 11:04 AM
To: Belfi, Eric J. <EBelfi@labaton.com>; Stocker, Michael W. <MStocker@labaton.com>
Cc: Bradley, Garrett J. <GBradley@labaton.com>
Subject: RE: State Street

We can't appear to be arbitrary. If we have a new deal for him then we have to discuss it. State Street can be a one off since it's not a securities class action and there are other relevant unique attributes. I like the idea of bringing him to the current best deal and that is 10% of our lodestar and 20% of our gravy. In most cases that will lead to a referral of about 15% and protects us in cases like spectrum where we only got a .7 on our time.



Christopher J. Keller | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0853 | F: (212) 883-7053
E: ckeller@labaton.com | W: www.labaton.com



From: Belfi, Eric J.
Sent: Tuesday, June 21, 2016 11:00 AM
To: Keller, Christopher J.; Stocker, Michael W.
Cc: Bradley, Garrett J.
Subject: RE: State Street

I do not have a problem with that. However, we need to deal with other issue soon – it does not make sense to leave it outstanding.

We also have to deal with Spectrum. Since we are getting .68 on our time, should we reduce him to 14 percent – I will call to discuss this issue with him.

From: Keller, Christopher J.

Sent: Tuesday, June 21, 2016 10:58 AM

To: Stocker, Michael W. <MStocker@labaton.com>

Cc: Bradley, Garrett J. <GBradley@labaton.com>; Belfi, Eric J. <EBelfi@labaton.com>

Subject: RE: State Street

I'm fine with that



Christopher J. Keller | Partner

140 Broadway, New York, New York 10005

T: (212) 907-0853 | F: (212) 883-7053

E: ckeller@labaton.com | W: www.labaton.com



From: Stocker, Michael W.

Sent: Tuesday, June 21, 2016 10:45 AM

To: Keller, Christopher J.

Cc: Bradley, Garrett J.; Belfi, Eric J.

Subject: State Street

Chris I think Garrett should have a friendly convo with Damon just about SS without alluding directly to the global issues. I think it is not a good idea to inject the other stuff into this conversation.

When we get to the harder stuff I can go with whoever to talk about the rules, but let's wait for this to clear.

Michael W. Stocker | Partner

140 Broadway, New York, New York 10005

T: (212) 907-0882 | F: (212) 883-7082

E: mstocker@labaton.com | W: www.labaton.com

EX. 146

Message

From: Lieff, Robert L. [RLIEFF@lchb.com]
Sent: 4/25/2013 1:17:49 AM
To: Garrett Bradley [GBradley@tenlaw.com]; Robert L. Lieff [rlieff@lieff.com]; Michael Thornton [MThornton@tenlaw.com]; Eric Belfi [ebelfi@labaton.com]
CC: Damon Chargois Esq. [damon@cmhllp.com]; Christopher J. Keller Esq. [ckeller@labaton.com]; Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]
Subject: RE: State street fee regarding local counsel

I am in full agreement. Bob

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Sent: Wednesday, April 24, 2013 6:07 PM
To: Lieff, Robert L.; Robert L. Lieff; Michael Thornton; Eric Belfi
Cc: Damon Chargois Esq.; Christopher J. Keller Esq.; Chiplock, Daniel P.
Subject: State street fee regarding local counsel

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Garrett

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intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by the attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error; please immediately notify us by telephone at (800) 431-4600. You will be reimbursed for reasonable costs incurred in notifying us.

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EX. 145

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

| | | |
|--|---|---------------------|
| ARKANSAS TEACHER RETIREMENT SYSTEM, |) | |
| on behalf of itself and all others similarly situated, |) | No. 11-cv-10230 MLW |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE STREET BANK AND TRUST COMPANY, |) | |
| |) | |
| Defendant. |) | |

| | | |
|---|---|---------------------|
| ARNOLD HENRIQUEZ, MICHAEL T. COHN, |) | |
| WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, |) | No. 11-cv-12049 MLW |
| and those similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE STREET BANK AND TRUST COMPANY, |) | |
| STATE STREET GLOBAL MARKETS, LLC and |) | |
| DOES 1-20, |) | |
| |) | |
| Defendants. |) | |

| | | |
|---|---|---------------------|
| THE ANDOVER COMPANIES EMPLOYEE SAVINGS |) | |
| AND PROFIT SHARING PLAN, on behalf of itself, and |) | No. 12-cv-11698 MLW |
| JAMES PEHOUSHEK-STANGELAND, and all others |) | |
| similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE STREET BANK AND TRUST COMPANY, |) | |
| |) | |
| Defendant. |) | |

DECLARATION OF DANIEL P. CHIPLOCK

Daniel P. Chiplock, Esq., declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am a partner with the law firm of Lief Cabraser Heimann & Bernstein, LLP (“Lief Cabraser”). I submit this declaration to further elaborate on my prior testimony concerning my understanding and belief, at all times prior to September 2017, as to Chargois & Herron LLP’s role as reputed “local counsel” in the State Street litigation, and the basis for that understanding and belief.

2. For my declaration, to avoid repetition, I specifically refer to and incorporate the Response by Lief Cabraser Heimann & Bernstein LLP to [the] Special Master’s September 7, 2017 Request for Supplemental Submission, dated November 3, 2017 (“the Supplemental Submission”)¹, and the citations to the record therein.²

3. As detailed in the Supplemental Submission and my prior deposition testimony dated September 8, 2017 (“Sept. 8 Deposition”), in the few communications where Lief Cabraser attorneys were copied or participated that concerned Damon Chargois, he was consistently referred to by attorneys outside of Lief Cabraser as “local counsel” for Labaton Sucharow LLP (“Labaton”) and/or the client, the Arkansas Teacher Retirement System (“ATRS”).³ See Exhibits A and B.

¹ The Supplemental Submission is attached hereto as Exhibit A, for ease of reference.

² All emails referenced in the Supplemental Submission, in addition to several others relevant to the issue of Lief Cabraser’s mindset, are attached collectively as Exhibit B.

³ The Ethical Report for Special Master Gerald E. Rosen by Prof. Stephen Gillers (“Ethical Report”), dated February 23, 2018, refers to an “original cost-sharing agreement” mentioning Mr. Chargois that purportedly was “circulated—but never executed—among Customer Class Counsel in 2011,” but Lief Cabraser has no record of its attorneys ever having received this document. See Ethical Report, p. 42 and n. 47. Indeed, the testimony cited in n. 47 of the Ethical Report appears to confirm that this document was not “circulated . . . among Customer Class Counsel” but instead was a draft that was circulated solely between Christopher Keller (of Labaton) and Garrett Bradley (of Thornton Law Firm). The first mention that Lief Cabraser can find of Mr. Chargois in any communication involving Lief Cabraser is the April 2013 email string described in paragraph 2 of the Supplemental Submission.

4. Loeff Cabraser's attorneys referred to Mr. Chargois in kind as "local counsel" in the handful of communications they exchanged with co-counsel about Mr. Chargois and in internal Loeff Cabraser communications. Co-counsel never corrected Loeff Cabraser's attorneys, nor suggested to Loeff Cabraser's attorneys that Mr. Chargois was anything other than "local counsel." *See* Exhibit B.

5. Loeff Cabraser was not lead counsel in the State Street litigation, and had no direct client relationship with ATRS. Indeed, the Loeff Cabraser attorneys did not interact with George Hopkins (the chief representative for ATRS in the litigation) at all during the State Street litigation, outside of the mediation sessions that Mr. Hopkins personally attended. Loeff Cabraser's attorneys also never spoke with Mr. Chargois to my knowledge, and had no interactions with him outside of a few group emails. For its understanding of Mr. Chargois' role and function in the State Street litigation, Loeff Cabraser accordingly relied on the representations by Labaton, who was lead counsel, and Mr. Garrett Bradley, who prior to the conclusion of the State Street litigation was Of Counsel to Labaton, and on Mr. Chargois' confirmations by email (copied to both Bob Loeff and myself) of his role as local counsel and his important role in the case. (For the latter, *see* Chargois' emails of April 25, 2013 [LBS025771] and July 8, 2016 [LCHB-0053544-45], contained in Exhibit B).

6. During the life of the State Street litigation, Loeff Cabraser had no visibility into any work being performed by Mr. Chargois. But this was not unusual for a local counsel working in tandem with a lead counsel, in my recent experience. In the BNY Mellon litigation (where Loeff Cabraser did serve as lead counsel), Loeff Cabraser worked with an Ohio-based local counsel for its Ohio-based public pension fund clients. That local counsel (who was selected by the Ohio Attorney General) communicated directly and virtually exclusively with Loeff Cabraser insofar as his work assignments were concerned. His work was focused primarily

on assisting Lieff Cabraser in guiding the Ohio pension fund clients through their responses to defendants' discovery requests, as well as helping to defend their depositions. This was but one distinct part of a very large and complex litigation effort (which involved taking more than 100 depositions overall, including scores of depositions of defendants and third parties all over the globe), which involved many law firms. Throughout this, the Ohio local counsel's principal focus remained serving the Ohio public pension funds' individual discovery and litigation needs (with some document review assignments as well). As such, he and his firm had very little (if any) contact with Lieff Cabraser's co-lead counsel in that case (Kessler Topaz Meltzer & Check LLP), and virtually none with the other law firms who were not serving in a co-lead capacity (which would have been analogous to Lieff Cabraser's position in the State Street litigation).

7. The total attorneys' fees awarded in the BNY Mellon litigation were \$83,750,000, which equated to 25% of the \$335 million settlement fund in that case. Ohio local counsel was ultimately awarded approximately 4% of the total fees by the court in that case, which was certainly within the range of fees commonly paid or awarded (in Lieff Cabraser's experience) to local counsel who have performed services for the class representatives or lead counsel and thus to the class as a whole.

8. The \$335 million settlement in the BNY Mellon litigation was reached in principle by March 2015, and preliminarily approved in late April 2015. Notice to the class was sent shortly thereafter, and by then it was understood and communicated to class members that counsel would apply for approximately a 25% attorneys' fee. By the time the final settlement approval and fee petitions were filed in August 2015, the level of fee we would be requesting for Ohio local counsel in the BNY Mellon case was established – approximately 4%.

9. Accordingly, at about the same time that I was being apprised by co-counsel of Mr. Chargois' role as "local counsel" in the State Street litigation, and the contours of his fee

interest were being discussed, I was in the process of finalizing and requesting a proposed fee allocation in the BNY Mellon litigation that included a fee percentage for local counsel that was not substantially different from what was being discussed for Mr. Chargois. That proposed fee percentage did not strike me as outside of the norm for a local counsel such as Mr. Chargois had been described to me. Nor did I view it as unusual that I was not privy to the specific work Mr. Chargois had performed as local counsel; as stated above, the various non-lead counsel in BNY Mellon, to my knowledge, had little or no substantive direct contact with Ohio local counsel in that case.

10. Based on lead counsel's descriptions, I understood during the State Street litigation that ATRS was gathering and producing a fairly substantial number of documents in response to defendant's requests. All told, according to lead counsel, ATRS produced more than 73,000 pages of documents,⁴ an undertaking in which Lief Cabraser was not directly involved. I also understood that prior to Lief Cabraser being engaged as additional counsel for the proposed class, ATRS had spent substantial time investigating, with the assistance of its counsel, the underlying allegations against State Street (which were first made public by the October 2009 unsealing of a whistleblower lawsuit in California) before finally filing a lawsuit in 2011, and that this time period included one or more meetings with State Street representatives (none of which included my firm). It was my belief, informed both by (i) co-counsel's descriptions of Mr. Chargois as "local counsel" who was "assisting" Labaton in matters pertaining to ATRS and had performed "an important role" in the litigation, and (ii) my firm's recent experience in BNY Mellon, that Mr. Chargois had actually assisted and played an important role in these efforts. It was also my belief, for the same reasons, that Mr. Chargois' involvement in these efforts (and in

⁴ See Decl. of Lawrence A. Sucharow, ¶ 97, Dkt. No. 104 (filed 9/15/16).

the litigation overall) was at ATRS' behest, and certainly (at a minimum) with its complete knowledge and consent. I assumed that ATRS and lead counsel in the State Street litigation regarded the proposed fee percentage for Mr. Chargois to be reasonable and justified by his value to the client, and therefore to the class, based on their knowledge of his work and contributions.

11. My belief during the 2015-2016 timeframe as to the apparent reasonableness of Mr. Chargois' fee interest as "local counsel" was further informed by historical experience at my firm. Over the years, for instance, Lief Cabraser has been asked to serve as local counsel in a number of securities class actions. In some other types of class actions, including cases involving consumer protection statutes such as the Telephone Consumer Protection Act of 1991 ("TCPA"), Lief Cabraser has requested counsel in the forum jurisdiction to act as our local counsel. In both circumstances, the local counsel (whether it is us or another firm) has often been offered the option of a fee arrangement predicated on lodestar or based on a percentage. When on a percentage basis, the fee has typically ranged from a low of 5% to a high of 10% of the total fees awarded in class cases. In the two most recent securities class cases in which Lief Cabraser agreed to serve as local counsel, for instance, the fee share upon which Lief Cabraser agreed at the outset with putative lead class counsel was 10% of the total fees awarded. While these cases have involved local counsel in the forum court, in contrast with Mr. Chargois' situation in the State Street litigation, this history comprises another baseline for commonly accepted percentage fee arrangements, in my experience, for local counsel in class litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 5, 2018.

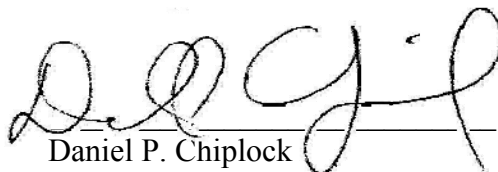

Daniel P. Chiplock

EXHIBIT A

**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. 11-cv-10230 MLW

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R.
TAYLOR, RICHARD A. SUTHERLAND, and those similarly
situated,

Plaintiff,

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,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**RESPONSE BY LIEFF CABRASER HEIMANN & BERNSTEIN LLP TO SPECIAL
MASTER'S SEPTEMBER 7, 2017 REQUEST FOR SUPPLEMENTAL SUBMISSION**

Lieff Cabraser Heimann & Bernstein, LLP (“Lieff Cabraser”) respectfully provides this individual response (“Response”) to the Special Master’s September 7, 2017 Request for Supplemental Submission concerning “the circumstances of the monies paid to Attorney Damon Chargois in the State Street case for his role as a referring attorney and the implications of that payment and circumstances in addressing the charge of Judge Wolf in paragraph 2 of his March 8, 2017 Order.”

1. At all times throughout the litigation of the State Street matter and up through August 11, 2017, Mr. Chargois was described and represented to Lieff Cabraser as “local counsel” for Labaton Sucharow LLP (“Labaton”) and/or the client, the Arkansas Teacher Retirement System (“ATRS”). Mr. Chargois was never described to Lieff Cabraser as a “referring,” “forwarding,” or any other kind of counsel by Labaton or Garrett Bradley (who was a partner at Thornton Law Firm LLP (“Thornton”) throughout the litigation and, starting in or about 2015, also of counsel at Labaton).

2. Specifically, on April 24, 2013 (when Mr. Chargois’ role in the litigation as well as his proposed allocation of a portion of the class attorneys’ fee was first broached), Mr. Chargois was described to Lieff Cabraser by Mr. Bradley as “local counsel who assists Labaton in matters involving [ATRS].” *See* LCHB-0053483.¹ In subsequent communications in 2015 and 2016, Mr. Chargois was described to Lieff Cabraser variously as the “[A]rkansas local” (LCHB-0053491), the “Arkansas firm” (LCHB-0053531), the “Arkansas component” (*id.*), and “the local attorney in this matter who has played an important role.” (LCHB-0053542). *See also* Chiplock Dep. (Sept. 8, 2017) at 102:3-13; 109:19-110:18; 115:8-117:8; 118:9-22.

¹ Mr. Chiplock, who was the principal Lieff Cabraser attorney on the case, was apparently copied on this initial April 24, 2013 email and one or more responses to it, but did not recall receiving them and did not himself reply. *See* Chiplock Dep. (Sept. 8, 2017) at 68:4-24; *see also* LCHB-0053522, 0053538, 0053541.

3. Lief Cabraser attorneys, on the subsequent handful of occasions when they referenced Mr. Chargois in written communications to attorneys at Labaton and Thornton—which almost exclusively was in the context of discussing attorney fee allocations—referred in kind to Mr. Chargois as the “local counsel,” “Arkansas local,” “local Arkansas counsel,” or simply “Arkansas” counsel. *See, e.g.*, LCHB-0053493, 0053507, 0053513, 0053522, 0053531, 0053549.

4. The “Agreement of Fees” entered into on August 30, 2016, approximately two weeks prior to the submission of the final settlement and fee approval papers to the Court, similarly references Mr. Chargois as “Labaton Sucharow’s local counsel.” LCHB-0053552. The fee allocation charts circulated by Labaton after final settlement approval had been granted (in November 2016) also refer to Mr. Chargois as “Labaton’s Local Counsel.” *See* LCHB-0053553-56, 0053560, 0053567.

5. Lief Cabraser understood Mr. Chargois’ stated role as “local counsel” throughout the litigation to mean that he was assisting ATRS and Labaton in Arkansas, including by interfacing with the client and/or performing local client-sided tasks that were helpful to the litigation. This was the type of role with which Lief Cabraser was generally familiar from prior experience—and was the type of role played by Ohio-based local counsel (for Ohio-based clients) in the BNY Mellon litigation (in which Lief Cabraser was lead counsel). Lief Cabraser assumed that Mr. Chargois’ role as local counsel was being performed at the behest of (and with the consent of) ATRS. All of the foregoing was consistent with the descriptions offered to Lief Cabraser by Labaton and Mr. Bradley of Mr. Chargois’ status and role in the litigation. *See, e.g.*, Chiplock Dep. (Sept. 8, 2017) at 101:24-104:18; 109:19-111:9; 115:8-118:22.

6. Lief Cabraser did not learn that Mr. Chargois (a) actually was not local counsel, (b) had performed no work in the State Street litigation, and (c) was not known to the client

representative for ATRS (George Hopkins), until after Mr. Hopkins (of ATRS) and Mr. Belfi (of Labaton) were deposed on September 5, 2017.

7. Had the Court ordered an accounting of all attorneys' fees and their planned allocation pursuant to Fed. R. Civ. P. 54, or had asked specific questions to that effect at the final approval hearing, Lieff Cabraser has (and had) no reason to believe that Mr. Chargois' allocation (along with all of the others') would not have been made known to the Court. At no time, ever, did Lieff Cabraser agree to "conceal" the existence of Mr. Chargois from anyone, including ERISA counsel, any clients, or the Court,² either before³ or after the final approval hearing (including in the November 28, 2017 "clawback" letter which Lieff Cabraser did not draft and which, without Lieff Cabraser's input, did not divulge Mr. Chargois' identity or fee interest to ERISA counsel).⁴

Dated: November 3, 2017

Respectfully submitted,

Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
415-956-1000



By: _____

Richard M. Heimann
Attorney for Lieff Cabraser Heimann & Bernstein, LLP

² See, e.g., Chiplock Dep. (Sept. 8, 2017) at 100:7-101:23; 104:19-105:7; 108:19-109:7; 119:4-20; 140:4-141:10.

³ Mr. Chiplock himself was not aware of Mr. Chargois when the original agreement memorializing a 9% fee allocation for ERISA counsel was signed in December 2013. See Chiplock Dep. (Sept. 8, 2017) at 120:19 – 121:15; see also LCHB-0053522, 0053538, 0053541. Mr. Lieff, for his part, did not recall Mr. Chargois' existence or stated role after the initial April 2013 email exchange until being reminded by Mr. Bradley in 2015 (and then again in 2016) of Mr. Chargois' putative status as local counsel. LCHB-0053531, 0053538.

⁴ See Sucharow Dep. (Sept. 1, 2017) at 20:22-23:15; 26:1-24. Lieff Cabraser was not copied on the email correspondence concerning the clawback letter in which it was stated there was "no need for ERISA to see Damon's split." *Id.*

EXHIBIT B

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Chronological Index of Pertinent Emails/Communications¹

Tab

- | | | |
|---|-----------------|--|
| 1 | LCHB-0053483 | 4/25/13 email from Garrett Bradley of Thornton Law Firm to Robert Lieff, copying Daniel Chiplock and others regarding “the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System.” Lieff replies that he is in “full agreement” with proposal to allocate 4 or 5% of awarded attorneys’ fees to Damon Chargois. |
| 2 | LBS025771 | 4/25/13 email from Chargois to Bradley (copying Lieff, Chiplock and others) agreeing to the same proposal, thereby confirming the description of him as “local counsel” assisting Labaton Sucharow LLP (“Labaton”). |
| 3 | LCHB-0053491-92 | 8/6/15 email from Bradley to Lieff, copying Michael Thornton, referring to Chargois as the “Arkansas local,” with an implied fee amount of 5% (arising in the context of negotiating a fee allocation among class counsel). |
| 4 | LCHB-0053493-4 | 8/28/15 string containing email from Lieff to Bradley referring in kind to “Arkansas local counsel,” with a provision for 5% of fees. (Also in the context of negotiating a fee allocation among class counsel.) |
| 5 | LCHB-0053507-12 | 8/28/15 exchange between Lieff and Chiplock referring to “Arkansas local” at 5%. (Again, part of the same allocation effort.) |

¹ These documents are being transmitted electronically by separate sharefile.

Tab

- 6 LCHB-0053513-14 8/28/15 string containing email from Bradley to Chiplock and others regarding fee allocation, indicating that the “Arkansas fee is still being negotiated,” with prior emails referring multiple times to either “Arkansas,” “Arkansas fee,” or “local Arkansas counsel.”
- 7 LCHB-0053522-23 8/30/15 email exchange between Chiplock and Bradley where Chiplock asks for copy of written agreement discussing “local Arkansas counsel” fee component. Bradley responds saying the “Arkansas component” was to “come off the top.”
- 8 LCHB-0053531-32 8/30/15 string containing emails from (i) Chiplock to Bradley asking for a copy of the written agreement relating to Arkansas local; (ii) Lieff to Bradley saying he does not have a copy of the agreement; and (iii) Bradley to Lieff and to Chiplock saying that he re-sent it to Lieff previously and that he will send it again when he gets to his office.
- 9 LCHB-0053538-40 6/14/16 email from Chiplock to Lieff, forwarding a copy of 8/30/15 and 7/28/15 emails from Bradley to Lieff and Chiplock and Thornton, with the note “I don’t know how you get around this.” The 8/30/15 and 7/28/15 emails from Bradley to Lieff each forwarded a copy of the original April 2013 email exchange, describing Chargois as “local counsel.”
- 10 LCHB-0053541 6/14/16 email from Chiplock to Lieff indicating that he found the April 2013 email in archives, and that he had no memory of it. Forwarding a copy of the April 2013 email to Lieff and inquiring how “local counsel’s” fee is going to be calculated.
- 11 TLF-SST-057140 7/8/16 email from Bradley to Lieff, Chiplock and others (copying Chargois) describing Chargois as “the local attorney in this matter who has played an important role.”

Tab

- 12 LCHB-0053542 7/8/16 email from Chiplock to Liefv forwarding a copy of the preceding email, and inviting Liefv to respond.
- 13 LCHB-0053544-45 7/8/16 email string containing a response from Chargois to Sucharow, copying Liefv, Chiplock and others, confirming his agreement to 5.5% and effectively confirming the description of his role in Bradley's email of the same date.
- 14 LBS039936-37 7/8/16 string containing email from Liefv to Bradley, copying others, confirming Liefv Cabraser's agreement to "5.5[%] to Chargois."
- 15 LCHB-0053548-49 String containing 8/12/16 corrective email from Liefv to Bradley, correcting Liefv's prior communication to include a reference to "**local counsel.**" (Emphasis in original).
- 16 LCHB-0053552 August 2016 written agreement concerning proposed allocation of attorneys' fees, referencing "Labaton Sucharow's local counsel."
- 17 LCHB-0053553-55 11/23/16 email from Nicole Zeiss of Labaton to Liefv, Chiplock and others referring to "Labaton's local counsel."
- 18 LCHB-0053560-62 11/23/16 email exchange between Chiplock and Liefv agreeing that figures for Liefv Cabraser look correct.
- 19 LCHB-0053567-69 11/23/16 email from Chiplock to Zeiss confirming that Liefv Cabraser's figures look correct.

EX. 147

From: Garrett Bradley
Sent: Thursday, August 6, 2015 9:01 AM
To: Robert L. Lieff
Cc: Michael Thornton
Subject: Fee discussions

Bob,

I was thinking about our call this morning yesterday while working out and I thought it might be helpful to put things in writing so everyone can see what we at Thornton are thinking. As I have said, before we start being equal in state street we need to be on an even par in both cases. What I mean by that is, even though you had no client, jurisdiction or concept Mike Thornton went and fought for you, and Lieff the entity, by using his influence with Labaton to get you 20% of state street. As I said yesterday, who was looking out for his interests in Mellon? Where was the corresponding deal? There was discussion of the same deal when we were in CA but Hausfield, who you brought in, did not sign and then we got sent to the MDL. Then you brought in Ohio for leverage in the MDL and Mike asked you what our fee interests were. I know because I was pressing him on it. He told me you said "we are in it together". Let's put some numbers behind what I am saying.

Because of Mike's advocacy, and only Mike's advocacy, you have a minimum in State street. We both know what that number is will be subject to many factors. But even in a low scenario of a \$60 million fee it could break down as follows:

\$60 million fee:

\$5,400,000 to Erisa
\$3,000,000 to arkansas local

That leaves \$51,600,000. For the sake of argument let's say Labaton sticks with the "we want half" that leaves \$25,800,000. Under the deal we each get 20% of the \$51,600,000 which is \$10,320,000 each which equals \$20,640,000. Leaving a balance of \$5,160,000.

Your position is you want to give us 10% of Mellon but an equal split of the residual (and discussion with Labaton of coming off their "we want half"). In Mellon you have \$20million in Lodestar and you want to get \$30million. So we would get \$2-3 million (plus our lodestar) in Mellon only to give it back to you in state street by splitting the residual balance \$5,160,000 50/50? Would you agree to this under these circumstances?

Here is how I propose we get to par. We fought for you to get at least \$10,320,000 in state street and here is how I believe you should reciprocate:

Our lodestar \$1.5 million- \$2.5 million depending on Judge 20% of Lieff fee \$4million-\$6million depending on Judge (if you get Kessler to cover some that is your business) What we have or likely will get total from relator cases \$1.5-\$2 million

Gives us between \$7 million and \$9.5 million.

This gets us close enough to par with your \$10,320,000 in state street. Then this is a basis for us to fight to get Labaton lower and certainly fair enough for us to split what ever the residual is. In our conversation, you keep trying to make up what you give us in Mellon back in state street and respectfully, that is unacceptable.

Also you raised that Chiplock said everything we provided in Mellon was already public. It was public because of our filings in Virginia and Florida (which were copied by Kessler, a point we will need to make in our own fee application). You also said Dan was considering his own fee application in State Street. The difference is we have real story to tell Judge Kaplan. We did what he said, we changed an industry and the federal investigations followed not the other way around. Lief can't tell a similar story to Judge Wolf in state street. Also, we would have to take the position, and I suspect Labaton would as well, that if you do that the deal we have is invalidated.

I really do not want to have to do my own fee application as my friends at Lieff may get hurt and I don't want that. However I do want them to recall we are friends and hope they treat us accordingly. I see no need to meet with Chiplock/Lesser but am happy to meet with you and Steve Fineman on Tuesday of next week perhaps for an early drink to see if we can come to a resolution and continue to work together on new projects in the future. Mike T is available as well. Together our firms have done great work and I hope we can equally be respected for that. Thanks for your time and effort.

Garrett

EX. 148

Message

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: 8/6/2015 2:00:35 PM
To: Loeff, Robert L. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RLIEFF]
CC: Michael Thornton [MThornton@tenlaw.com]
Subject: Fee discussions

Bob,

I was thinking about our call this morning yesterday while working out and I thought it might be helpful to put things in writing so everyone can see what we at Thornton are thinking. As I have said, before we start being equal in state street we need to be on an even par in both cases. What I mean by that is, even though you had no client, jurisdiction or concept Mike Thornton went and fought for you, and Loeff the entity, by using his influence with Labaton to get you 20% of state street. As I said yesterday, who was looking out for his interests in Mellon? Where was the corresponding deal? There was discussion of the same deal when we were in CA but Hausfield, who you brought in, did not sign and then we got sent to the MDL. Then you brought in Ohio for leverage in the MDL and Mike asked you what our fee interests were. I know because I was pressing him on it. He told me you said "we are in it together". Let's put some numbers behind what I am saying.

Because of Mike's advocacy, and only Mike's advocacy, you have a minimum in State street. We both know what that number is will be subject to many factors. But even in a low scenario of a \$60 million fee it could break down as follows:

\$60 million fee:

\$5,400,000 to Erisa
 \$3,000,000 to arkansas local

That leaves \$51,600,000. For the sake of argument let's say Labaton sticks with the "we want half" that leaves \$25,800,000. Under the deal we each get 20% of the \$51,600,000 which is \$10,320,000 each which equals \$20,640,000. Leaving a balance of \$5,160,000.

Your position is you want to give us 10% of Mellon but an equal split of the residual (and discussion with Labaton of coming off their "we want half"). In Mellon you have \$20million in Lodestar and you want to get \$30million. So we would get \$2-3 million (plus our lodestar) in Mellon only to give it back to you in state street by splitting the residual balance \$5,160,000 50/50? would you agree to this under these circumstances?

Here is how I propose we get to par. We fought for you to get at least \$10,320,000 in state street and here is how I believe you should reciprocate:

Our lodestar \$1.5 million- \$2.5 million depending on Judge
 20% of Loeff fee \$4million-\$6million depending on Judge (if you get Kessler to cover some that is your business)
 What we have or likely will get total from relator cases \$1.5-\$2 million

Gives us between \$7 million and \$9.5 million.

This gets us close enough to par with your \$10,320,000 in state street. Then this is a basis for us to fight to get Labaton lower and certainly fair enough for us to split what ever the residual is. In our conversation, you keep trying to make up what you give us in Mellon back in state street and respectfully, that is unacceptable.

Also you raised that Chiplock said everything we provided in Mellon was already public. It was public because of our filings in Virginia and Florida (which were copied by Kessler, a point we will need to make in our own fee application). You also said Dan was considering his own fee application in State Street. The difference is we have real story to tell Judge Kaplan. We did what he said, we changed an industry and the federal investigations followed not the other way around. Lief can't tell a similar story to Judge Wolf in state street. Also, we would have to take the position, and I suspect Labaton would as well, that if you do that the deal we have is invalidated.

I really do not want to have to do my own fee application as my friends at Loeff may get hurt and I don't want that. However I do want them to recall we are friends and hope they treat us accordingly. I see no need to meet with Chiplock/Lesser but am happy to meet with you and Steve Fineman on Tuesday of next week perhaps for an early drink to see if we can come to a resolution and continue to work together on new projects in the future. Mike T is available as well. Together our firms have done great work and I hope we can equally be respected for that. Thanks for your time and effort.

Garrett

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EX. 149

Message

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: 8/28/2015 6:17:58 PM
To: Loeff, Robert L. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RLIEFF]
CC: Michael Thornton [MThornton@tenlaw.com]; Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]; rlieff@lieff.com
Subject: Re: State Street

Bob,
 I am driving but took a quick look at your email and pulled over to type this. I think you are misunderstood. I have not agreed that it would be equitable to split the balance of the forty percent the way you described below. What I have said is that may be a fair approach depending on the outcome of our fee in the Mellon matter. If we are treated fairly there, then we will do all we can to treat you fairly in the state street matter. As I have said before, because of Mike Thornton's advocacy, you are guaranteed at least 20% of the State Street case in which you have no client and did not develop the concept. Yet, we have no corresponding protection in the Mellon matter. Happy to discuss further at any time.

Garrett

On Aug 28, 2015, at 2:05 PM, Loeff, Robert L. <RLIEFF@lchb.com> wrote:
 Garrett,

I called and suggested that we have a meeting together with the Labaton people to talk about putting in writing an understanding of the fee division in this case.

You, Mike and I have discussed the State Street fee division and have focused on the existing verbal understanding that was reached on November 9, 2010, with Chris Keller. We agreed that among the three firms we will each have a 20% interest in the fee with the balance to be divided later. Of course, we also have to factor in the 9% that ERISA counsel get pursuant to written agreement and a provision for Arkansas local counsel.

You and I have agreed that it would be equitable to divide the balance of the fee with Labaton getting 50% and each of our firms 25%. This would result in a fee division as follows:

| | | |
|----------------|------------|------------|
| Labaton | 33.0 | (20 + 13) |
| Thornton | 26.5 | (20 + 6.5) |
| Lieff Cabraser | 26.5 | (20 + 6.5) |
| ERISA | 9.0 | |
| Arkansas Local | <u>5.0</u> | |
| | 100.0% | |

If we put the above into an agreement among the three firms, that would certainly provide protection for everyone.

Bob

<image001.gif>

Robert L. Loeff
 Of Counsel
rlieff@lchb.com

t 415.956.1000
f 415.956.1008
Lief Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com

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EX. 150

From: Chiplock, Daniel P. <DCHIPLOCK@lchb.com>
Sent: Sunday, August 30, 2015 12:50 PM
To: Michael Thornton; Garrett Bradley
Cc: Lieff, Robert L.; rlieff@lieff.com; Michael Lesser
Subject: RE: State Street

Excellent and I would expect and anticipate nothing less, Mike. I just know what some of our colleagues can do when presented with an easy target in order to hold up the process, and we don't want to do that. Thanks.

-----Original Message-----

From: Michael Thornton [mailto:MThornton@tenlaw.com]
Sent: Sunday, August 30, 2015 12:45 PM
To: Chiplock, Daniel P.; Garrett Bradley
Cc: Lieff, Robert L.; rlieff@lieff.com; Michael Lesser
Subject: Re: State Street

Thank you for the tip Dan. I did say something like that on the call, but preceded it by saying it was a guess and that I would have to ask Mike Lesser for the actual figure at that point which of course is not complete as with the other firms. I appreciate your concern and I guess I can only assure you that it generally our policy to truthful and accurate hour claims.

Original Message

From: Chiplock, Daniel P.
Sent: Sunday, August 30, 2015 12:24 PM
To: Garrett Bradley
Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com
Subject: RE: State Street

No problem. It may be tomorrow since I have to go back to archives.

In the meantime, while we're on the subject of credibility, I want to point out that we need to be consistent and credible with our lodestar reporting in State Street. We are gathering final lodestar reports now, but I heard third-hand that Mike recently said on a call (that I wasn't on) that Thornton Law Firm was showing \$14 million. That number does not comport with the hours Mike Lesser told me for Thornton as of June 29 (around 12,750), which make more sense given what we know about the work that was done. I am hopeful Mike T. simply misspoke or was guessing when he said \$14 million and that we are not going to suddenly see an additional 12,000 hours mysteriously appear on Thornton Law Firm's behalf. I would expect that you would object if LCHB or Labaton tried something like that, and ERISA counsel certainly will (and tie up this process as long as possible) if they suspect anything remotely amiss on that front. Let's not make problems for ourselves that we don't need. Also recognize that your reviewers were all housed outside of your firm and their respective overhead and facilities expenses were paid for by others, which we were happy to do as a courtesy. Thanks.

-----Original Message-----

From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Sunday, August 30, 2015 10:43 AM
To: Chiplock, Daniel P.
Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com
Subject: Re: State Street

That would be helpful thank you.

Garrett

> On Aug 30, 2015, at 10:30 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:

>

> I don't look past that point, Garrett. But you need to also recognize that you are only in the BNYM class case because of us.

>

> I guess I'll gather the emails etc concerning the assignments that were given to your firm. As if that's going to change your position.

>

> Sent from my iPhone

>

> On Aug 30, 2015, at 10:19 AM, Garrett Bradley <GBradley@tenlaw.com<mailto:GBradley@tenlaw.com>> wrote:

>

> Dan,

>

> Thanks for the email. I think we will have to agree to disagree as you keep looking past the fact that but for Mike Thornton you would not be in the state street case just like Labaton is not in BONY.

>

> Can you clarify what you mean by we did not "get the work done" as you indicated. That has never been specified and really should be to be deemed credible. Thanks.

>

> Garrett

>

> On Aug 30, 2015, at 9:04 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:

>

> Garrett,

>

> Thanks for your email and I actually think it's useful so that Mike and Bob can participate in this.

>

> This idea of "protection" in BNYM is where I think we keep talking past each other. The bottom line is that LCHB is the least protected of all in that case. This is the fact that has kept me up at night for 2.5 years while we've continued pouring lodestar into that case (because we had to). We invested the most in order to try to get a class certified there and to sufficiently man 110 depositions, defend counterclaims, etc., but if Judge Kaplan takes a negative view of the value of document review/analysis (our arguments to the contrary notwithstanding), then LCHB will get hit the hardest. You are totally shielded from this because you didn't invest in document review. In other words, LCHB has a real risk of actually losing money in BNYM. You have virtually no risk of that. If Thornton is not treated "fairly" in BNYM by the Court it will be because nobody (least of all LCHB) was treated "fairly." It's not clear to me what it is you expect in that circumstance.

>

> The \$10 million in State Street that you mention below also does not make up for LCHB's investment in that case. And we've certainly contributed our share to the result in State Street, having litigated BNYM (thus substantially increasing the value of State Street) and developed the ch. 93A theory (the most readily certifiable claim in State Street, and by far the most valuable).

>

> Dan

>

> From: Garrett Bradley [mailto:GBradley@tenlaw.com]

> Sent: Friday, August 28, 2015 3:01 PM

> To: Chiplock, Daniel P.
> Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com<mailto:rlieff@lieff.com>
> Subject: Re: State Street
>
> Dan,
>
> I tried to call you but you are out. I think these things are best discussed rather than emailed so please call my cell when you can 6174134892 as I do not have yours.
>
> However a few points. I do not dismiss your efforts in Mellon but your guaranteed percentage was established years prior to a Mellon result. What I am pointing out is the inequities of our different positions. In Mellon, when we had created that case by developing the fx case all that we got was some work that resulted in \$1.5 million in time. Also please elaborate on your statement that "the work was not getting done".
>
> Now contrast that to state street where you had no client and no concept (and Mellon was years from setting) and Mike Thornton demands that you get a floor of 20% which is probably worth about \$10 million.
>
> You must agree you are in a much better position in state street than we are in Mellon. As I have said to Bob, we are only looking for a fair outcome in these matters. I think you would agree we have protected you better in state street than we are protected in Mellon. Once we have an idea of what our Mellon number looks like then we can discuss how to approach the balance of the 40% with Labaton .
>
> Garrett
>
> On Aug 28, 2015, at 2:34 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
> Garrett,
>
> I know you didn't really mean to diminish LCHB's role in creating the result in BNY Mellon, at extraordinary risk to itself, which in turn doubled the value of State Street. You need to know that we advocated for you guys too, getting you a role in the BNYM class case (and pushing back against several co-counsel in the process) when you weren't actually owed one. I also gave your firm more assignments than others at the outset in BNYM, until it became clear that the work simply wasn't getting done. In other words, we've each tried to look out for the other in the past. This has been far from a one-way street.
>
> As you know, Judge Kaplan controls everyone's fate in BNYM and LCHB has the most risk before him, having invested the most. We asked for a multiplier for your firm that is much larger than anyone else's, and I really, truly hope that he grants that request.
>
> Thanks,
>
> Dan
>
> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
> Sent: Friday, August 28, 2015 2:18 PM
> To: Lieff, Robert L.
> Cc: Michael Thornton; Chiplock, Daniel P.; rlieff@lieff.com<mailto:rlieff@lieff.com>
> Subject: Re: State Street
>
> Bob,
> I am driving but took a quick look at your email and pulled over to type this. I think you are misunderstood. I have not agreed that it would be equitable to split the balance of the forty percent the way you described below. What I have said is that may be a fair approach depending on the outcome of our fee in the Mellon matter. If we are treated fairly

there, then we will do all we can to treat you fairly in the state street matter. As I have said before, because of Mike Thornton's advocacy, you are guaranteed at least 20% of the State Street case in which you have no client and did not develop the concept. Yet, we have no corresponding protection in the Mellon matter. Happy to discuss further at any time.

>

> Garrett

>

> On Aug 28, 2015, at 2:05 PM, Lieff, Robert L. <RLIEFF@lchb.com<mailto:RLIEFF@lchb.com>> wrote:

> Garrett,

>

> I called and suggested that we have a meeting together with the Labaton people to talk about putting in writing an understanding of the fee division in this case.

>

> You, Mike and I have discussed the State Street fee division and have focused on the existing verbal understanding that was reached on November 9, 2010, with Chris Keller. We agreed that among the three firms we will each have a 20% interest in the fee with the balance to be divided later. Of course, we also have to factor in the 9% that ERISA counsel get pursuant to written agreement and a provision for Arkansas local counsel.

>

> You and I have agreed that it would be equitable to divide the balance of the fee with Labaton getting 50% and each of our firms 25%. This would result in a fee division as follows:

>

> Labaton 33.0 (20 + 13)

> Thornton 26.5 (20 + 6.5)

> Lieff Cabraser 26.5 (20 + 6.5)

> ERISA 9.0

> Arkansas Local 5.0

> 100.0%

>

> If we put the above into an agreement among the three firms, that would certainly provide protection for everyone.

>

> Bob

>

> <image001.gif>

>

> Robert L. Lieff

> Of Counsel

> rlieff@lchb.com<mailto:rlieff@lchb.com>

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EX. 151

From: Chiplock, Daniel P. <DCHIPLOCK@lchb.com>
Sent: Friday, August 28, 2015 3:02 PM
To: 'Sucharow, Lawrence'
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

If the Arkansas and ERISA fees didn't come off the top, I guess the split would look like this:

&
Labaton - 20%
LCHB - 20%
Thornton - 20%
ERISA - 9%
Arkansas - 5%
Labaton/LCHB/Thornton - 26%

&
&
If the Arkansas and ERISA fees do come off the top, I guess the split looks like this:

&
ERISA - 9%
Arkansas - 5%
Labaton - 17.2%
LCHB - 17.2%
Thornton - 17.2%
Labaton/LCHB/Thornton - 34.4%

&
&
I'm not the math wizard, so please correct me if anyone comes up with different figures.

&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 3:27 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

&
Just my own thinking on this but I think the deal with them would be that their percentage does come off the top (although what the top is another question). I can't imagine how else it would be calculated since all the other fees are two customer counsel.

Sent from my iPhone

On Aug 28, 2015, at 2:11 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:

Actually one wrinkle I'm not sure about is how ERISA and local Arkansas counsel fits in - I had thought that their payments would not come off the top and therefore would not result in a reduction of each customer firm's 20% - do you know what I mean?& You may be saying something different from that below, which may be why it'd be useful to iron it out.

&

From: Sucharow, Lawrence [<mailto:LSucharow@labaton.com>]
Sent: Friday, August 28, 2015 1:59 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&

Dan sorry for that last email that I didn't spellcheck.&
Basically what I'm trying to say is I understand the basic agreement to be that after payment of all other counsel, our three firms shall each receive 20%, with the distribution of the balance of 40% to be determined later.

&

If that is the agreement you are referring to, I can confirm it. Let me know.&
Larry

Sent from my iPhone

On Aug 28, 2015, at 1:39 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com>wrote:

Mike, Garrett – Hope you're well – please see below.& If we can figure this out early next week that may help speed the process.

Thanks,

&

Dan

&

From: Chiplock, Daniel P.
Sent: Friday, August 28, 2015 1:33 PM
To: 'Sucharow, Lawrence'
Cc: Zeiss, Nicole; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&

The purpose of my email was just to get your reaction, Larry, since these are your drafts.& Thank you for responding quickly, and for giving me your reaction.& I would love to include them so we can move forward promptly.& I'll re-send.&

&

From: Sucharow, Lawrence [<mailto:LSucharow@labaton.com>]
Sent: Friday, August 28, 2015 1:28 PM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&

I don't know why you left the Thornton firm off this email since they are party to any understanding we have and are therefore he sensual to any memorialization of that understanding. & If you more willing to resend your email and include them,we can see if there is any disagreement as to what our understanding is/was.

Larry

Sent from my iPhone

On Aug 28, 2015, at 1:10 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com>wrote:

Larry and Nicole:

&

Attached are my redlines to the preliminary approval order and final judgment. These edits are consistent with the Court's January 2012 order concerning leadership structure.

&

I'm emailing just you (and copying Bob) so as to try not to make a big thing over this, but I do think it's appropriate to memorialize what the fee allocation amongst customer class counsel is going to be (consistent with the understanding that the firms have been operating under for a couple years now) before we proceed much further. I think we'd be willing to support Lead Counsel having final authority over fee and expense allocations, etc., for purposes of the settlement stip, and thus present a united front against a perpetual troublemaker like McTigue—which should be in everyone's interest—provided we had some basic written comfort ourselves. I don't think it's too early for that, given the interest in seeing the funds come in this year.

&

Thanks,

Dan

&

From: Zeiss, Nicole [<mailto:NZeiss@labaton.com>]

Sent: Friday, August 28, 2015 9:53 AM

To: Chiplock, Daniel P.

Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

&

Thank you!

&

&

&

&

&

&

&

&<image001.jpg>

Nicole M. Zeiss | Partner

140 Broadway, New York, New York 10005

T: (212) 907-0867 | F: (212) 883-7067

E: nzeiss@labaton.com | W: www.labaton.com

&

&<image002.gif> &<image003.gif> &<image004.gif>

&

From: Chiplock, Daniel P. [<mailto:DCHIPLOCK@lchb.com>]

Sent: Friday, August 28, 2015 9:29 AM

To: Sucharow, Lawrence

Cc: Zeiss, Nicole; Lynn Sarko; 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

&

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; 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>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'; 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&>

Nicole M. Zeiss | Partner

140 Broadway, New York, New York 10005

T: (212) 907-0867 | & F: (212) 883-7067

E: nzeiss@labaton.com | & W: www.labaton.com

&
&<image002.jpg>& &<image003.jpg>& &<image004
.jpg>

&

From: Zeiss, Nicole

Sent: Wednesday, August 26, 2015 5:09 PM

To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; '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>

Nicole M. Zeiss | Partner

140 Broadway, New York, New York 10005

T: (212) 907-0867 |& F: (212) 883-7067

E: nzeiss@labaton.com& |& W: www.labaton.com

&

&<image006.jpg>& &<image007.jpg>& &<image008
.jpg>

&

From: Sucharow, Lawrence

Sent: Wednesday, August 26, 2015 4:34 PM

To: Lynn Sarko; Goldsmith, David; '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'; 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

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From: Sucharow, Lawrence

[<mailto:LSucharow@labaton.com>]

Sent: Wednesday, August 26, 2015 1:25 PM

To: Lynn Sarko &<lsarko@kellerrohrback.com>; Goldsmith, David &<dgoldsmith@labaton.com>; 'rlieff@lieff.com' &<rlieff@lieff.com>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com>; Michael Thornton &<MThornton@tenlaw.com>; Garrett J. Bradley &<gbradley@tenlaw.com>; Michael Lesser &<MLesser@tenlaw.com>; 'Evan Hoffman' &<EHoffman@tenlaw.com>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com>; 'Brian McTigue' &<bmctigue@mctiguelaw.com>

Cc: Zeiss, Nicole &<NZeiss@labaton.com>; Rogers, Michael H. &<MRogers@labaton.com>

Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

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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?

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Sent: Wednesday, August 26, 2015 3:42 PM

To: Goldsmith, David; '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

&

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Seattle, WA 98101

Phone: (206) 623-1900

Fax: (206) 623-3384

E-mail: lsarko@kellerrohrback.com

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From: Goldsmith, David

[\[mailto:dgoldsmith@labaton.com\]](mailto:dgoldsmith@labaton.com)

Sent: Wednesday, August 19, 2015 2:59 PM

To: 'rlieff@lieff.com' &<rlieff@lieff.com>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com>; Michael Thornton &<MThornton@tenlaw.com>; Garrett J. Bradley &<gbradley@tenlaw.com>; Michael Lesser &<MLesser@tenlaw.com>; 'Evan Hoffman' &<EHoffman@tenlaw.com>; Lynn Sarko &<lsarko@KellerRohrback.com>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com>; 'Brian McTigue' &<bmctigue@mctiguelaw.com>

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Subject: SST--Proposed Revision to Term Sheet for DOL Deal

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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.

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&<image005.jpg&>

David J. Goldsmith | Partner

140 Broadway, New York, New York 10005

T: (212) 907-0879 | F: (212) 883-7079

E: dgoldsmith@labaton.com | & W: www.labaton.com

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EX. 152

Message

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: 8/28/2015 8:04:28 PM
To: Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]
CC: Sucharow, Lawrence [LSucharow@labaton.com]; Michael Thornton [MThornton@tenlaw.com]; Lieff, Robert L. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RLIEFF]
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

The Arkansas fee is still being negotiated but we hope to have it down to 5%.

Garrett

On Aug 28, 2015, at 4:02 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:

If the Arkansas and ERISA fees didn't come off the top, I guess the split would look like this:

Labaton - 20%
LCHB - 20%
Thornton - 20%
ERISA - 9%
Arkansas - 5%
Labaton/LCHB/Thornton - 26%

If the Arkansas and ERISA fees do come off the top, I guess the split looks like this:

ERISA - 9%
Arkansas - 5%
Labaton - 17.2%
LCHB - 17.2%
Thornton - 17.2%
Labaton/LCHB/Thornton - 34.4%

I'm not the math wizard, so please correct me if anyone comes up with different figures.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 3:27 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Just my own thinking on this but I think the deal with them would be that their percentage does come off the top (although what the top is is another question). I can't imagine how else it would be calculated since all the other fees are two customer counsel.

Sent from my iPhone

On Aug 28, 2015, at 2:11 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:

Actually one wrinkle I'm not sure about is how ERISA and local Arkansas counsel fits in – I had thought that their payments would not come off the top and therefore would not result in a reduction of each customer firm's 20% - do you know what I mean? You may be saying something different from that below, which may be why it'd be useful to iron it out.

From: Sucharow, Lawrence [<mailto:LSucharow@labaton.com>]
Sent: Friday, August 28, 2015 1:59 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Dan sorry for that last email that I didn't spellcheck.

Basically what I'm trying to say is I understand the basic agreement to be that after payment of all other counsel, our three firms shall each receive 20%, with the distribution of the balance of 40% to be determined later.

If that is the agreement you are referring to, I can confirm it. Let me know.

Larry

Sent from my iPhone

On Aug 28, 2015, at 1:39 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:

Mike, Garrett – Hope you're well – please see below. If we can figure this out early next week that may help speed the process.

Thanks,

Dan

From: Chiplock, Daniel P.
Sent: Friday, August 28, 2015 1:33 PM
To: 'Sucharow, Lawrence'
Cc: Zeiss, Nicole; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

The purpose of my email was just to get your reaction, Larry, since these are your drafts. Thank you for responding quickly, and for giving me your reaction. I would love to include them so we can move forward promptly. I'll re-send.

From: Sucharow, Lawrence [<mailto:LSucharow@labaton.com>]
Sent: Friday, August 28, 2015 1:28 PM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I don't know why you left the Thornton firm off this email since they are party to any understanding we have and are therefore he sensual to any memorialization of that understanding. If you more willing to resend your email and include them,we can see if there is any disagreement as to what our understanding is/was.

Larry

Sent from my iPhone

On Aug 28, 2015, at 1:10 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:
Larry and Nicole:

Attached are my redlines to the preliminary approval order and final judgment. These edits are consistent with the Court's January 2012 order concerning leadership structure.

I'm emailing just you (and copying Bob) so as to try not to make a big thing over this, but I do think it's appropriate to memorialize what the fee allocation amongst customer class counsel is going to be (consistent with the understanding that the firms have been operating under for a couple years now) before we proceed much further. I think we'd be willing to support Lead Counsel having final authority over fee and expense allocations, etc., for purposes of the settlement stip, and thus present a united front against a perpetual troublemaker like McTigue—which should be in everyone's interest—provided we had some basic written comfort ourselves. I don't think it's too early for that, given the interest in seeing the funds come in this year.

Thanks,
Dan

From: Zeiss, Nicole [<mailto:NZeiss@labaton.com>]
Sent: Friday, August 28, 2015 9:53 AM
To: Chiplock, Daniel P.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Thank you!

<image001.jpg>

Nicole M. Zeiss | Partner

140 Broadway, New York, New York 10005

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E: nzeiss@labaton.com | W: www.labaton.com

<image002.gif> <image003.gif> <image004.gif>

From: Chiplock, Daniel P. [<mailto:DCHIPLOCK@lchb.com>]

Sent: Friday, August 28, 2015 9:29 AM

To: Sucharow, Lawrence

Cc: Zeiss, Nicole; Lynn Sarko; 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

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; 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> 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'; 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>

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<image002.jpg> <image003.jpg> <image004.jpg>

From: Zeiss, Nicole

Sent: Wednesday, August 26, 2015 5:09 PM

To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; '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>

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<image006.jpg> <image007.jpg> <image008.jpg>

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Cc: Zeiss, Nicole; Rogers, Michael H.

Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

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Sent: Wednesday, August 26, 2015 4:26 PM

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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

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David

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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

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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.

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EX. 153

Message

From: Lieff, Robert L. [RLIEFF@lchb.com]
Sent: 8/28/2015 7:34:19 PM
To: Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]
CC: rlieff@lieff.com
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

1.4% of \$70 Million (if we're lucky) or \$1Million. That assumes 34.4% (also if we're lucky).

From: Chiplock, Daniel P.
Sent: Friday, August 28, 2015 11:52 AM
To: Lieff, Robert L.
Cc: 'rlieff@lieff.com'
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Yes, it seems to result in our respective fees being a couple million dollars lower. Oh well.

From: Lieff, Robert L.
Sent: Friday, August 28, 2015 2:40 PM
To: Chiplock, Daniel P.
Cc: 'rlieff@lieff.com'; Lieff, Robert L.
Subject: FW: SST--Proposed Revision to Term Sheet for DOL Deal

Dan - If you take ERISA and Arkansas local off the top, you end up with the following:

| | | |
|----------------|------|-------|
| Labaton | 34.4 | |
| Thornton | 25.8 | |
| Lieff Cabraser | 25.8 | |
| ERISA | | 9.0 |
| Arkansas Local | 5.0 | |
| | | 100.0 |

This is still predicated on dividing the remaining 25/25. Labaton and Thornton have not agreed to that as you can see from Garrett's email of 2:17pm EDT.

Bob

From: Chiplock, Daniel P.
Sent: Friday, August 28, 2015 11:12 AM
To: 'Sucharow, Lawrence'
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Actually one wrinkle I'm not sure about is how ERISA and local Arkansas counsel fits in - I had thought that their payments would not come off the top and therefore would not result in a reduction of each customer firm's 20% - do you know what I mean? You may be saying something different from that below, which may be why it'd be useful to iron it out.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:59 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Dan sorry for that last email that I didn't spellcheck. Basically what I'm trying to say is I understand the basic agreement to be that after payment of all other counsel, our three firms shall each receive 20%, with the distribution of the balance of 40% to be determined later.

If that is the agreement you are referring to, I can confirm it. Let me know.
Larry

Sent from my iPhone

On Aug 28, 2015, at 1:39 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:

Mike, Garrett - Hope you're well - please see below. If we can figure this out early next week that may help speed the process.

Thanks,

Dan

From: Chiplock, Daniel P.
Sent: Friday, August 28, 2015 1:33 PM
To: 'Sucharow, Lawrence'
Cc: Zeiss, Nicole; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

The purpose of my email was just to get your reaction, Larry, since these are your drafts. Thank you for responding quickly, and for giving me your reaction. I would love to include them so we can move forward promptly. I'll re-send.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:28 PM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I don't know why you left the Thornton firm off this email since they are party to any understanding we have and are therefore essential to any memorialization of that understanding. If you more willing to resend your email and include them, we can see if there is any disagreement as to what our understanding is/was.

Larry

Sent from my iPhone

On Aug 28, 2015, at 1:10 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote: Larry and Nicole:

Attached are my redlines to the preliminary approval order and final judgment. These edits are consistent with the Court's January 2012 order concerning leadership structure.

I'm emailing just you (and copying Bob) so as to try not to make a big thing over this, but I do think it's appropriate to memorialize what the fee allocation amongst customer class counsel is going to be (consistent with the understanding that the firms have been operating under for a couple years now) before we proceed much further. I think we'd be willing to support Lead Counsel having final authority over fee and expense allocations, etc., for purposes of the settlement stip, and thus present a united front against a perpetual troublemaker like McTigue—which should be in everyone's interest—provided we had some basic written comfort ourselves. I don't think it's too early for that, given the interest in seeing the funds come in this year.

Thanks,
Dan

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Friday, August 28, 2015 9:53 AM
To: Chiplock, Daniel P.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Thank you!

<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/>

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<image003.gif><https://twitter.com/LabatonSucharow>
<image004.gif><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Friday, August 28, 2015 9:29 AM
To: Sucharow, Lawrence
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

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/>

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<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

From: Goldsmith, David [<mailto:dgoldsmith@labaton.com>]

Sent: Wednesday, August 19, 2015 2:59 PM

To: 'rlieff@lieff.com' <rlieff@lieff.com>; Daniel P. Chiplock <DCHIPLOCK@lchb.com>; Michael Thornton <MThornton@tenlaw.com>; Garrett J. Bradley <gbradley@tenlaw.com>; Michael Lesser <MLesser@tenlaw.com>; 'Evan Hoffman' <EHoffman@tenlaw.com>; Lynn Sarko <lsarko@kellerrohrback.com>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com>; 'Brian McTigue' <bmctigue@mcctiguelaw.com>

Cc: Sucharow, Lawrence <LSucharow@labaton.com>; Zeiss, Nicole <NZeiss@labaton.com>; Rogers, Michael H. <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.

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