EX. 154

Message

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: 8/30/2015 2:48:28 PM
To: Lieff, Robert L. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RLIEFF]
CC: Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]; lsucharow@labaton.com; Michael Thornton [MThornton@tenlaw.com]; rlieff@lieff.com
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Bob I resent it to you awhile ago. It is the agreement that whatever the obligation is to the Arkansas firm it is off the top. Everyone agreed several years ago. I'll send it when I am at the office. Your assent is in the email string.

Garrett

> On Aug 30, 2015, at 10:25 AM, Lieff, Robert L. <RLIEFF@lchb.com> wrote:
>
> I don't have the agreement and have not seen it . I don't necessarily disagree but it is part of the overall dynamic that we will have to deal with at the appropriate time.
> _____
> From: Garrett Bradley [GBradley@tenlaw.com]
> Sent: Sunday, August 30, 2015 7:16 AM
> To: Chiplock, Daniel P.
> Cc: Lieff, Robert L.; lsucharow@labaton.com; Michael Thornton
> Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Dan I can't until I get back to the office as I can't access the archived files on my phone. However Bob has it.
>
> Garrett
>
> On Aug 30, 2015, at 8:49 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
>
> Garrett – Can you send me this written agreement? Thanks a lot.
>
> Dan
>
> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
> Sent: Friday, August 28, 2015 2:22 PM
> To: Chiplock, Daniel P.
> Cc: Sucharow, Lawrence; Michael Thornton; Lieff, Robert L.
> Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Dan,
> There is a written agreement between all the parties that the Arkansas component would come off the top. As for the ERISA piece, I see no other way than to have that come out as well. So yes, everyone's 20% would be out of the net after Arkansas and after ERISA. That is our understanding, and from my conversations with Bob Lieff, that is his understanding as well as Larry's.
>
> Garrett
>
> On Aug 28, 2015, at 2:11 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto: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<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 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<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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<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
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<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
>
>
>
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>
>
> <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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<image007.jpg><https://twitter.com/LabatonSucharow>
<image008.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
> From: Sucharow, Lawrence
> Sent: Wednesday, August 26, 2015 4:34 PM
> To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Then we can probably forget my proposed changes.
>
> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
> Sent: Wednesday, August 26, 2015 4:26 PM
> To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Sure. If it works for them – its fine with me
>
> Lynn Lincoln Sarko
> Managing Partner
>
> Keller Rohrback L.L.P.
> 1201 Third Avenue, Suite 3200
> Seattle, WA 98101
>
> Phone: (206) 623-1900
> Fax: (206) 623-3384
> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>
> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> Sent: Wednesday, August 26, 2015 1:25 PM
> To: Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>; 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
> Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Can we leave para 8(n) the general way it is and protect the DOL through the express provision of para 12 limiting fees charged to ERISA allocation to $10.9 million?
>
> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
> Sent: Wednesday, August 26, 2015 3:42 PM

> To: Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> David
> Thanks for sending this. Sorry, I had misunderstood what you were saying on our call earlier today.
>
> Two things:
>
> 1. I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
> 2. On paragraph 8(n)- the problem is the word "fees"—since the DOL has given us a hard number for ERISA fees—that won't be going up or down. So—question—can we get rid of the word "fees" in this paragraph—does it still work?
>
> What do you think??
>
> Lynn
>
> Lynn Lincoln Sarko
> Managing Partner
>
> Keller Rohrback L.L.P.
> 1201 Third Avenue, Suite 3200
> Seattle, WA 98101
>
> Phone: (206) 623-1900
> Fax: (206) 623-3384
> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>
> From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
> Sent: Wednesday, August 19, 2015 2:59 PM
> To: 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
> Cc: Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>; Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
> Subject: SST--Proposed Revision to Term Sheet for DOL Deal
>
> All: The below reflects our proposed revisions to the Term Sheet (in red boldface) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet). Please comment. Thanks.
>
>
> 8(n). Plan of Allocation. . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court. However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.
>
> 12. Plaintiffs' Counsel's Attorneys' Fees and Expenses. Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of the Settlement or the fee and expense award. Plaintiffs' Counsel shall may apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above. In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within

fourteen (14) business days. The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees. Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.
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> <image005.jpg><http://www.labaton.com/>
> David J. Goldsmith | Partner
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www.labaton.com<http://www.labaton.com/>
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> <LCHB_iManage_1271399_1.DOC>
> <LCHB_iManage_1271400_1.DOCX>
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EX. 155

Message

From: Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]
Sent: 6/14/2016 3:42:09 PM
To: Lieff, Robert L. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RLIEFF]
Subject: FW: State street fee regarding local counsel

Bob – See below. I don't know how you get around this…

From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Sunday, August 30, 2015 10:58 AM
To: Lieff, Robert L.; Chiplock, Daniel P.; Michael Thornton
Subject: Fwd: State street fee regarding local counsel

I found it in my sent email.

Garrett

Begin forwarded message:

From: <GBradley@tenlaw.com>
Date: July 28, 2015 at 5:55:24 PM EDT
To: "Robert L. Lieff" <RLIEFF@lchb.com>
Subject: Fwd: State street fee regarding local counsel

Here is the email we discussed tonight.

Garrett

Begin forwarded message:

From: "Robert L. Lieff" <RLIEFF@lchb.com>
Date: April 24, 2013 at 9:17:49 PM EDT
To: "Garrett J. Bradley" <gbradley@tenlaw.com>, "Robert L. Lieff" <rlieff@lieff.com>, Michael Thornton <MThornton@tenlaw.com>, "Belfi, Eric J." <EBelfi@labaton.com>
Cc: Damon Chargois Esq. <damon@cmhllp.com>, "Keller, Christopher J." <ckeller@labaton.com>, "Daniel P. Chiplock" <DCHIPLOCK@lchb.com>
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 spilt 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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EX. 156

Message

From: Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]
Sent: 6/14/2016 3:48:34 PM
To: Lieff, Robert L. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RLIEFF]
Subject: FW: State street fee regarding local counsel

I had to go through archives to find this, but I guess Garrett sent me this email back in April 2013 as well. I had no memory of it. In any event, it's useful because it confirms the 20-20-20 arrangement going back more than 3 years ago. But I have to admit being confused as to how the local counsel's fee gets calculated. I think what he is saying is that the local counsel's fee will be the equivalent of 20% of Labaton's fee, but Labaton is sharing the responsibility for that fee with us and Thornton. The challenging part is you don't know what local counsel's fee is until Labaton's fee has been decided upon.

-----Original Message-----
From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Wednesday, April 24, 2013 9:08 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 spilt 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

EX. 157

Message

From: Bradley, Garrett J. [GBradley@labaton.com]
Sent: 7/8/2016 9:36:54 PM
To: Keller, Christopher J. [ckeller@labaton.com]
Subject: Re: State street fee.

Thanks

Garrett

On Jul 8, 2016, at 5:31 PM, Keller, Christopher J. <ckeller@labaton.com> wrote:
great work getting this done.

Christopher Keller
Partner || Labaton Sucharow LLP
140 Broadway
New York, NY 10005
212-907-0853

Begin forwarded message:
From: "Robert L. Lieff" <RLIEFF@lchb.com>
Date: July 8, 2016 at 4:05:03 PM EDT
To: "Garrett J. Bradley" <gbradley@tenlaw.com>
Cc: Michael Thornton <MThornton@tenlaw.com>, "Sucharow, Lawrence" <LSucharow@labaton.com>, Robert Lieff <rlieff@lieff.com>, "Daniel P. Chiplock" <DCHIPLOCK@lchb.com>, "Keller, Christopher J." <ckeller@labaton.com>, "Belfi, Eric J." <EBelfi@labaton.com>, Damon Chargois Esq. <damon@cmhllp.com>
Subject: Re: State street fee.
We LCHB are in agreement with the 5.5 to Chargois. Now let's continue to resolve the split among us.

Sent from my iPhone

On Jul 8, 2016, at 9:06 PM, Garrett Bradley <GBradley@tenlaw.com> wrote:

Gentlemen,

As we discuss how to distribute the fee between ourselves, and of course the ERISA attorneys, I have had discussion with Damon Chargois, the local attorney in this matter who has played an important role. Damon and his firm are willing to accept 5.5% of the total fee awarded by the Court in the State Street class case now pending before Judge Wolf. As you know, we had a prior deal with him that his fee would be "off the top". He understands that ERISA counsel is now in the same pool of money. He has agreed to come done to this number with a guarantee that it will be off the court awarded fee number. Please reply all if you agree. Given that it is off the total number their is no need to add the ERISA counsel to this email chain.

Thank you,

Garrett Bradley

EX. 158

Message

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: 7/9/2016 2:26:31 AM
To: =SMTP:damon@cmhllp.com; Keller, Christopher J. [ckeller@labaton.com]; Belfi, Eric J. [EBelfi@labaton.com]; =SMTP:rlieff@lieff.com; Daniel P. Chiplock [DCHIPLOCK@lchb.com]; Sucharow, Lawrence [LSucharow@labaton.com]
Subject: Fwd: State street fee.

Garrett

Begin forwarded message:

From: Michael Thornton <MThornton@tenlaw.com <mailto:MThornton@tenlaw.com> >
Date: July 8, 2016 at 10:06:17 PM EDT
To: Garrett Bradley <GBradley@tenlaw.com <mailto:GBradley@tenlaw.com> >
Subject: Re: State street fee.

Sure. I agree.

Sent from my BlackBerry 10 smartphone.

From: Garrett Bradley
Sent: Friday, July 8, 2016 5:49 PM
To: Michael Thornton
Subject: Fwd: State street fee.

Mike can you reply and say you agree?

Garrett

Begin forwarded message:

From: "Lieff, Robert L." <RLIEFF@lchb.com <mailto:RLIEFF@lchb.com> >
Date: July 8, 2016 at 4:05:03 PM EDT
To: Garrett Bradley <GBradley@tenlaw.com <mailto:GBradley@tenlaw.com> >
Cc: Michael Thornton <MThornton@tenlaw.com <mailto:MThornton@tenlaw.com> >, "Lawrence A. Sucharow" <LSucharow@labaton.com <mailto:LSucharow@labaton.com> >, Robert Lieff <rlieff@lieff.com <mailto:rlieff@lieff.com> >, "Chiplock, Daniel P." <DCHIPLOCK@lchb.com <mailto:DCHIPLOCK@lchb.com> >, "Christopher J. Keller Esq." <ckeller@labaton.com <mailto:ckeller@labaton.com> >, Eric Belfi <ebelfi@labaton.com <mailto:ebelfi@labaton.com> >, Damon Chargois Esq. <damon@cmhllp.com <mailto:damon@cmhllp.com> >
Subject: Re: State street fee.

We LCHB are in agreement with the 5.5 to Chargois. Now let's continue to resolve the split among us.

Sent from my iPhone

On Jul 8, 2016, at 9:06 PM, Garrett Bradley <GBradley@tenlaw.com <mailto:GBradley@tenlaw.com> > wrote:

Gentlemen,

As we discuss how to distribute the fee between ourselves, and of course the ERISA attorneys, I have had discussion with Damon Chargois, the local attorney in this matter who has played an important role. Damon and his firm are willing to accept 5.5% of the total fee awarded by the Court in the State Street class case now pending before Judge Wolf. As you know, we had a prior deal with him that his fee would be "off the top". He understands that ERISA counsel is now in the same pool of money. He has agreed to come done to this number with a guarantee that it will be off the court awarded fee number. Please reply all if you agree. Given that it is off the total number their is no need to add the ERISA counsel to this email chain.

Thank you,

Garrett Bradley

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EX. 159

Volume: 1

Pages: 1-48

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 J. BRIAN McTIGUE

September 8, 2017, 4:30-5:27 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

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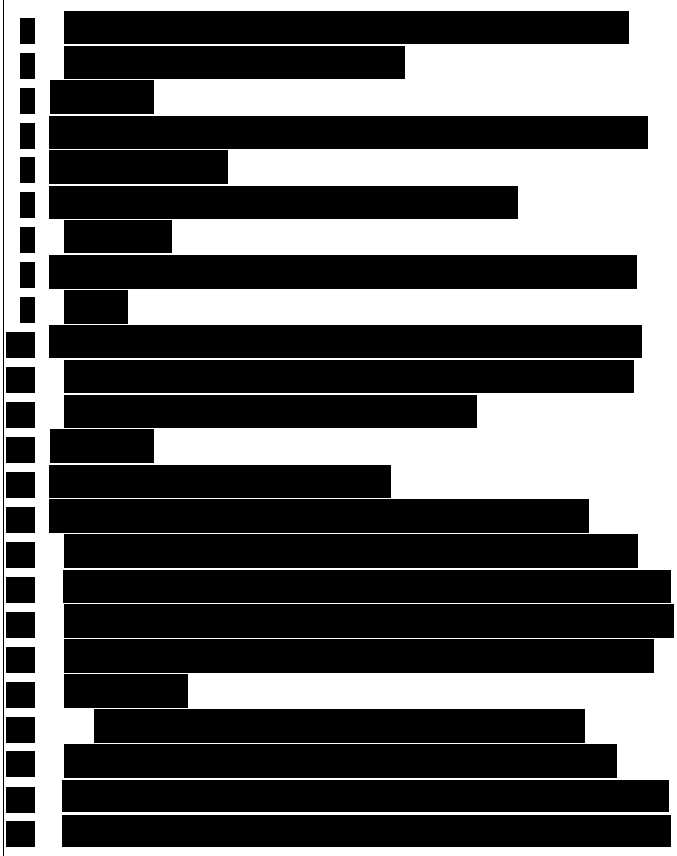

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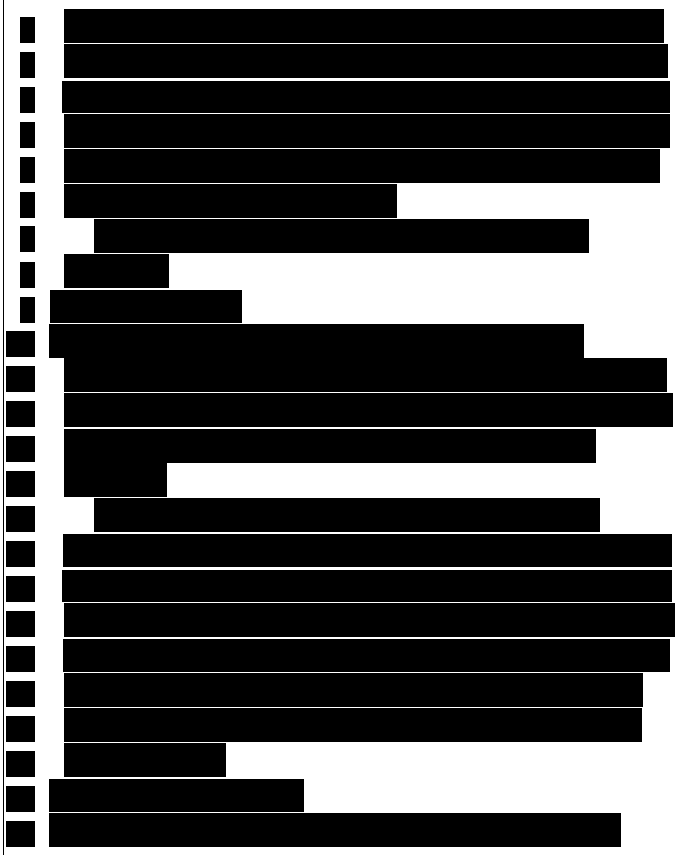

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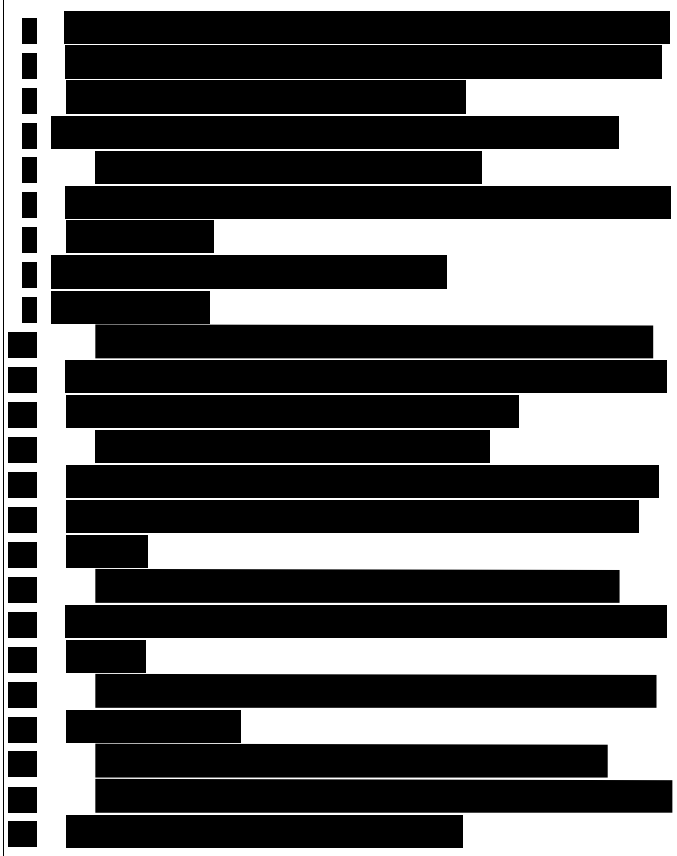

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THE WITNESS: No.
THE SPECIAL MASTER: About the fee?
THE WITNESS: No. Maybe I did. But I don't recollect it. I don't think -- the substantive discussion was the lower percentage -- I'm calling it 4. My request for a greater number. And the resultant 9 percent.
THE SPECIAL MASTER: That was with Mr. Sarko?
THE WITNESS: Yes. Well, I think I got an e-mail from an attorney at Keller Rohrback saying this is the best we can do.
BY MR. SINNOTT:
Q. At some point, Brian, did you learn about a referring attorney or an individual named Damon Chargois in connection with the State Street case?
A. Yes, I did.
Q. And when did you learn that?
A. Well, I learned it from the special master's -- first learned it in the special master's proceedings this year.
Q. All right. And what was your reaction when you heard that?
THE SPECIAL MASTER: Would that have

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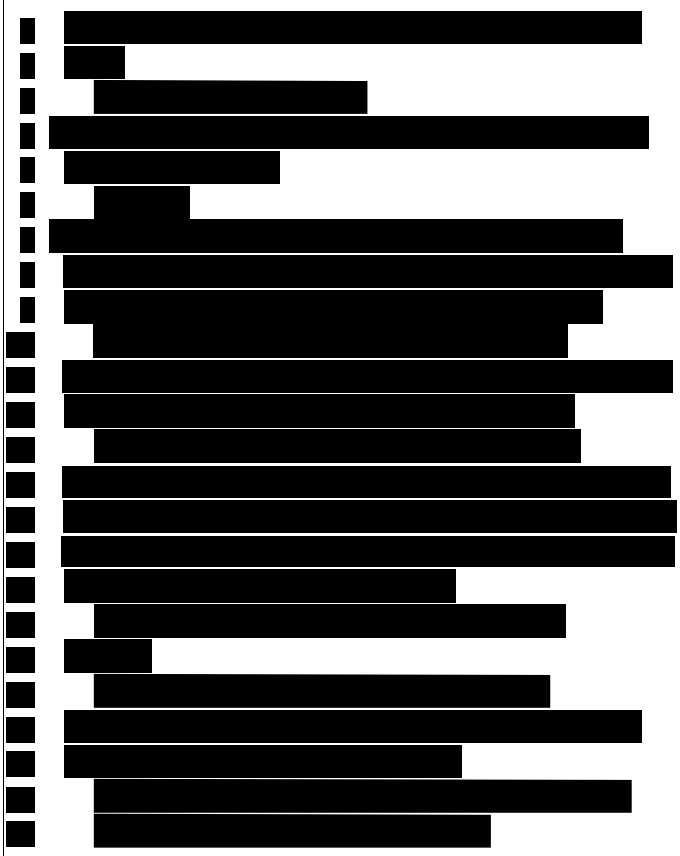

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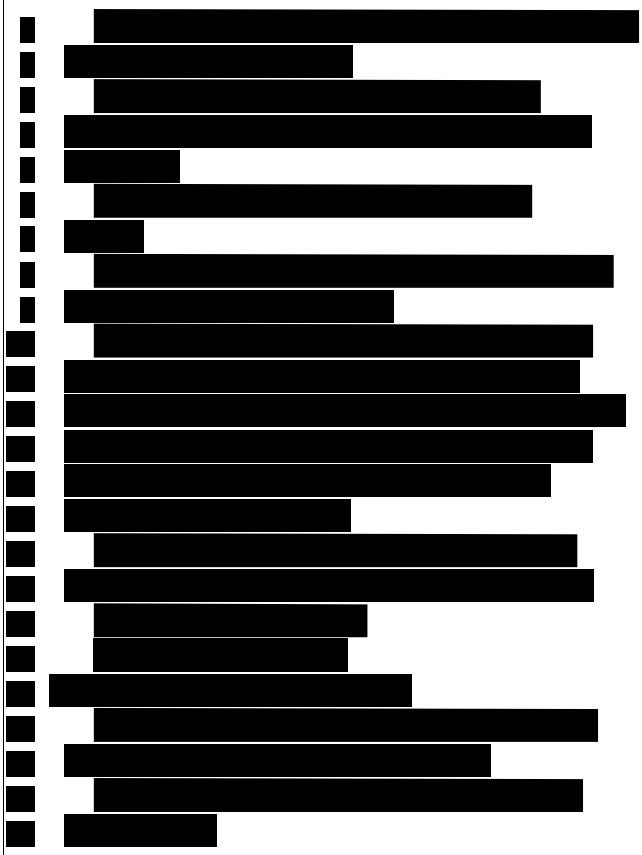

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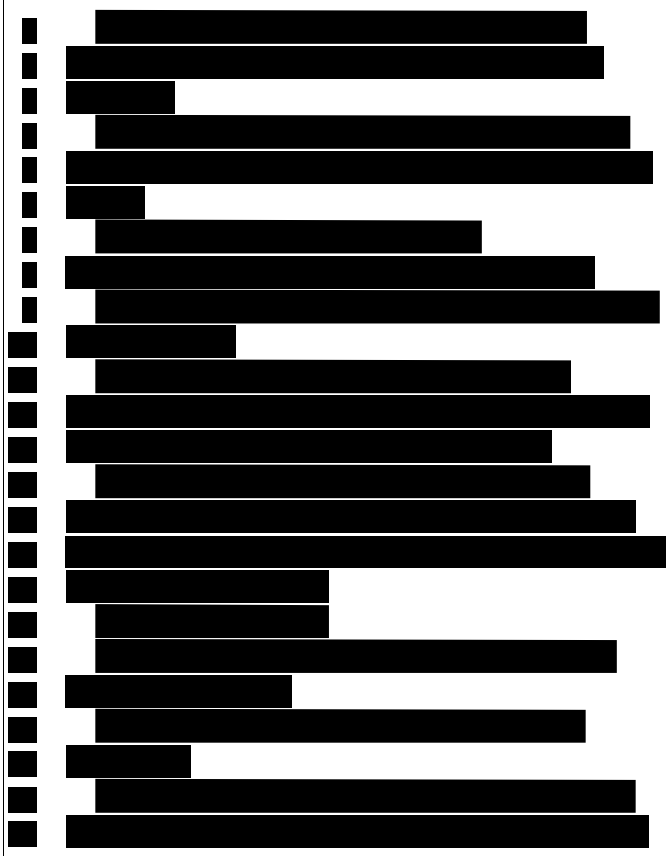

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the context of Rule 103, Federal Rule of Evidence 103?

MS. LUKEY: Well, I didn't look up the rule, but basically when there's a nonresponsive answer, I want to be able to contend that it shouldn't be used as part of the record.

THE SPECIAL MASTER: Okay. Rule 103 says objections and motions to strike have to be made at, or as near as possible, to the time of the testimony objected to or move to strike.

So that was the question I was asking, and I'll be happy to grant that.

MS. LUKEY: Thank you.

BY MR. SINNOTT:

Q. Brian, had you known of the existence of and the role of Mr. Chargois in this case, would you have done anything differently?

A. Yes.

Q. Could you explain that to us?

A. Well, with respect to the 9 percent agreement, I wouldn't have signed it if I had known that he was involved and would be receiving 5 percent or 4 million dollars of the attorneys' fees to be awarded.

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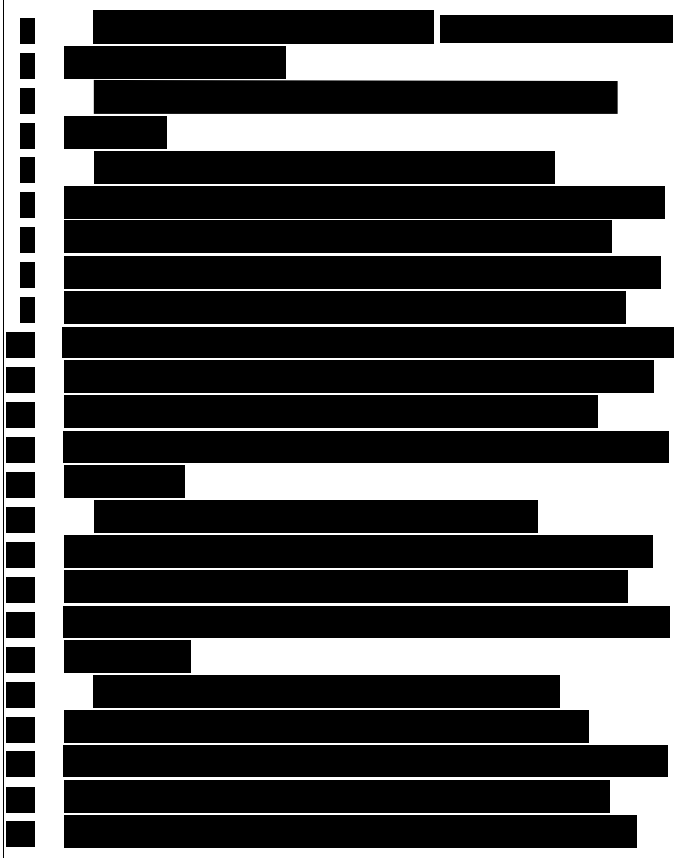

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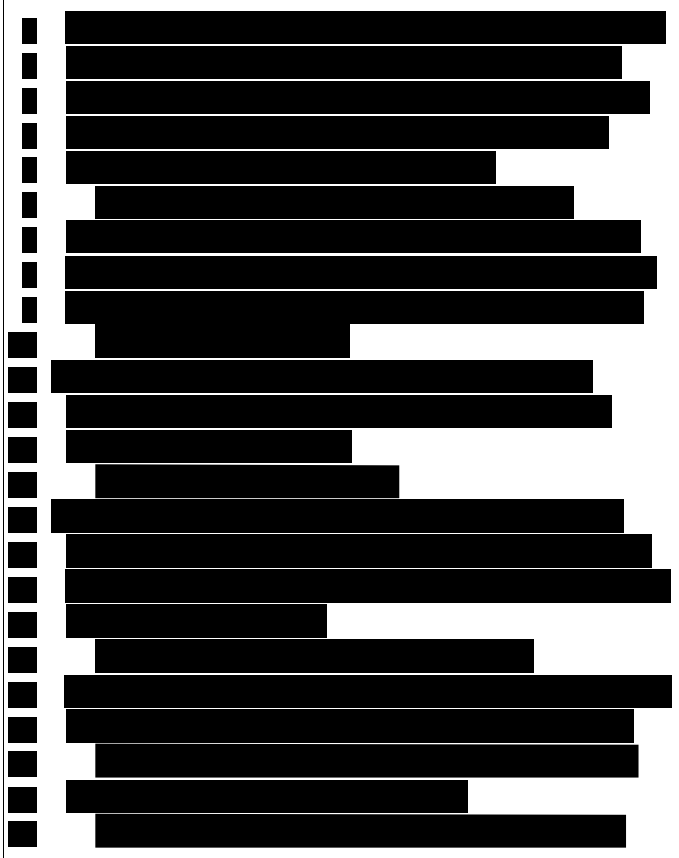

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behalf of their plans.
THE SPECIAL MASTER: Do you believe you would have had to have disclosed that to your client; that Chargois --
THE WITNESS: Yes, I do.
THE SPECIAL MASTER: -- arrangement?
BY MR. SINNOTT:
Q. Do you believe that settlement negotiations were affected by the presence, albeit without your knowledge, of Mr. Chargois in the case?
A. I don't know. I don't know. Because I -- I didn't -- I didn't know him during that period of time.
So those people who knew of him, you know, it did or did not factor into their posture, but I didn't know of him so it couldn't factor into my posture.
THE SPECIAL MASTER: Would it have affected your agreement to accept 9 or 10 percent if you had known that Mr. Chargois was getting 5.5 percent?
THE WITNESS: Yes, but because it would give me some leverage to get more information.
It was one of the few points of leverage

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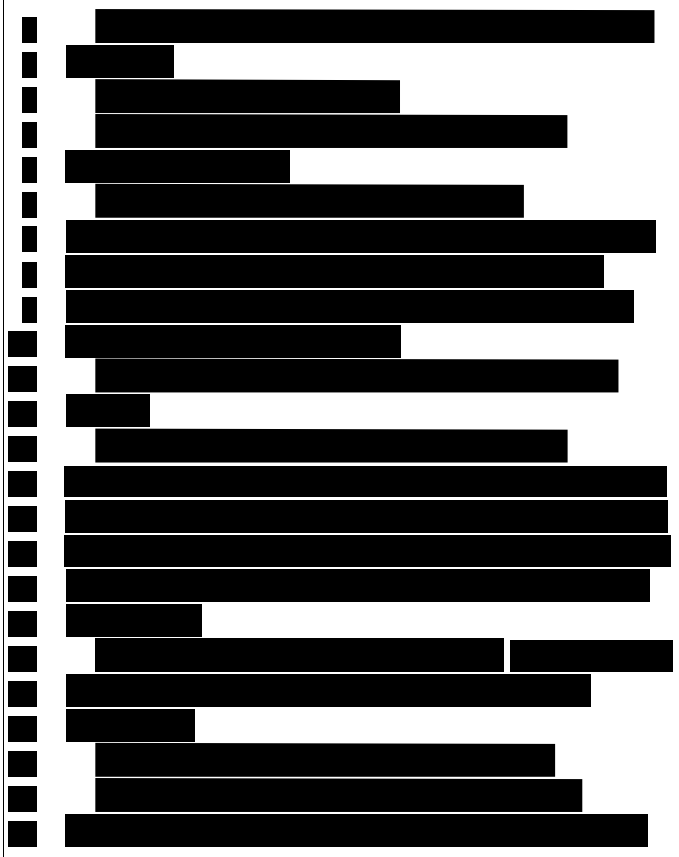

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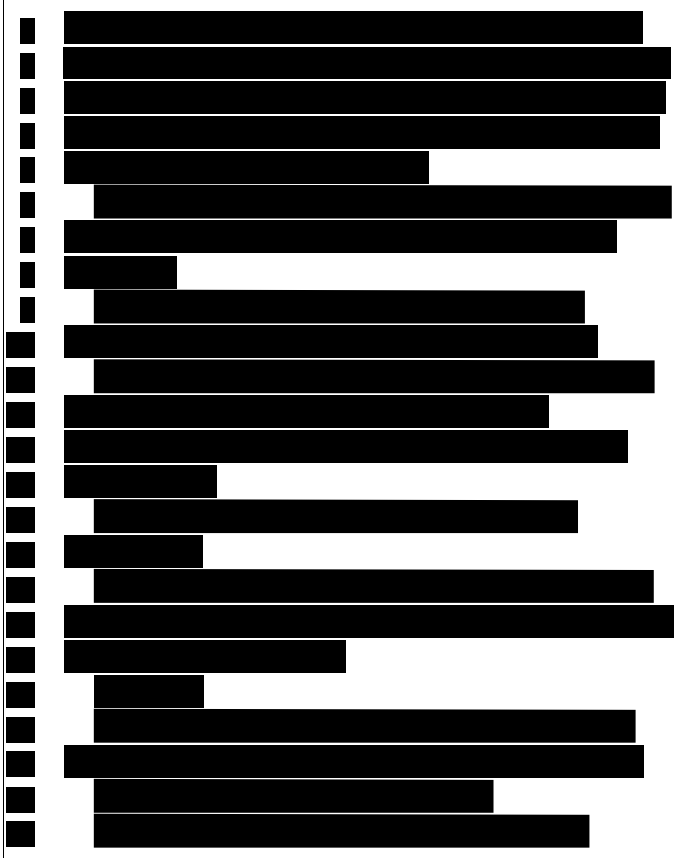

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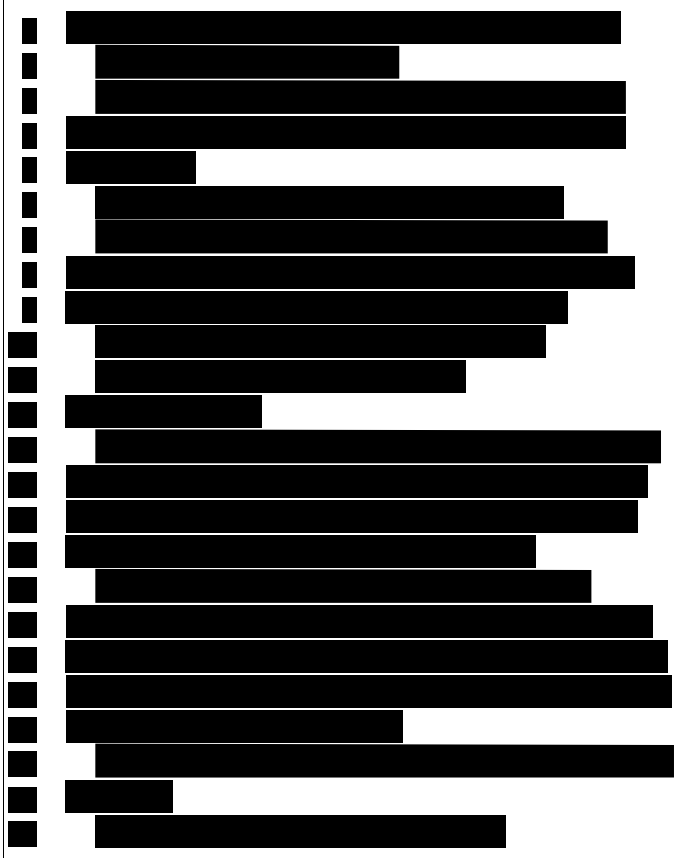

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information -- did you believe you had complete information sufficient to make a determination as to whether the 9 percent in the agreement was a fair allocation?

THE WITNESS: No.

(Pause.)

THE WITNESS: But, as I said, I gave it up for the clients.

THE SPECIAL MASTER: Do you think you would have still given it up had you known about Mr. Chargois in order to get the additional disclosure?

THE WITNESS: No, because --

MS. LUKEY: Objection.

THE WITNESS: No, I would not.

THE SPECIAL MASTER: Why?

THE WITNESS: Because I would have had some bargaining power. You disclose it to the Court.

THE SPECIAL MASTER: I'm sorry, I missed the last -- you dropped your voice.

THE WITNESS: Oh. I said I would have had some bargaining power. I would have said I'm not signing this agreement. We'll just litigate

EX. 160

From: Sucharow, Lawrence <LSucharow@labaton.com>
Sent: Tuesday, November 22, 2016 1:01 PM
To: Goldsmith, David; Garrett J. Bradley; Keller, Christopher J.; Belfi, Eric J.
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX

Need two letters with breakdown.
ERISA just gets sent to & ERISA counsel with 10% off top and then 1/3 each.
Class co-counsel gets one with:
ERISA 10% off top
Damon's percentage also off top
Then each of class co-counsel split with percentages agreed to.
&
In short, no reason for ERISA to see Damon's split.& They only need to see their 10% and then split 3 ways.
By the way I want to *Asterisk the 10% to ERISA with a footnote saying "Although our fee agreement with ERISA counsel only provides for a 9% allocation, & Class co-counsel have determined to increase that to 10% in light of the excellent work and contribution of ERISA counsel."
&

From: Goldsmith, David
Sent: Tuesday, November 22, 2016 11:49 AM
To: Garrett J. Bradley; Sucharow, Lawrence; Keller, Christopher J.; Belfi, Eric J.
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
We thought we'd do a separate letter to him.
&

From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Tuesday, November 22, 2016 11:48 AM
To: Goldsmith, David; Sucharow, Lawrence; Keller, Christopher J.; Belfi, Eric J.
Subject: Fwd: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
I think you should put Damon on this letter.

Garrett

Begin forwarded message:

> **From:** Lynn Sarko &<lsarko@KellerRohrback.com&>
> **Date:** November 22, 2016 at 11:40:23 AM EST
> **To:** "Lieff, Robert L." &<RLIEFF@lchb.com&>, "'Goldsmith, David'" &<dgoldsmith@labaton.com&>, Michael Thornton &<MThornton@tenlaw.com&>, "Garrett J. Bradley" &<gbradley@tenlaw.com&>, Michael Lesser &<MLesser@tenlaw.com&>, "Chiplock, Daniel P." &<DCHIPLOCK@lchb.com&>, 'Robert Lieff' &<rlieff@lieff.com&>, "'Kravitz, Carl S.'" &<ckravitz@zuckerman.com&>, "'Brian McTigue'" &<bmctigue@mctiguelaw.com&>
> **Cc:** "Sucharow, Lawrence" &<LSucharow@labaton.com&>, "Belfi, Eric J." &<EBelfi@labaton.com&>, "Stocker, Michael W." &<MStocker@labaton.com&>, "Zeiss, Nicole" &<NZeiss@labaton.com&>
> **Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX**
>
> Ditto for KR.& We will sign- but let's include the breakdown in a draft letter.
> Thanks

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: Lieff, Robert L. [mailto:RLIEFF@lchb.com]
Sent: Monday, November 21, 2016 4:25 PM
To: 'Goldsmith, David' &<dgoldsmith@labaton.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>; 'Robert Lieff' &<rlieff@lieff.com&>; Lynn Sarko &<lsarko@KellerRohrback.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Sucharow, Lawrence &<LSucharow@labaton.com&>; Belfi, Eric J. &<EBelfi@labaton.com&>; Stocker, Michael W. &<MStocker@labaton.com&>; Zeiss, Nicole &<NZeiss@labaton.com&>; Lieff, Robert L. &<RLIEFF@lchb.com&>
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
David,
&
I have no concerns regarding the proposed letter.& I think that it is appropriate and I intend to sign it.
&
What I would like to see is a breakdown as to the fees and cost reimbursements going to each counsel listed in the letter.& I know that we have all agreed to the distribution; however, I think we should have a dollar breakdown to be paid December 8.
&
Thank you,
&
Bob
&

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Monday, November 21, 2016 3:55 PM
To: Michael Thornton; Garrett J. Bradley; Michael Lesser; Chiplock, Daniel P.; 'Robert Lieff'; Lynn Sarko; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Belfi, Eric J.; Stocker, Michael W.; Zeiss, Nicole
Subject: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
All:
&
Attached please find a draft letter setting out our plan with regard to the November 10 letter we filed with the Court and future distribution of fees and expenses.
&
Please let us know if you have any comments or concerns.& We'd like to circulate a final version and collect signatures before the holiday if possible.
&

Thanks,
David
&
&
&
&
&

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. 161

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

REBUTTAL RESPONSE BY LABATON SUCHAROW LLP

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

I. PRELIMINARY STATEMENT

After three million dollars[1] and more than a year, the long and arduous road of this investigation is nearing its end. Having begun as a result of a self-reported double-counting error in the lodestar reports of the three customer class law firms, it has morphed into a challenge of the practice of paying referral fees, in Massachusetts where they are perfectly permissible. Accusations of ethical misconduct – e.g., whether the existence of such fee splits must be disclosed to the Court and the class notwithstanding the express terms of Fed. R. Civ. P. 54(d)(2) and 23(h) and the absence of a court order or inquiry – have been asserted. Threats of discipline and sanctions hang over prominent law firms, although they have "violated" nothing more than the aspirational views of those who wish to change that bar without effecting change in the rules that govern it.

This constitutes the final submission to the Special Master, and is specifically intended to respond to Prof. Stephen Gillers' Ethical Report for Special Master Gerald E. Rosen (the "Gillers Report"), including the statement of assumed facts provided to Prof. Gillers by the Special Master and constituting the Special Master's findings of fact.[2] The submission incorporates the expert reports and testimony on behalf of customer class counsel submitted by Profs. Bruce Green, Peter Joy, Brad Wendel, William Rubenstein, ethics practitioner Hal Lieberman, and

[1] That is the amount that the Court has ordered the customer class law firms to pay into the Court to defray the expenses of the Special Master and the lawyers and experts retained by him to make findings of fact and recommendations relating to the firms' fee petition to the Court in the captioned matter. The first $2,000,000 payment has apparently been exhausted, although the customer class law firms have not seen any invoices or received an accounting. It is unclear whether any of the final $1,000,000 will be returned to the firms upon the conclusion of this investigation.

[2] These findings were reached before the Special Master had received the rebuttal reports of Profs. Green, Joy, Wendel, and Rubenstein, and Mr. Lieberman. Labaton Sucharow will not have the opportunity to file an additional submission to the Special Master if the Gillers Report, including the Special Master's findings of fact, is changed. To the extent that it becomes necessary or prudent, Labaton Sucharow reserves the right to submit the original Gillers Report, with the original findings of fact of the Special Master, to the Court.

experienced Massachusetts practitioner Camille Sarrouf.[3] As to matters not expressly addressed by Prof. Gillers, but nonetheless raised by the Special Master during his investigation – i.e., the double counting investigation – Labaton Sucharow LLP ("Labaton Sucharow") incorporates its November 3, 2017 Response by Labaton Sucharow LLP to Special Master's September 7, 2017 Request for Supplemental Submission (attached hereto as Ex. 1), and all prior submissions.

These proceedings are highly unusual and have been, at many junctures, a moving target and difficult for Labaton Sucharow and its counsel to follow. The proceedings arise in the aftermath of a $300 million class action settlement, in which Labaton Sucharow's client and named plaintiff Arkansas Teacher Retirement System ("ARTRS") has repeatedly expressed unfettered satisfaction with its representation in a complex case against State Street Bank and Trust Company (the "State Street litigation"). ARTRS has approved and ratified the 25% fee awarded by the Court to all counsel, which fee – although already distributed – is now in limbo as a result of a $4,000,000 double-counting error in the lodestar reports[4] of the three customer class law firms. The accusations against Labaton Sucharow have evolved and changed frequently (and apparently are still changing). Yet, ARTRS' attorneys are being investigated for, and apparently accused of, ethical violations entirely unrelated to the double-counting error, the

[3] The cited expert reports and expert deposition excerpts are attached hereto as Exhibits A – Q, but for clarity, they are referred to as "Rep." (report) and "Dep." (deposition transcript excerpt) throughout this submission. Other cited materials, such as documents or legal authority, are cited with a number designation (e.g., "Ex. 1") and also attached hereto.

[4] The lodestar reports were used as a cross-check for the Court's approval of a 25% contingent fee. ECF No. 114. The ratio moved from 1.8 to 2.0 after the adjustment for that error (ECF No. 116, Letter from D. Goldsmith to the Court, November 10, 2016), and is still well within the acceptable range in this Circuit. *See*, *e.g.*, *Harden Mfg. v. Pfizer, Inc (In re Neurontin Mktg. & Sales Practices Litig.)*, 58 F. Supp. 3d 167, 172 (D. Mass. 2014) (describing a multiplier of 3.32 as standard in the Boston market), *citing* 4 Newberg on Class Actions § 14:7 (4th ed. 2002) ("Generally, multipliers from 1-3 are the norm."); *Evangelist v. Fid. Mgmt. & Research Co.*, No. 81-536-Z, 82-912-Z, 1986 U.S. Dist. LEXIS 20993, at *5 (D. Mass. Aug. 29, 1986) ("a multiplier of 2.2 . . . [is] well within the bounds of applicable precedent"); *see also In re Lupron Mktg. & Sales Practices Litig.*, No. 01-CV-10861-RGS, 2005 U.S. Dist. LEXIS 17456, at *18 (D. Mass. Aug. 17, 2005).

investigation of which appeared to have been largely concluded many months ago. Even accusations that are unsupported by the Gillers Report, e.g., an amorphous concept of a duty to disclose fee agreements to other counsel, will apparently be addressed by the Special Master, although that is not at all clear given the absence of expert testimony.

The current investigation relates to customer class counsels' honoring of a Labaton Sucharow contractual obligation to pay a referral fee[5] to the local Arkansas law firm that facilitated the introduction to ARTRS. This unrelated referral fee investigation was undertaken by the Special Master at or near the end of the $2,000,000 double-counting investigation,[6] and has presumably consumed all or most of the supplemental $1,000,000 that the Court ordered Labaton Sucharow to fund. See Special Master's September 7, 2017 Request for Supplemental Submission [Ex. 2]; ECF No. 208. Although the concern of the Special Master and his counsel William Sinnott appears initially to have been tied to the mistaken belief that Massachusetts follows the ABA Model Rule (the "Model Rule") regarding fee sharing,[7] the investigation proceeded long after they understood that that was not the case. At the latter juncture, the focus shifted to an evolving series of Massachusetts Rules of Professional Conduct, none of which (as argued below) is applicable to the facts of this proceeding. As weaknesses in one theory were

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[5] Whether the fee is referred to as a "referral fee," a "forwarding fee," a contractual fee, or by any other name is of no significance under the Massachusetts Rules of Professional Conduct ("MRPC"). *See* MRPC 1.5(e); Green Dep. at 138:18-24.

[6] Labaton Sucharow was required by the Court to fund the initial $2,000,000 (ECF No. 173 ¶¶ 13-14), which amounted to a full 50% of the double-counting error, and the supplemental $1,000,000 requested by the Special Master to continue his investigation (ECF No. 208). The obligation was shared equally with the other two customer class law firms, Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") and the Thornton Law Firm ("TLF").

[7] The Model Rule requires that the attorney or firm receiving a referral fee either be paid proportionally for work performed, or that s/he assume responsibility for the provision of appropriate legal services. ABA Model Rule Prof. Conduct 1.5(e)(1). The Massachusetts analog rule, Rule 1.5(e) of the Massachusetts Rules of Professional Conduct ("R. 1.5(e)") is a "bare referral rule," requiring no services or assumption of liability. Board of Bar Overseers, *Massachusetts Legal Ethics: Substance and Practice* at 185-86 (2017), *available at* https://bbopublic.blob.core.windows.net/web/f/BBO_Draft_Treatise.pdf.

revealed by the facts or by the opposing experts, the Special Master's focus, with direction from Prof. Gillers handing or emailing him questions and comments during the experts' depositions, shifted from the anti-touting rule MRPC 7.2(b) ("Advertising") and MRPC 1.5(e) ("Fees"), to 1.5(a), then rather amorphously to MRPC 1.4(a) ("Communications") and 1.6(a) ("Confidentiality"), and tangentially to MRPC 7.3 ("Solicitation").[8] Throughout, Prof. Gillers pressed the application of MRPC 3.3 ("Candor Toward the Tribunal"), even though it does not create an obligation independent of one derived from another source (Joy Rep. at 43), and in passing MRPC 8.4(c) which prohibits a lawyer from engaging in "conduct involving dishonesty, fraud, deceit or misrepresentation," as to which no evidence exists. The constantly moving target has presented, and continues to present, significant difficulties in Labaton Sucharow's ability to defend itself.

In sum, there was nothing unethical about the division of a fee between Labaton Sucharow and Chargois & Herron (the "Chargois Agreement"). To the contrary, Labaton Sucharow complied with the Massachusetts Rules of Professional Conduct, as confirmed by its five expert witnesses and by Lieff Cabraser's expert Prof. William Rubenstein. Prof. Gillers is a lone outlier, propounding arguments regarding the fee sharing that are unprecedented,

[8] The issue of violation of R. 7.3, entitled "Solicitation," arose in relation to Chargois' outreach, at the suggestion of Sen. Farris, to then-Executive Director of ARTRS Paul Doane to set up a meeting with ARTRS for his firm and Labaton Sucharow. But, that outreach fell squarely within two of the exceptions to the non-solicitation rule, which is presumably why Prof. Gillers did not allude to that rule in his report. In the first place, MRPC 7.3(a)(4) permits a lawyer, in person or by live telephone or real-time electronic contact to solicit "a representative of an organization, including a non-profit or government entity, in connection with the activities of such organization." Paul Doane was a representative of an organization, specifically ARTRS, which is essentially a government organization, and the outreach was in connection with ARTRS's pension fund investment activities. (This subsection suggests that the rule is intended to apply to solicitation of individuals, e.g., accident victims.) Secondly, Paul Doane is a lawyer licensed to practice in Massachusetts (BBO No. 126440), and MRPC 7.3 (a)(1) expressly permits a lawyer to reach out to another lawyer "by in-person, live telephone or real-time electronic contact [to] solicit professional employment for a fee…" Hence, even if Chargois were deemed to have "solicited" Paul Doane as Executive Director of ARTRS, which he did not, such contact was expressly permitted by these two subsections of R. 7.3.

unrealistic, incorrect, and not "believable." *See* Rubenstein Dep. at 73:7-19 ("I think it was made up after the fact to fit the facts of this case."). His conduct has been that of an advocate, and he has been described by Mr. Sinnott as a member of the Special Master's "team." *See, e.g.*, Wendel Dep. at 8:12-17; Green Dep. at 7:19-23. Prof. Gillers has, from Labaton Sucharow's perspective, created and/or imputed ethical duties to meet his apparent perceptions of the Special Master's objectives. In no sense has he served in the traditional role of an expert witness, nor, under the law, could he.[9]

II. SELECTED CONTESTED FACTS

Labaton Sucharow respectfully disagrees with the so-called "Factual Background" contained in the Gillers Report at p. 2-53, prepared by the Special Master or his attorney Mr. Sinnott under his direction. Labaton Sucharow submitted an extensive statement of facts in its November 3, 2017 submission [Ex. 1]. It incorporates those facts here, and will not retread the same ground. Nevertheless, Prof. Gillers' report contains several incorrect or misleading factual assertions, generally in the Background Facts section, prepared by the Special Master or his attorney, to which Labaton Sucharow is constrained to respond. Moreover, an important new fact has developed since the November submission, i.e., George Hopkins' written ratification on behalf of ARTRS of the Chargois Agreement. Labaton Sucharow addresses the most egregious, but not all, of the contested facts below.

[9] Expert witnesses may opine on the facts, and in some instances on mixed questions of fact and law. *See, e.g.*, *Bacchi v. Mass. Mut. Life Ins. Co.*, No. 12-cv-11280, 2016 U.S. Dist. LEXIS 37772, at *11 (D. Mass. Mar. 23, 2016). Hence, Labaton Sucharow's original expert, Camille Sarrouf, opined with regard to standard practices among Massachusetts lawyers and judges in dealing with fee sharing, a factor considered by the Board of Bar Overseers when interpreting the Massachusetts Rules of Professional Conduct. *See* Board of Bar Overseers, *Massachusetts Legal Ethics: Substance and Practice* at 185 (2017) [Ex. 3]. However, expert witnesses may not opine on the law, *Nieves-Villanueva v. Soto-Rivera*, 133 F.3d 92, 99 (1st Cir. 1997), which is precisely what Prof. Gillers has done. Labaton Sucharow expressed its objection to the Special Master, but was rebuffed, and was therefore compelled to submit its own rebuttal experts to prevent Prof. Gillers' testimony from standing unchallenged. In truth, the opinions of all of the academic experts should have been submitted in legal briefs, not as expert reports.

A. LABATON SUCHAROW DID NOT "TAKE PAINS" TO HIDE THE CHARGOIS AGREEMENT FROM GEORGE HOPKINS.

The Special Master or his counsel, who wrote the fifty-plus page "Factual Background" section of Prof. Gillers' Report, *see* Gillers Day 1 Dep. at 35:3-11, employs the inflammatory language that Labaton Sucharow "took pains at every turn not to reveal" Damon Chargois, Chargois & Herron, or the Chargois Agreement to Hopkins. Gillers Rep. at 38. Prof. Gillers relied significantly on these findings, reiterating in his arguments that Labaton Sucharow "took pains to ensure that George Hopkins, ARTRS's Executive Director, would not become aware of the Chargois Arrangement," *id*. at 60, and that "[Labaton Sucharow] acted to conceal the existence of the Chargois Arrangement from ARTRS." *Id.* at 61-62. The referenced finding – and its inflammatory language, which is particularly inappropriate under the circumstances – is wholly unsupported by the record.

1. *Client Instructions*

Apart from the fact that ARTRS as an institutional party was unquestionably aware of a relationship between Labaton Sucharow and Chargois & Herron (*see* subsection 2 below), the finding of concealment simply disregards the testimony of the only two parties with knowledge of whether there was any attempt to hide information from ARTRS, i.e., Mr. Hopkins and ARTRS' Labaton Sucharow relationship partner Eric Belfi. The finding in the Gillers Report focuses on the fact that Belfi "blind courtesy copied" and/or forwarded ARTRS information to Chargois & Herron separately from his communication with George Hopkins, the executive director of ARTRS as of late December 2009. But, both Belfi and Hopkins testified to an explanation of the blind copies far removed from concealment. After Hopkins joined ARTRS, Belfi raised the subject with Hopkins of "how fees worked." Belfi 2d Dep. at 23:17-23 [Ex. 4]. Hopkins responded that "he only wanted to deal with [Labaton Sucharow] and wasn't concerned

about how [Labaton Sucharow] would cut fees up if [they were] working with other firms." *Id*. In short, Hopkins was interested in the aggregate attorney fee amount – not the allocations of that aggregate fee among various firms. *Id.* at 23:24-24:5. Hopkins' testimony confirmed Belfi's understanding: "I told Eric if I ever want to know about your attorney fees and who all you hired, I'll ask you. And, you know, on any case because I intentionally didn't want to know a whole lot." Hopkins 2d Dep. at 68:23-69:3 [Ex. 5]. For the avoidance of any doubt, he continued, "I don't feel misled because I made it real clear to them I didn't want to be the gatekeeper on all this attorney relationship. And I think if they thought that I wanted to know, they would have told me because Eric always said if you ever want to see how we do all these fees, just let me know. And I said that's fine." *Id.* at 73:11-19; *see also id.* at 74:10-75:8. In sum, Hopkins "didn't want to be the gatekeeper" and didn't want to know the identity of the other lawyers sharing in the fee. Belfi could not face copy Chargois without violating that instruction. As Prof. Rubenstein testified, that is very consistent with the norm, to wit: class representatives are typically not involved in fee allocations, other than under the PSLRA. Rubenstein Dep. at 138:10-140:17. The explanation, provided by the two individuals with personal knowledge of the truth, is a far cry from actively concealing or taking pains at every turn to conceal the relationship.

2. *Institutional Knowledge of the Chargois & Herron Connection*

Prof. Gillers also improperly frames the knowledge of ARTRS (the client) only in terms of what Hopkins knew. *See, e.g.*, Gillers Rep. at 60-61. This conveniently ignores the institutional knowledge of ARTRS. It is undisputed that ARTRS was well-aware of Damon Chargois ("Chargois") and his firm Chargois & Herron. Chargois, with the assistance of his partner Tim Herron and through the offices of Herron's friend or acquaintance State Senator Steve Farris, Chargois Dep. at 33:16-37:10, facilitated the introduction between ARTRS and

Labaton Sucharow and was present at their initial meeting. LBS040322; LBS017438 [Ex. 6]. Further, Chargois & Herron and Labaton Sucharow jointly responded to ARTRS' Request for Qualifications for a monitoring counsel role and expressly stated that they intended to work together. LBS017743 [Ex. 7]. ARTRS answered through its Chief Counsel Christa Clark that, while the state system could not accommodate two unaffiliated firms as a single monitoring panel member, Labaton Sucharow would be free to "affiliate that firm [Chargois & Herron] or utilize them." LBS017456 [Ex. 8]. Thereafter, Belfi spoke with Chief Counsel Clark, and informed her that Labaton Sucharow *would* be working with Chargois & Herron and that Chargois & Herron "were going to be involved in the relationship." Belfi 2d Dep. 114:2-22, 117:20-118:10 [Ex. 4]. All of the foregoing facts are undisputed; yet, none is acknowledged or accepted by the Special Master or Prof. Gillers in the Gillers Report.

B. GEORGE HOPKINS RATIFIED THE CHARGOIS AGREEMENT ON BEHALF OF ARTRS.

During his deposition testimony on September 5, 2017, George Hopkins expressed no concerns with the Chargois Agreement. *See*, *e.g.*, Hopkins 2d Dep. at 73:11-19 [Ex. 5]. Subsequently, on March 15, 2018, Hopkins submitted a Declaration that acknowledged the fee division with Chargois, recited its details, and consented to and ratified the fee division on behalf of ARTRS with respect to the State Street matter. *See* Hopkins Decl. [Ex. 8]. Hopkins reiterated that Belfi was following his instructions, and stated that he does not feel misled and has "no problem" with the fact that details of the agreement were not conveyed to him sooner. *Id.* at ¶¶ 14-16.

C. THE COURT DID NOT ASK FOR INFORMATION REGARDING FEE AGREEMENTS AT THE SETTLEMENT HEARING, NOR DID IT EVEN IMPLY THAT IT WANTED SUCH INFORMATION.

Prof. Gillers makes several misleading and (at best) misinformed statements regarding the November 2, 2016 settlement hearing. For example, he notes that, "[t]he Court itself dispelled any uncertainty about what it expected. Just before approving Lead Counsel's fee request in full, the Court said: 'I'm relying heavily on the submissions and what's been said today,'" Gillers Rep. at 67. He also states that, "[e]arlier in the proceeding, the Court specifically asked to be reminded 'of the terms of allocation' . . . Chargois was not mentioned." *Id.* at 68.

When pressed at his deposition, Prof. Gillers acknowledged that the Court's general statement that it was "relying heavily on the submissions" is of no significance, and certainly does not indicate a request for information regarding fee agreements between counsel. Gillers Day 1 Dep. at 175:10-176:9.[10] As to Prof. Gillers' statement regarding the "terms of allocation," the transcript plainly demonstrates that the Court was inquiring about the allocation of the settlement among the class, not an allocation of fees among the lawyers. Indeed, the Court, after discussing the allocation of the settlement funds among the class, then turned to the new topic of fees, stating: "I'm persuaded that the plan of allocation is fair . . . So now with regard to requests for attorneys' fees." A discussion of the total amount of attorneys' fees – not the allocation among law firms – then followed. ECF 114 (Transcript of November 2, 2016 Hearing) at 20-38. Prof. Gillers conceded that the Court "never asked about the allocation of fees among the lawyers, and he never asked about fees to someone whose existence he did not know about."

[10] *See also* Joy Dep. at 185:8-10 ("There's no obligation to disclose a fee-sharing agreement in response to that."); Rubenstein Dep. at 194:21-22 ("What I don't think he meant is [a request] for fee agreements.").

Gillers Day 1 Dep. at 142:7-10. Prof. Gillers' willingness to rest his arguments upon obvious mischaracterizations of the Court's statements severely undermines his credibility. If the Court wishes to ask about fee agreements, it certainly knows how to do so. *See, e.g.*, Transcript of March 9, 2018 Hearing, *Arkansas Teacher Retirement System v. Insulet Corp.,* 1:15-cv-12345 (D. Mass) (Wolf, J.), ECF No. 120 [Ex. 10] ("Is there one or more other attorneys that would benefit, get money from the settlement of this case?").

D. NO RECORD EVIDENCE EXISTS FOR THE FINDING THAT THE ERISA TRADING VOLUME WAS 12-15% OF THE TOTAL TRADING VOLUME.

The Special Master found that ERISA trading volume was 12-15% of the total trading volume.[11] Gillers Rep. at 9. This is incorrect and appears to depend entirely upon the unsupported deposition testimony of ERISA lawyers Lynn Sarko and Carl Kravitz. *See id.* There is no documentation in the court record supporting this 12-15% figure. The Special Master and his counsel, in making this finding of fact, completely ignore the testimony of the one witness who is actually responsible for working with A.B. Data, i.e., Labaton Sucharow settlement partner Nicole Zeiss. Zeiss testified that the ERISA trading volume "ended up around 9%." Zeiss Dep. at 163:16-165:1 [Ex. 11]. The Special Master's counsel acknowledged this testimony during the deposition ("All right. If that's your memory, yeah, okay"), *id.* at 164:24-165:1, but Zeiss's testimony is omitted from the Gillers Report. The "official" determination of customer class versus ERISA trading volume remains undetermined, as A.B. Data – which supplies the trading volume information on behalf of State Street – attested in November 2017

[11] This can only be relevant in the context of these proceedings to the Special Master's view that the ERISA counsel in the consolidated actions were underpaid at an allocation of 10%, i.e., one percent *above* their contractually agreed upon 9%.

that the volume data was still being calculated. ECF 211 ¶¶ 13-14.[12] Stated simply, the assertion regarding ERISA trading volume that the Special Master has adopted is either counterfactual, or at best premature and without record foundation.

E. INFORMATION REGARDING THE CHARGOIS AGREEMENT WAS NOT RESPONSIVE TO THE SPECIAL MASTER'S DISCOVERY REQUESTS BECAUSE THE SPECIAL MASTER WITHDREW THE ONLY DOCUMENT REQUEST THAT WOULD HAVE ELICITED SUCH INFORMATION.

Finally, the Special Master or his counsel contend in the Factual Background to Prof. Gillers' report that "[n]either Labaton nor Lieff produced any emails related to Chargois in response to the Special Master's initial requests for production of documents." Gillers Rep. at 30 n.34. The implication of discovery wrongdoing is clear, but incorrect. In fact, Request for Production No. 22 (attached hereto as Ex. 12) – which sought documents "regarding the allocation of a certain percentage of the Fee Award among counsel," and which is the only discovery request that arguably elicited information about the Chargois Agreement – was withdrawn after a conference with the Special Master's counsel. Prof. Gillers acknowledged this in his deposition. Gillers Day 1 Dep. at 191:16-192:1. It is unclear why TLF produced the materials, but Labaton Sucharow and Lieff Cabraser were justified in not doing so.

III. PROF. GILLERS' EXPERTISE DOES NOT EXTEND TO MASSACHUSETTS PRACTICE, TO FEDERAL RULES OF CIVIL PROCEDURE 23 AND 54, OR TO STATUTORY CONSTRUCTION.

Prof. Gillers is a recognized expert regarding many aspects of legal ethics, but he is not an expert in three key areas: Massachusetts rules and practice, the Federal Rules of Civil Procedure including especially Rules 23 and 54, and statutory construction. Indeed, he admits as much as to the first two categories. Gillers Day 1 Dep. at 11:13-16:16, 112:23-113:1.

[12] The issue relates to the so-called "Group Trust" members of the class, whose participants include both ERISA plaintiffs and customer class plaintiffs. A.B. Data cannot complete its determination of allocations without additional information on the latter breakdown. *See* ECF 211.

First, Prof. Gillers is not a member of the Massachusetts Bar, nor has he ever practiced here. While the same is true of Profs. Green, Joy, and Wendel, that gap is filled for the customer class counsel by Hal Lieberman, Camille Sarrouf, and Prof. William Rubenstein. Prof. Gillers' opinions regarding ethics specific to Massachusetts practice are not rooted in his own experience. *See*, *e.g.*, Gillers Day 1 Dep. at 53:23-54:12 (testifying that he is unfamiliar with the Massachusetts Bar Association and the Boston Bar Association). This absence of experience in Massachusetts is of particular import because Prof. Gillers focuses on the fact that the Chargois Agreement was a bare referral payment (i.e. no work was done) – "quintessentially a Massachusetts practice." Board of Bar Overseers, *Massachusetts Legal Ethics: Substance and Practice* at 185 (2017) [Ex. 3]. It is apparent that Prof. Gillers views bare referral fees as improper, as apparently does the Special Master, to be prevented by whatever alternative means can be found. His opinions flow from that misplaced premise. *See,* e.*g.*, Gillers Rep. at 62, 66, 76; Gillers Day 1 Dep. at 219:12-222:12. But, such fees are permitted by the Massachusetts fee sharing rule, i.e., MRPC 1.5(e). The Massachusetts Bar has rejected Prof. Gillers' perspective regarding referral fees time and again, as explained by the Supreme Judicial Court ("SJC"), the Board of Bar Overseers, and lifelong Massachusetts practitioners, among others. *See Saggese v. Kelley*, 445 Mass. 434, 442 (2005) (describing referral fees as a "time-honored practice in this State"); *Mass. Legal Ethics* at 185 [Ex. 3]; October 31, 2017 Declaration of Camille Sarrouf at ¶¶ 19-21; H.P. Wilkins, *The New Massachusetts Rules of Professional Conduct: An Overview*, 82 Mass. L. Rev. 261, 261-262 (1997) [Ex. 13]. Prof. Gillers may not approve of the practice, but in Massachusetts, it is a bedrock principle.[13]

[13] Prof. Gillers' lack of relevant experience is a serious detriment to the credibility of his opinions. He has in the past explained the importance of practical experience in understanding ethics: "The rules here may be obscure; they may even be counterintuitive, and they can be subtle in application.

Second, Prof. Gillers concedes that he is not an expert on class action litigation or the Federal Rules of Civil Procedure. Gillers Day 1 Dep. at 15:16-19; 112:23-113:1. Nevertheless, he purports to render expert opinions regarding what Fed. R. Civ. P. 54 and 23 require with regard to disclosure to the court and to the class.[14] His unsupported arguments should be afforded no weight. Rather, the Special Master should credit the opinions of those who *are* experts on class action litigation and the Federal Rules of Civil Procedure.[15]

Third, Prof. Gillers is not an expert on statutory construction. Yet he relies on novel and unprecedented text-based arguments regarding Mass. R. Prof. C. 1.5 and 7.2. Gillers Day 1 Dep. at 59:8-15 ("Well, I'm relying on the language of 7.2(b) and 1.5(e). So my argument is that the text of the rule self-evidently bring[s] the lawyer within 7.2(b) . . ."). In interpreting these rules, the Special Master should follow the path of the U.S. Court of Appeals for the Second Circuit and decline to credit Prof. Gillers' strained readings. *See Amnesty Int'l United States v. Clapper*, 638 F.3d 118, 128 n.12 (2d Cir. 2011) ("[T]o the extent that Prof. Gillers declares that the FAA [FISA Amendment Act] creates a sufficient risk of interception to trigger that ethical duty, that

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Application in turn calls for judgment, and judgment is mostly learned through experience." Stephen Gillers, *Regulation of Lawyers: Problems of Law and Ethics* at xxvi (9th Ed. 2012) [Ex. 14].

[14] Although the Special Master has implied through his questions that he is also troubled by failure to disclose to the ERISA attorneys, neither Prof. Gillers, nor anyone else, has opined that such disclosure was necessary. Any such claim therefore stands unsupported at the close of the evidence. It would, in any event, be rebutted by (a) the contractual agreement of the ERISA lawyers to a 9% allocation, and their acceptance without issue of 10%; (b) the inherent fairness of the 10% allocation given the relative trading volume between ERISA investors and non-ERISA investors (*see* p. 11, and in particular n. 14, *supra*); and (c) the circumstances under which the customer class counsel found themselves in a short-term co-counsel role with the ERISA counsel, i.e., the consolidation of the much larger customer class action with the two ERISA cases for pre-trial purposes.

[15] *Cf.* testimony of Prof. W. Brad Wendel at 167:17-23 ("I will tell you exactly what would happen if someone called me and asked me that question. I would walk right next door to my colleague, who is a civil procedure expert . . ."). In stark contrast to Prof. Gillers, Prof. Rubenstein *is* an expert on class actions – and he thoroughly researched his opinions. *E.g.*, Rubenstein Dep. at 20:20-22:24 (describing process of reviewing roughly 1,200 cases).

assertion relies on his analysis of how the FAA operates, which we are not compelled to accept."), *rev'd on other grounds*, 568 U.S. 398 (2013).[16]

Finally, Prof. Gillers' Report is largely devoid of authority or precedent that supports his novel opinions. During his deposition, he confirmed that he has none. *See, e.g.*, Gillers Day 2 Dep. at 386:6-7 (when confronted by the lack of support for his previously unaddressed 1.5(a) opinion, he explained: "I don't know. I haven't researched this question."). Prof. Gillers' willingness to create or accept from the Special Master brand-new theories regarding Massachusetts ethics without any support – and without looking for any support – severely undermines his credibility.

IV. THE CHARGOIS AGREEMENT COMPLIED WITH THE MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT AND HAS NOW, IN ANY EVENT, BEEN RATIFIED BY ARTRS.

Labaton Sucharow's fee division with Chargois complied with Mass. R. Prof. C. 1.5(e). Moreover, even if the Special Master finds that the fee division did not comply with Rule 1.5(e), the Agreement has now been ratified. And, leaving aside whether Labaton Sucharow perfectly complied with Rule 1.5(e), under no circumstances do Mass. R. Prof. C. 1.5(a) or 7.2(b) apply to the Chargois fee division.

A. LABATON SUCHAROW COMPLIED WITH RULE 1.5(E).

Contrary to Prof. Gillers' arguments, Labaton Sucharow complied with Rule 1.5(e) because it notified ARTRS that it would be sharing its fee and obtained ARTRS' consent to do so. In February 2011, when the engagement was entered into, Rule 1.5(e) provided that a "division of a fee between lawyers who are not in the same firm may be made only if, after informing the client that a division of fees will be made, the client consents to the joint

[16] *See* Wendel Dep. at 65:22-23 ("[The Rules] are drafted like a statute.").

participation and the total fee is reasonable."[17] Mass. R. Prof. C. 1.5(e) [Ex 15].[18] In their engagement letter, ARTRS consented to Labaton Sucharow dividing its fees, *inter alia*, with "local or liaison counsel" or as "referral fees." LBS011061 [Ex. 16]. This was sufficient under the text of Rule 1.5(e) at the time. *See* Green Rep. at 19-20 ("Particularly in the context of a retention letter setting forth the parties' respective rights and responsibilities, it seems reasonably plain to me that the sentence in question in fact memorializes ARTRS's permission.").[19]

To the extent that it was required – which is an open question in the view of the experts (Joy Dep. at 69:4-70:3; Lieberman Dep. at 125:5-16; Wendel Rep. at 14) – Labaton Sucharow also complied with the written consent requirement in the SJC's opinion in *Saggese v. Kelley*, decided in 2005 (but not codified in the Massachusetts Rules of Professional Conduct until March 15, 2011). *See Saggese*, 445 Mass. at 434. The SJC explained in dictum that Rule 1.5(e) would be construed prospectively to require consent to be obtained in writing (*id*. at 443), which Labaton Sucharow did. LBS011061 [Ex. 16]. The SJC also suggested in dictum that the written consent must be obtained before the referral is made (*Saggese*, 445 Mass at 443), which, as Hal

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[17] Until the depositions were in progress in Massachusetts, it appears that neither the attorneys, customer class counsels' experts, nor the Special Master realized that the current version of Rule 1.5(e) took effect on March 15, 2011, just weeks after ARTRS' February 8, 2011 engagement letter with Labaton Sucharow. *See* Sarrouf Day 1 Dep. at 139:17-24 (Special Master, following an off the record discussion as to what rule governed: "And I think . . . there was an interim rule to cover *Saggese* until it was finalized which was then adopted in December by the Supreme Court . . . to be effective March 15th."); *see also* Lieberman Dep. at 14:15-15:13. It is troubling to note that Prof. Gillers *was* aware of this error, but chose not to bring it to the attention of anyone else. *See* Gillers Day 2 Dep. at 391:6-7 ("I'm aware that the new language of rule 1.5(e) was effective March 15, 2011."). The requirements of the old (and applicable) rule were considerably more lenient for Labaton Sucharow in terms of proving full technical compliance, e.g., consent did not have to be in writing at all.

[18] Mass. R. Prof. C. 1.5(e) was amended on March 15, 2011 to provide that: "A division of a fee (including a referral fee) between lawyers who are not in the same firm may be made only if the client is notified before or at the time the client enters into a fee agreement for the matter that a division of fees will be made and consents to the joint participation in writing and the total fee is reasonable."

[19] The Special Master has raised questions regarding whether a client can be referred for a series of matters, rather than a specific matter. Labaton Sucharow's experts agreed that this was permissible. As Mr. Lieberman testified, "I think this is a referral fee, and it happens all the time, common." Lieberman Dep. at 44:12-14.

Lieberman noted, makes no sense. Lieberman Dep. at 131:1-7. (Once the rule was actually amended, the requirement was for written consent to be obtained "before or at the time the client enters into a fee agreement for the matter." Hence, the *Saggese* dictum and the new rule as ultimate promulgated were not identical). The *Saggese* court, in its two-sentence description of its prospective interpretation of Rule 1.5(e), does not require a disclosure of the identity of other attorney(s) receiving fees or the details of the fee agreements. 445 Mass at 443.[20] Nor is there such a requirement in either the old or the new version of Rule 1.5(e). Thus, the engagement letter was sufficient to meet the requirements of both R. 1.5(e) and *Saggese*.

Five different experts – three academics, one practitioner with a deep background in attorney discipline, and one lifelong Massachusetts practitioner – have examined the circumstances of the fee division with Chargois and ARTRS' engagement of Labaton Sucharow. Each has concluded that Labaton Sucharow complied with the applicable requirements of the Massachusetts Rules of Professional Conduct.[21]

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[20] *See* Green Dep. at 117:14-17 ("the rule itself does not require more"); Lieberman Dep. at 34:17-20 ("The rule doesn't require anything more than that. And that's been the common understanding of the rule."). Contrary to indications from the Special Master, it is well-settled that the details of a fee agreement need not be disclosed. *See* Mass. R. Prof. C. 1.5 Cmt. 7A ("The Massachusetts rule does not require disclosure of the fee division that the lawyers have agreed to, but if the client requests information on the division of fees, the lawyer is required to disclose the share of each lawyer.").

[21] Green Rep. at 19 ("Labaton therefore complied with the relevant version of Rule 1.5(e)."); Joy Rep. at 27 ("Labaton's engagement letter with ARTRS for the State Street Litigation met the requirements of Mass. R. Prof. C. 1.5(e) as it existed at the time of the engagement letter."); Joy Dep. at 174:6-8 ("[T]he retention agreement standing on its own, met 1.5(e) as it existed at the time."); Lieberman Rep. at 16 ("Labaton obtained ARTRS' consent to divide its fees with Chargois, and therefore complied with Rule 1.5(e), as it then existed."); Lieberman Dep. at 38:18-19 ("It's plain language to me, sir."); Wendel Rep. at 14 ("In my opinion, the negotiations between Labaton and the ARTRS and the written consent provided by Clark and Hopkins satisfy the requirements of Mass. RPC 1.5(e) and the interpretation placed on the rule by the *Saggese* court."); Wendel Dep. at 25:15-21; Sarrouf Day 1 Dep. at 106:6-107:5.

B. IF LABATON SUCHAROW DID NOT COMPLY WITH SAGGESE, ITS NON-COMPLIANCE WAS MINIMAL AND HAS NOW BEEN CURED.

To the extent the Special Master finds that Labaton Sucharow did not comply with the SJC's opinion in *Saggese*, the non-compliance was at most a procedural technicality. At worst, ARTRS did not consent in writing that Labaton Sucharow would split its fee with Chargois specifically, although *Saggese* does not require, by its terms, that the attorney sharing a fee be named. *See Saggese*, 445 Mass. at 443.[22] However, any non-compliance with Rule 1.5(e) has now been cured, because Hopkins, acting on behalf of ARTRS, ratified the Chargois Agreement with respect to the State Street matter. *See* Hopkins Decl. [Ex. 9]. As the court noted in *Saggese*, "the beneficiary in a fiduciary relationship may ratify conduct that otherwise would constitute a breach of fiduciary duties, provided the requisite disclosure has been made." 445 Mass. at 442 (fee-sharing agreement ratified two years after unconsented-to referral, "toward the end of the attorney-client relationship"). The court further noted that "[r]atification is not the preferred method to obtain a client's consent to a fee-sharing agreement, but it is adequate." *Id.* As such, Hopkins' ratification on behalf of ARTRS is adequate here. *See id.*[23] Rule 1.5(e) exists for the benefit of clients; [24] and, here, the client was protected and is content.

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[22] Contrary to Prof. Gillers' description of the Chargois Agreement as "secret," ARTRS knew Damon Chargois – because he introduced ARTRS and Labaton Sucharow – and knew that he would be part of the Labaton-ARTRS relationship. *See* § II.A, *supra.* The relationship cannot be characterized as "secret" when the *Chief Counsel* of ARTRS was aware that Labaton Sucharow would be affiliated with Chargois & Herron. Given ARTRS' consent to Labaton Sucharow dividing its fees, and particularly when considering ARTRS' legal sophistication, the Chargois referral fee was hardly a "secret." *Cf.* Joy Dep. at 142:17-22 ("But anybody that knows anything about law firms would know that there are other lawyers who are sharing in those fees . . .").

[23] *See also* Lieberman Rep. at 16 ("In my opinion the foregoing facts fully support the conclusion that ARTRS was adequately informed, in writing, at the inception of the retention, and *de facto*, and retroactively, assented to Labaton's sharing of its fees with Chargois.").

[24] *See* Green Rep. at 20 ("Further, the purposes of the procedural requirements were adequately served."); Sarrouf Day 2 Dep. at 257:17-258:5 ("[T]he Court in this state has repeatedly said . . . that the purpose of the statute is to protect the clients. And the client says 'I have not been harmed. Matter of fact, I think I've been tremendously well represented, and I agree with letting him pay from his fee a

C. MRPC 1.5(E), NOT 7.2(B), APPLIES TO LABATON SUCHAROW'S DIVISION OF FEE.

Prof. Gillers argues that, if Labaton Sucharow did not meet the requirement of Rule 1.5(e) of obtaining consent, Rule 1.5(e) would no longer be applicable. *See* Gillers Rep. at 58-61. The analysis, he contends, would default to Rule 7.2(b), where, having vitiated the only potential exception, the payment to Chargois & Herron would be rendered an an automatic ethics violation. *See* MRPC 7.2(b) ("[a] lawyer shall not give anything of value to a person for recommending the lawyer's services"). The respective titles of these two rules – "Fees" and "Advertising" – presage how truly flawed this novel argument is. While the argument at this point is purely academic, given that Labaton Sucharow very clearly *did* comply with the existing version of Rule 1.5(e), Prof. Gillers' willingness to make the argument is indicative of the extent to which he would go to put Labaton Sucharow in harm's way. This argument has literally no precedent or support in Massachusetts, which Prof. Gillers acknowledges. Gillers Day 1 Dep. at 53:9-62:17 (conceding that he found no opinions of the Massachusetts Board of Bar Overseers, the Massachusetts Bar Association, or the Boston Bar Association, or any Massachusetts judicial opinions, which explain or hold that imperfect compliance with Rule 1.5(e) constitutes a violation of 7.2(b)). Yet, in a remarkably cavalier opinion, he describes his reading of the Rules as "syllogistic," despite his inability to cite a single example where these Rules have been applied as he construes them. *Id.* at 59:8-24.

The history behind the Rules contradicts Prof. Gillers' novel interpretation. In Massachusetts, Rule 7.2 was never intended to apply, and has never applied, to a division of a

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portion to someone else.'. . . The client [] has not been harmed in any way. And that's the purpose of the statute."). Notably, the facts here are similar to *Saggese*, although the the fee division in the latter was greater (33%). *Saggese*, 445 Mass at 437.

fee between attorneys. *See, e.g.*, Wendel Rep. at 16; Green Rep. at 16 n.13.[25] If Rule 7.2(b) did apply to imperfect fee divisions, decisions disciplining attorneys for violating Rule 1.5(e) would also discipline the attorneys for violating Rule 7.2(b). Research has not uncovered a single example.[26] *See* Joy Rep. at 16-27 (exhaustive survey of ethics law did not find any authority supporting Prof. Gillers' position); Lieberman Rep. at 17.[27] Applying Rule 7.2 here would break new ground. *See* Gillers Day 1 Dep. at 62:12-17 (admitting that he is unaware of any lawyer or law firm that has ever been disciplined based on Rule 7.2(b) for failing to perfect client consent under Rule 1.5(e)).

Notwithstanding the fact that Prof. Gillers' position lacks any legal precedent, his text-based argument is also flimsy. Rule 7.2(b) expressly does not apply to a division of fees between lawyers. Mass. R. Prof. C. 7.2(b)(5) ("except that a lawyer may . . . pay fees permitted by Rule 1.5(e)").[28] Nor does it state that non-compliance with Rule 1.5(e) leads to a violation of Rule 7.2. Instead, Rule 1.5(e) governs the division of fees between lawyers (whether perfect or

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[25] *See also* Green Dep. at 80:22-23 ("[T]he purposes of the rule are not implicated at all."); Lieberman Dep. at 77:24-78:7 ("I have never heard this interpretation before, and if you look in the ALI restatement, if you look in the treatises, you never see any case that talks about if you violate the specific express terms of 1.5(e), then you are, therefore, in violation of 7.2 by attempting to get a referral fee from a person. I've never seen that.").

[26] Prof. Gillers claims that *Daynard v. Ness, Motely, Loadholt, Richardson & Poole, P.A.*, 188 F. Supp. 2d 115, 130 stands for the proposition that an imperfect fee division would result in the application of Rule 7.2(b). Gillers Day 1 Dep. at 84:22-86:18. The case does not state, or even suggest, that concept. *See Daynard*, 188 F. Supp. 2d at 130. In fact, despite an analysis of both Rule 1.5(e) and its New York equivalent, Rule 7.2(b) is never mentioned. *Id.* at 124 n.5. Prof. Gillers' reliance on *Holstein v. Grossman*, 246 Ill. App. 3d 719 (1993) is similarly inapposite. That case extensively discusses imperfect fee-splitting agreements under Ill. Sup. Ct. R. 2-107. Despite its lengthy discussion – and the fact that the referral fees at issue were not consented to in writing – the court never mentions Rule 7.2(b) or its Illinois analogue. *Id.*

[27] "Massachusetts state courts, Massachusetts disciplinary authorities, and the United States District Court for Massachusetts have never considered a fee division between law firms based on a flawed or imperfect division of fee arrangement between law firms and a client under Mass. R. Prof. C. 1.5(e) to be a violation of Mass. R. Prof. C. 7.2(c)." Joy Rep. at 16.

[28] Prof. Green testified that this language in Rule 7.2(b)(5) operates to "emphasize that fee-sharing agreements are okay in Massachusetts." Green Dep. at 58:17-19.

imperfect). In turn, it does not mention Rule 7.2(b). A commonsense reading of the Rules demonstrates that Rule 1.5(e) is designed to govern a division of fees between lawyers, while Rule 7.2(b) is designed to govern payments other than fee divisions. Finally, as briefly noted above, if there were any doubt regarding this sensible reading of the Rules – which, frankly, there should not be – Rule 1.5(e) is titled "Fees," while Rule 7.2 is titled "Advertising." *See Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (explaining that "the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute") (internal quotations omitted).[29] Prof. Gillers' construction impermissibly ignores this clear structure and should be rejected. *See O'Connell v. Shalala*, 79 F.3d 170, 176 (1st Cir. 1996) ("[C]ourts are bound to afford statutes a practical, commonsense reading. Instead of culling selected words from a statute's text and inspecting them in an antiseptic laboratory setting, a court engaged in the task of statutory interpretation must examine the statute as a whole, giving due weight to design, structure, and purpose as well as to aggregate language.") (internal citations omitted).[30]

In short, Prof. Gillers' interpretation of the relationship between MRPC 1.5(e) and 7.2(b) is unprecedented and unsupported by the language of the Rules and the history of their

[29] Prof. Green agreed that 1.5(e) "occupies the field" regarding fee divisions. Green Dep. at 73:11-18. Given the design, structure, and history of the Rules, this is the most reasonable interpretation.

[30] Assuming solely for the sake of argument that 7.2(b) were applicable to this situation, Prof. Green explains that the facts do not reflect that Chargois was paid for a recommendation. Green Rep. at 14-15 ("Labaton did not compensate Chargois 'for recommending [Labaton's] services' [to ARTRS]. . . . [t]he original fee-sharing arrangement was not compensation 'for recommending' Labaton but for helping Labaton secure an opportunity to pitch its own services as well as for anticipated future work by Chargois." The intent had been for Chargois to perform the traditional role of a local relationship counsel for ARTRS until George Hopkins became Executive Director and indicated his preference for dealing directly with Labaton Sucharow. Belfi 2d Dep. 26:15-27:15, 57:5-19 [Ex. 4]; Keller Dep. Day 1 44:8-46:21.

application in Massachusetts.[31] His argument is most notable for the fact that he would make it at all.

D. MRPC 1.5(A) DOES NOT APPLY TO THE DIVISION OF FEE WITH CHARGOIS.

Prof. Gillers' improvised, eleventh-hour opinion, prompted by the Special Master, regarding MRPC 1.5(a) also does not withstand scrutiny.[32] Here, again, Prof. Gillers relies on a strained reading of the Rules.

The payment at issue is a division of Labaton Sucharow's fee with Chargois. Stated simply, Rule 1.5(e) governs fee divisions; Rule 1.5(a) does not. Rule 1.5(a) assesses whether a singular "fee" is "clearly excessive." Once that threshold inquiry is made, Rule 1.5(e) addresses the requirements for dividing the singular "fee," and notes that the "total fee" must be reasonable. In other words, the whole fee is evaluated for excessiveness – as the Court did here – and then it may be divided according to the requirements of Rule 1.5(e). There is no requirement that each portion of the fee not be "clearly excessive." *Compare* Mass. R. Prof. C. 1.5(a) *with* Mass. R. Prof. C. 1.5(e).

As with his argument regarding Rule 1.5(e), Prof. Gillers' construction of Rule 1.5(a) appears to be unprecedented in Massachusetts.[33] The absence of any supporting authority is

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[31] *See*, *e.g.*, Green Rep. at 16-17 ("I am unaware of any judicial decision arising in the disciplinary setting or any other context, or any secondary authority holding that compensating a lawyer for a referral in the context of an imperfect fee-sharing arrangement violates Rule 7.2(b). Nor have I found any ethics opinion of the Massachusetts or Boston bar associations to this effect.").

[32] Prof. Gillers first introduced his opinion during deposition testimony, largely in response to a line of leading questions from the Special Master. Gillers Day 1 Dep. at 364:8-370:17. This opinion is not contained in his 84-page report.

[33] *See, e.g.*, Joy Rep. at 55 ("I could not locate a single case, advisory ethics opinion, or any authority for the proposition that a lawyer's *share* of a fee in a division of fee under Mass. R. Prof. C. 1.5(e) must not be clearly excessive."); Lieberman Rep. at 19 ("[I]n my experience I cannot recall a single instance in which a referral fee was scrutinized for reasonability under the Mass. Rules…."); Green Rep. at 25 ("Prof. Gillers cites no judicial or bar opinions supporting his theory of independent analysis of each lawyer's share of a fee under Rule 1.5(a). I am unaware of any."); Wendel Rep. at 19-20. Gillers admits

unsurprising. Applying Rule 1.5(a) to fee divisions would run counter to the "time-honored" Massachusetts tradition of allowing referral fees, even where the referring attorney does no work. *See Saggese*, 445 Mass. at 442 (enforcing a 33% referral fee where no work was performed by referring lawyer, without questioning whether the 33% division was clearly excessive); *Mass. Legal Ethics* at 185 [Ex. 3].[34] The encouragement of referral fees in Massachusetts is the result of deliberate consideration by the state's Bar, and undermines any argument that Rule 1.5(a) is intended to restrain referral fees. *See Mass. Legal Ethics* at 185 [Ex. 3]; Wilkins, 82 Mass. L. Rev. at 261-262 [Ex. 13].

As a practical matter, it does not make sense to apply Rule 1.5(a) to a referral fee because the factors it enumerates contemplate work being done. In particular, subsection 1 states that a factor "to be considered" is "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly." This factor cannot be applied to a bare referral fee. *See In re Fordham*, 423 Mass. 481, 490-91 (1996) (focusing extensively on the hours an attorney spent working on a case and the types of work he did in determining whether a fee was clearly excessive). Prof. Gillers' construction would render Rule 1.5(a)(1) a nullity in some cases and must be rejected. *See United States v. Ven-Fuel, Inc.*, 758 F.2d 741, 751-52 (1st Cir. 1985) ("All words and provisions of statutes are intended to have

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that he too is unaware of any authority in Massachusetts that says a referral fee can be deemed clearly excessive under 1.5(a) on the basis of the time and labor expended. Gillers Day 2 Dep. at 386:9-16.

[34] *See also* Joy Dep. at 167:18-22 ("I don't think the court would even . . . address the issue, because in *Saggese*, he gets $90,000 from what sounds to be like ten minutes worth of work, and the court didn't even blink an eye at it."); Green Dep. at 98:17-22 ("Obviously, it's capped by the total fee and the total fee has to be reasonable, but it does not limit the amount that's paid out of the total share to the lawyer who made the introduction."); Lieberman Dep. at 103:12-104:10 ("First of all, there's no authority for that notion, that I'm aware of. And, secondly, it doesn't make any sense . . . It wouldn't matter. You can say 99.9 percent, Judge. I wouldn't change my opinion.").

meaning and are to be given effect, and no construction should be adopted which would render statutory words or phrases meaningless, redundant or superfluous.").

Moreover, there is no policy reason to scrutinize whether the individual segment of a fee is clearly excessive. The percentages of a fee division have no effect on the client, who pays the total fee.[35] Here, the client agrees with this common-sense view and believes that the total fee was fair. *See* Hopkins Decl. at ¶ 11 [Ex. 9] ("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.").

Simply put, the text of Rules 1.5(a) and 1.5(e), the history of their application in Massachusetts, and common sense all require rejecting Prof. Gillers' last-minute opinion, which he admittedly did not attempt to support with any research. This, too, is an argument most notable for the fact that it was made.

V. LABATON SUCHAROW WAS NOT REQUIRED TO DISCLOSE THE CHARGOIS AGREEMENT TO THE COURT.

As stated in Section III, *supra*, Prof. Gillers admits that he is not an expert on the Federal Rules of Civil Procedure or class action litigation. Nevertheless, he asserts that customer counsel were "obligated to disclose the Chargois Arrangement to the Court." Gillers Rep. at 66. His testimony is contradicted by that of leading national class action expert Prof. William Rubenstein, who noted, "[i]t bothers me that judges do not use their authority to ask for fee agreements." Rubenstein Depo. 197:23-24." And, ""[t]he judge has a fiduciary duty to absent class members. …He, in this case Judge Wolf, should be asking these questions." Id. 198:17-19.

[35] *See* Green Rep. at 24 ("This goes to the fairness of the division among lawyers, not to the fairness of the client's fee, and is a matter for the lawyers to work out among themselves."); Wendel Rep. at 19 ("From the client's point of view, what matters is that the total fee is reasonable.").

A. THE FEDERAL RULES OF CIVIL PROCEDURE CONTROL AND DO NOT REQUIRE DISCLOSURE.

The Federal Rules of Civil Procedure specifically address a party's obligation to disclose fee agreements. Federal Rule of Civil Procedure 54(d)(2)(B) provides that a motion or petition for attorneys' fees must "disclose, ***if the court so orders***, the terms of any agreement about fees for the services for which the claim is made" (emphasis added).[36] The Rule's Advisory Notes make clear that this provision includes fee-division agreements: "*[i]f directed by the court*, the moving party is also required to disclose any fee agreement, including those between . . . attorneys sharing a fee to be awarded . . . ." Fed. R. Civ. P. 54, 1993 Notes of Advisory Committee, ¶ 8 (emphasis added). This language is unequivocal: disclosure of fee agreements is not required unless the court orders it.

Contrary to Prof. Gillers' suggestion, this is not a narrow "construction" by Labaton Sucharow, and courts applying Rule 54 have adhered to its plain terms. For example, in *Pierce v. Barnhart*, the Fifth Circuit Court of Appeals held that the District Court abused its discretion in denying attorney's fees where the plaintiffs' attorney did not submit information regarding "whether attorney's fees had been paid or were due to other counsel for representation," because she had "complied with the local rules and the district court never directed her" to disclose additional information. 440 F.3d 657, 660-61, 664-65 (5th Cir. 2006).

Nor does Federal Rule of Civil Procedure 23 require the disclosure of fee agreements. Fed. R. Civ. P. 23(h). The Second Circuit's decision in *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP* is particularly instructive. 814 F.3d 132, 137-38 (2d Cir. 2016). There, a fee petition filed in a class action did not disclose fee-sharing agreements with (or the presence of)

[36] Fed. R. Civ. P. 23(h)(1) requires that motions for attorneys' fees in a class action be brought pursuant to Rule 54(d)(2), such that the general disclosure requirement – i.e., disclosure if the court asks – is expressly incorporated into class actions.

an attorney in Mississippi, who allegedly was paid for unnecessary and irrelevant work, nor did the petition disclose four other law firms. *Id*. The Second Circuit explained that Fed. R. Civ. P. 23(h) "does not mandate automatic disclosure of all fee-sharing arrangements in class actions" in the absence of a local rule. *Id.* at 137 n.2.[37]

Prof. Gillers attempts to avoid the clear meaning of Rules 54 and 23 by claiming – with no legal support – that the latter rules only apply to attorneys about whom the Court knows. Gillers Rep. at 67. The Rules, and the courts interpreting them, make no such distinction. *See* Fed. R. Civ. P. 23(h); Fed. R. Civ. P. 54(d)(2)(B); *Bernstein*, 814 F.3d at 137 n.2 (holding that there was no requirement to disclose fee applications where the court was unaware of the various attorneys receiving fees). Moreover, Prof. Gillers' unsupported argument that the Court cannot be "expected" to ask affirmatively whether there are undisclosed fee agreements is contradicted by the plain language of Rule 54, which expressly contemplates the court taking such action. Fed. R. Civ. P. 54 ("if the court so orders"); *id.*, 1993 Notes of Advisory Committee ("[i]f directed by the court"). As noted at p. 9, *supra*, Judge Wolf did just that in a recent case. The leading authorities reject Prof. Gillers' uninformed view of the Federal Rules. *See, e.g.*, William B. Rubenstein, *Newberg on Class Actions* § 15:11 (5th ed. 2016) [Ex. 17] ("The third prong of Rule 54(d)(2)'s motion requirement – concerning disclosure of fee agreements – is discretionary with the court."); Rubenstein Rep. at 5 ("Rule 23(h) and Rule 54 are therefore clear in mandating the submission of fee agreements – including those concerning the allocation of fees among counsel – only upon court order."); 10-54 *Moore's Federal Practice - Civil* § 54.154 (2018) [Ex.

[37] Nor does Rule 23(e) require disclosure of agreements allocating fees amongst plaintiff's attorneys. *See* Fed. R. Civ. P. 23(e); Rubenstein Rep. at 29 n.94.

18] ("If the court so directs, the fee motion must also disclose the terms of any fee agreement with respect to the services implicated by the motion."); *see also* Joy Rep. at 31-35.[38]

B. PROF. GILLERS' LEGAL AUTHORITIES DO NOT SUPPORT HIS POSITION THAT DISCLOSURE IS REQUIRED TO THE COURT.

The cases that Prof. Gillers cites (*see* Gillers Rep. at 68-71, and cases cited therein) do not require disclosure of fee agreements to the Court. Instead, they stand for the different proposition that courts have a duty to protect class interests and, in that role, may be interested in fee agreements between attorneys. *See id.* It does not follow – nor do these cases hold – that the burden is on the attorneys to disclose information regarding fees in the absence of a court request. *See* Rubenstein Dep. at 135:8-12 ("Number one, when I see that the Court is a fiduciary for the class members, I immediately think that means the Court has a responsibility to do something. I don't immediately think that means the parties have a responsibility to do something.").[39] Respectfully, if a court is interested in scrutinizing fee agreements, it should use its authority under the Rules and order their disclosure, which many commentators favor aspirationally as a matter of policy. *See Newberg* §15:12 [Ex. 17] ("While Rule 54(d)(2)(B)(iv) makes disclosure of such agreements dependent on a judicial order, there are at least two reasons that courts should regularly order disclosure."); *Moore's* § 54.154 [Ex. 18] ("The compelled

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[38] Prof. Rubenstein expanded on this point during his deposition, in no uncertain terms: "From my point of view . . . it's not complicated. The judge should have ordered that the fee agreements be released. He didn't do that. And absent him doing that, I just don't think there was an obligation to make public any of the fee agreements." Rubenstein Dep. at 66:13-19. Moreover, Prof. Rubenstein explains that Prof. Gillers' argument betrays a profound misunderstanding of fee awards in the class action context. Rubenstein Rep. at 9-12 (noting that "the class action experts who drafted Rule 23(h) were well aware that a class action case encompasses cast and crew – and they nonetheless chose the default embodied in Rule 54: that fee allocation agreements need not be disclosed absent judicial request, that the judge must ask for the playbill"). Prof. Gillers backtracked from his argument during his deposition. Gillers Day 1 Dep. at 115:5-7 ("I'm not relying on Rule 54 as the source of authority or obligation to disclose participation of a lawyer whom the court does not know about.").

[39] If Prof. Gillers' theory were true, the rules regarding disclosure in class action litigation would require it. They do not. Fed. R. Civ. P. 23; Fed. R. Civ. P. 54.

disclosure of such fee agreements may assist the court in determining the appropriate amount of any attorney's fee.").[40]

Prof. Gillers' reliance on *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987), is misplaced for two reasons. First, in the more recent *Bernstein* case, the Second Circuit held without qualification that information regarding attorneys' fees was not required to be disclosed even where attorneys collecting fees were unknown to the Court. *Compare In re "Agent Orange"*, 818 F.2d at 223, *with Bernstein*, 814 F.3d at 137 n.2. Second, when *Agent Orange* was decided, a local rule required disclosure of fee agreements. *See In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 869 (E.D.N.Y. 1984) ("The Court has determined that Rule 5 of the U.S. District Court for the Southern and Eastern Districts of New York should not be applied in this litigation because of the need for continued intensive work by the attorneys until the close of the fairness hearings and because of the complexity of the fee applications.").[41] Taken together, the import of these two cases is clear: If there is a local rule requiring disclosure of fee agreements, they must be disclosed. Otherwise, no disclosure is required.[42]

Nor can the express terms of Fed. R. Civ. P. 23(h) and 54(d)(2) be end-run by relying on the general duty of candor (MRPC 3.3) or the general duty to avoid fraud on the court (MRPC 8.4) as contained in the Massachusetts Rules of Professional Conduct. *See* Rubenstein Dep. at 149:2-15 ("Rule 23 clearly sets out a process and the structure for the fee process in class action cases. It's the governing rule. In the case we're talking about it has a specific subpart directly

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[40] Joy Dep. at 91:14-15 ("That's for the judge to decide."); *id.* at 118:11-15 ("Federal Rule of Civil Procedure 54(d) [] says when a judge wants to know about fee sharing, the judge will ask.").

[41] At his deposition, Prof. Rubenstein explained another difference: unlike the fee agreement in *Agent Orange*, the Chargois Agreement did not incentivize the plaintiffs' attorneys to change their behavior in a way that negatively affected the class. Rubenstein Dep. at 55:23-56:3 ("Second, when I look at Chargois' involvement, I don't see anything like in the *Agent Orange* case where anyone's worried that the payment to Chargois conflicted with the class' interest in litigating the case.").

[42] There is no such rule in the District of Massachusetts.

on point . . . I feel like you all [The Special Master and his team] are trying very hard to find a way around that specific law . . . from where I sit there's a specific[] rule directly on point. Just doesn't happen to say what you want it to say, but it's there."). The Federal Rules of Civil Procedure specifically govern this situation and do not require disclosure. *See id.*

C. MRPC 3.3(D) DOES NOT APPLY.

In the past weeks, the Special Master has intimated a belief that MRPC 3.3(d) (candor in ex parte proceedings), informed by Comment 14A, may govern Labaton Sucharow's disclosure obligations. *See, e.g.*, Joy Dep. at 95:1-99:3. This argument also was absent from Prof. Gillers' Report. Nevertheless, to the extent that it is belatedly at issue here, it is misguided for two reasons.

First, MRPC 3.3(d), by its terms, does not apply because the settlement hearing, and in particular the fee petition, were not ex parte. *See* MRPC 3.3(d) ("In an ex parte proceeding . . ."). Nor does Comment 14A bring this case under MRPC 3.3(d). That Comment discusses situations where "adversaries present a joint petition to a tribunal." MRPC 3.3, Comment 14A. The fee petition in this case was not joint – it was filed by the plaintiffs. ECF 102. Despite the Special Master's continued search to find a codified ethical violation to match his personal view of Labaton Sucharow's non-disclosure, 3.3(d) does not fit.

Second, Comment 14 makes clear that 3.3(d) "does not change the rules applicable in situations covered by specific substantive law . . ." MRPC 3.3 Comment 14. As discussed in the preceding section, there is specific substantive law covering this situation, i.e., Fed. R. Civ. P. 23 and 54. Accordingly, as Comment 14 reflects, Rule 3.3(d) did not mandate disclosure of the

Chargois Agreement during the settlement hearing, despite its purportedly non-adversarial nature.[43]

VI. DISCLOSURE TO THE CLASS WAS NOT REQUIRED.

Prof. Gillers also argues that Labaton Sucharow was obligated to disclose the Chargois Agreement to the class once it was certified for settlement purposes. Gillers Rep. at 75-78. Here, again, Prof. Gillers offers an expert opinion on class action procedure, in which he admittedly has no expertise, and he does so in stark contravention of the report and testimony of Prof. Rubenstein, one of the nation's leading class action experts. As with most of his other arguments, Prof. Gillers concedes that his position is, as far as he knows, unprecedented. Gillers Day 1 Dep. at 156:20-157:1 (admitting that none of the cases he cites hold that counsel must disclose fee allocations to class members, including those unnamed). And again, Prof. Gillers' position is incorrect.[44]

A. THE FEDERAL RULES OF CIVIL PROCEDURE DO NOT REQUIRE DISCLOSURE TO THE CLASS.

Rule 23(h)(1) governs the requirements of class notices relative to attorney's fees.[45] It provides that claims for attorneys' fees be made by motion with notice served on all parties and class members "in a reasonable manner." *Id.* The rule says nothing regarding disclosure of fee agreements to the class. Instead, it directs that the motion for fees must be made pursuant to

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[43] And, as Professor Rubenstein has noted, the drafters of Rule 23 are deeply experienced in class action litigation and surely are familiar with this dynamic. Rubenstein Rep. at 14 ("In other words, the class action law experts who wrote the rule after study and public input balanced the principles at stake by authorizing class counsel to keep fee-sharing agreements confidential absent an explicit judicial order to the contrary.").

[44] *See* Joy Rep. at 50 ("There was no ethical or legal requirement for Labaton to provide notice of the fee sharing agreement between Labaton and Chargois & Herron to the class members."); Joy Dep. at 139:8-9 ("I could not find any obligation to do so.").

[45] As Professor Green testified, "[i]n my view the kinds of notice you give to a class is governed by Rule 23 and case law that develops under Rule 23." Green Dep. at 152:12-14.

Rule 54(d)(2). As explained in § V, *supra*, Rule 54 does not require fee agreements to be disclosed absent a court order. Thus, by extension, Rule 23(h) also does not require disclosure of fee agreements absent a court order. *See Bernstein*, 814 F.3d at 137-38 n.2 (explaining that Fed. R. Civ. P. 23(h) "does not mandate automatic disclosure of all fee-sharing arrangements in class actions").

As Prof. Rubenstein testified, "…class action law generally does not put fee allocation information in the class notice…I would say it's not an expected part of the notice process in a class action that the allocations as to what each lawyer's getting is put in the notice." Further, "[i]f the class members want to know that information, they can come forward and ask the Court to release it. I hope the Court would. But it's not expected in a class action that the allocation as to what each lawyer is getting is ever in the notice to the class." Rubenstein dep. 188:4-20.[46] Prof. Joy concurs: "Without a disclosure obligation to the Court and without a clear obligation to disclose how fees would be divided to the class, there was no obligation for Labaton to disclose [] the fee sharing agreement with Chargois & Herron to the class members." Joy Rep. at 50.[47]

B. THE COURT HAS ENDORSED THE NOTICE USED BY LABATON SUCHAROW.

Prof. Gillers' arguments regarding the Notice of Pendency of Class Actions (the "Notice") ring especially hollow when considering recent actions taken by Judge Wolf. In *Arkansas Teacher Retirement System v. Insulet Corp.*, in which Bernstein Litowitz represents

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[46] *See also* Rubenstein Rep. at 27-30 (Prof. Gillers' argument that "class counsel must disclose fee-sharing agreements in the class's notice . . . is not supported by the text of Rule 23, nor the cases interpreting it.")..

[47] Professor Joy explained further during his deposition: "It was sufficient to notify class members about the fees. It didn't have to describe the division of fees because the court did not use Rule 54(d) to order that the terms of any agreement about fees for which the claim is being made be disclosed." Joy Dep. at 145:14-19.

ARTRS, the parties conducted a preliminary settlement hearing on March 9, 2018, at which the Court reviewed the draft settlement notices provided by the parties and gave guidance and instruction as to how they should be revised. 1:15-cv-12345 (D. Mass) (Wolf, J.). As noted above, the Court expressly inquired as to the different lawyers who would share in an attorneys' fee award, demonstrating the ease with which this can be accomplished if the Court wishes to know. March 9, 2018 Hearing Tr. at 12 (ECF 120) [Ex. 10]; *see also* p. 9, *supra*. The Court also explained that the notice regarding the fee petition need only include the aggregate amount of fees being requested: "[i]f it's your intention to ask for 25%, all you have to say is the lawyer is going to ask for 25%." *Id*. This is sensible, because the division of fees among different attorneys has no effect on the class. *See, e.g.*, *Hartless v. Clorox*, 273 F.R.D. 630, 646 (S.D. Cal. 2007) ("The agreement as to the amount of attorneys' fees could affect the class members. The allocation of those fees amongst class counsel does not affect the monetary benefit to class members.").

Importantly, in *Insulet*, the Court directed the parties to conform their notice to that sent by Labaton Sucharow in this case, which the Court described as one of the "templates" it has been using. March 9, 2018 Hearing Tr. at 29-30 [Ex. 10] (explaining the need for a notice that provides enough information to be fair to the class). After the hearing, the Court ordered that "[t]he proposed documents shall comply with the requirements discussed by the court at the March 9, 2018 hearing and be consistent with the notices approved in *Arkansas Teacher Retirement System, et al. v. State Street*, *et al.*, C.A. No. 11-10230, Docket No. 95-1, 95-3, and 95-5, and *KBC Asset Management NV, et al. v. Aegerion Pharmaceuticals, Inc., et al.*, C.A. No. 14-10105, Docket No. 145-1." *Id.*, ECF 118. Neither of those notices describes fee allocations or fee agreements among lawyers. In other words, in its most recent pronouncement on what is

appropriate notice to the putative class in a class action settlement, the Court held up Labaton Sucharow's Notice in *State Street* as a model for other law firms, despite the Notice's lack of information regarding fee agreements or fee allocations (including the allocation among the three class counsel firms). Thus, Prof. Gillers' description of the Notice in this case as ethically infirm is contradicted by the Court's use of that notice as a template for other cases.[48]

C. THE RULES OF PROFESSIONAL CONDUCT DO NOT REQUIRE DISCLOSURE TO THE CLASS.

In his attempt to impose an ethical requirement that class counsel must disclose a fee agreement to the class in a notice of settlement and fee petition (*see* Gillers Rep. at 75-78), Prof. Gillers improperly attempts to pound a square peg into a round hole. The cases upon which he relies, however, do not hold that disclosure of a fee agreement is required, but rather explain that attorneys representing a certified class owe a fiduciary duty to the class. He then seizes upon the "fiduciary duty" rubric, as did the Special Master in his questioning, *e.g.*, Joy Dep. 154:6-10, to presuppose the highest burden of disclosure, as between an attorney and his or her actual client.

However, as Prof. Gillers should have known before proffering this opinion, this general fiduciary duty to the class did not create an ethical obligation akin to that between an attorney and his or her client, and did not extend to an obligation of disclosure for the following reasons:

Prof. Gillers relies upon Mass. R. Prof. C. 1.2(a) and 1.4(a) – rules that require specific client interactions that are at odds with the nature of class actions – for the premise that, as fiduciaries, Labaton Sucharow and the other class counsel had a vague obligation to provide class members "information relevant to decisions that belonged to the client." Gillers Rep. at 77-78. *See, e.g.*, Mass. R. Prof. C. 1.4(a)(2) (lawyer must "reasonably consult with the client about

[48] The Court approved the notice in the *Insulet* case on April 6, 2018. *Id.*, ECF Nos. 122, 124.

the means by which the client's objectives are to be accomplished").[49] Apparently, Prof. Gillers neglected to read the Advisory Committee's Note to Fed. R. Civ. P. 23, which explains that an attorney's obligation to the class "may be different from the customary obligations of counsel to individual clients." Fed. R. Civ. P. 23, 2003 Advisory Note. He similarly appears to have skipped a review of *Moore's Federal Practice. See* 5-23 *Moore's Federal Practice - Civil* § 23.120 (2018) [Ex. 19] ("[T]he post-2003 appointment procedures probably sharpen the differences in ethical obligations between class-action attorneys and the 'customary obligations of counsel to individual clients.'"); *see also* Rubenstein Dep. at 151:19-21 (explaining that members of the certified class are "clients for some purposes, and they're not clients for other purposes."). Moreover, as courts have recognized, class actions are legally unique situations that do not always neatly fit within the standard framework of ethical rules. *See Rand v. Monsanto Co.*, 926 F.2d 596, 600 (7th Cir. 1991) ("We conclude that DR 5-103(B) is inconsistent with Rule 23 and therefore may not be applied to class actions."). For example, conflicts rules – which are suited to individual clients – are "much laxer" in the class action context. *See* Rubenstein Dep. at 151:23-153:10.

Hence, Rule 23 provides the rules of ethical conduct relating to class counsel's fiduciary duty, and the latter do not encompass the meaning attributed to them by Prof. Gillers in any event. *See* Rubenstein Dep. at 154:16-20 ("What the Court found [in other cases] was that there was not a breach of fiduciary duty because Rule 23 had been complied with and hence in some ways what the Court's saying is that whatever fiduciary duty the lawyer had was co-extensive with its Rule 23 duties.").

[49] As Professor Wendel testified, "[u]nless there is something about class action procedure that I don't know, there is nothing as a matter of the Rules of Professional Conduct that would create that obligation." Wendel Dep. at 132:1-5.

VII. ADDITIONAL DISCLOSURES TO CUSTOMER CLASS CO-COUNSEL WERE NOT REQUIRED; AND, ANY FAILURE TO DISCLOSE DOES NOT CONSTITUTE A VIOLATION OF ANY RULE IN ANY EVENT.

Although Prof. Gillers offered no opinion that Labaton Sucharow owed or violated a legal or ethical rule to any co-counsel, be they other customer class counsel or ERISA counsel,[50] the Special Master has persisted in raising the issue through his deposition questioning. His concerns are unfounded.

TLF was aware of the referral relationship since at least May of 2011, when Labaton Sucharow partner Christopher Keller forwarded a draft letter to TLF Managing Partner Garrett Bradley memorializing the proposed relationship among the three customer class law firms. Among the disclosed terms was this: "There is an 'off the top' obligation to referring counsel of 6% of the fees awarded." TLF-SST-033911 et seq. at 033912 [Ex. 20]. TLF does not dispute receipt of the cover email (TLF-SST-033910) or the draft letter. Indeed, TLF produced them in these proceedings. (Although the draft letter was addressed to Lieff Cabraser partners Fineman, Chiplock, Heimann, and Hazam, as well as to Michael Thornton and Garrett Bradley, Labaton Sucharow has uncovered no evidence that the letter was actually finalized and sent.)

Prof. Gillers opined in his report – incorrectly for the reasons that forth in Section VI, *supra* -- that as fiduciaries and lawyers, Labaton Sucharow, TLF, and Lieff Cabraser all "had a duty to provide the unnamed customer and ERISA members of the class whom they represented after the Court certified the class for settlement purposes on August 8, 2016 of the existence of the Chargois Arrangement and its terms when in the notice of pendency they purported to inform class members of the terms of the settlement including anticipated counsel fee requests and explained their options to object or opt out." Gillers Rep. at 78. When pressed by Lieff

[50] *See* Gillers Rep. at 14, n.17.

Cabraser's in-house attorney Richard Heimann about the attribution of such responsibility to Lieff Cabraser specifically, Prof. Gillers responded, "the assumptions I make are that even though Lieff Cabraser did not know what Labaton Sucharow knew about the Chargois Arrangement, Chargois never shows up in any of the work that is done on behalf of [ARTRS]," that TLF leads Lieff Cabraser to believe that Chargois is acting as local counsel but that Lieff Cabraser "never encounters Chargois," and that "Chargois is getting a substantial amount of money – more money than someone who is merely local counsel and not doing valuable work meriting 4.1 million dollars would ordinarily receive." Gillers Dep. Vol. I at 227:4-19. Because of the "duty to the class as counsel to protect its recovery," Gillers opined that Lieff Cabraser was obligated to ask questions about the payment to Chargois. *Id*., 227:19-24. Although acknowledging that Lieff Cabraser may have been lacking sufficient information to trigger a disclosure requirement – which did not exist in any event – Prof. Gillers concluded that "the unusual nature of the payment for a local counsel would have at least impelled the firm in protecting its client to look into the matter." *Id*. 228:1-13.

Prof. Gillers is in error in concluding that any of the customer class firms had a duty of disclosure to the class. But, the suggestion that either TLF or Lieff Cabraser were in any way kept in the dark or misled[51] by Labaton Sucharow is equally erroneous. The fact that the draft was directed to both Lieff Cabraser and TLF demonstrates that Labaton Sucharow intended that both be informed of the referral relationship.

[51] As Lieff Cabraser's ethics expert Timothy Dacey acknowledged, Chargois did not appear in Labaton Sucharow's lodestar report, did not file a separate fee declaration, was not on any of the pleadings, and never appeared at any hearing or mediation session. Dacey Dep. at 75:6-77:16. Moreover the client, George Hopkins, was personally present at most of the mediation sessions and hearings.

VIII. WHERE PERCEIVED TRANSGRESSIONS ARE OF ASPIRATIONAL OBJECTIVES RATHER THAN ACTUAL RULES, SANCTIONS AND DISCIPLINE ARE INAPPROPRIATE.

Prof. Gillers is not alone in musing about the wisdom of such matters as adopting local rules requiring the disclosure to the Court of all fee allocations in class actions. See, e.g., Newberg §15:12 [Ex. 17] ("While Rule 54(d)(2)(B)(iv) makes disclosure of such agreements dependent on a judicial order, there are at least two reasons that courts should regularly order disclosure."); Moore's § 54.154 [Ex. 18] ("The compelled disclosure of such fee agreements may assist the court in determining the appropriate amount of any attorney's fee."). But, such aspirational musings are themselves indicative of the absence of a current requirement of disclosure. The imposition of a court sanction or discipline, or the referral to a disciplinary body, are all inappropriate for perceived transgressions of aspirational goals as a matter of due process and basic fairness.

A. DISCIPLINE AND SANCTIONS CANNOT PROPERLY BE IMPOSED FOR FAILURE TO DISCLOSE THE FEE SHARING AGREEMENT TO THE COURT.

Prof. Gillers' opinion regarding disclosure to the Court lacks any basis in law or principle. He does not believe that disclosure is always required. Rather, he argues that disclosure was required *in this specific case*, because (1) the payment to Chargois was a bare referral fee, and (2) the consent to that fee division was allegedly imperfect. *See* Gillers Day 1 Dep. at 219:12-222:12.[52] In other words, it is Prof. Gillers' "expert" opinion that, although Rule 54 does not require disclosure, an attorney can be subject to discipline for nondisclosure if some subjective and unstated combination of factors exists. This cannot be the basis for an ethical

[52] As discussed above, Prof. Gillers' opinions are squarely at odds with "time-honored" Massachusetts practice regarding referral fees. *See, e.g.*, *Saggese*, 445 Mass. at 442. Prof. Gillers' inability to separate his personal views of ethics from the actual rules in Massachusetts pervades his opinions.

violation. "Due process requires that attorneys, like anyone else, not be subject to laws and rules of potential random application or unclear meaning." *In re Discipline of an Atty.*, 442 Mass. 660, 668 (2004). Prof. Gillers' "rule" is at odds with the Federal Rules of Civil Procedure and, even in his view, only sometimes applies. It is, by definition, "unclear" and "random." *See id.*

Moreover, Prof. Gillers' formulation of the disclosure requirement is entirely inconsistent with the actual practice in the District of Massachusetts. As Prof. Rubenstein (a member of the Massachusetts bar) notes, throughout the 127 class action settlements in the District of Massachusetts over the past seven years, the Court never ordered disclosure of fee agreements. Rubenstein Rep. at 6. Thus, there is no local practice that should have alerted Labaton Sucharow that a disclosure of fees was expected despite the lack of any applicable rule or a court inquiry.[53] Nor did the Court create a duty of disclosure through its statements to the parties. It did not ask a *single* question regarding the allocation of fees between the Customer Class lawyers. *See* ECF 114 (Transcript of November 2, 2016 Hearing). Prof. Gillers' assertion that the Court "dispelled any uncertainty" that it desired information on fee agreements is either disingenuous or oblivious to the record. Gillers Rep. at 67.[54] In sum, as explained by Prof. Rubenstein – who, unlike Prof. Gillers, is an expert in class action litigation – Labaton Sucharow fully complied with its disclosure obligations.

In light of the lack of an obligation to disclose the Chargois Agreement to the Court, Prof. Gillers' arguments regarding Mass. R. Prof. C. 3.3(a) and 8.4(c) badly miss the mark. As noted by Profs. Joy and Wendel, those Rules require a "knowing" misrepresentation or omission on the

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[53] *See also* Sarrouf Day 2 Dep. at 292:12-13 ("I've never been asked [about referral fees by a court] in all my years.").

[54] By material contrast, at a recent hearing the Court *did* ask about fee agreements. *See* Transcript of March 9, 2018 Hearing at 16, *Arkansas Teacher Retirement System v. Insulet Corp.*, 1:15-cv-12345 (D. Mass.) (Wolf, J.), ECF No. 120 [Ex. 10] ("Is there one or more other attorneys that would benefit, get money from the settlement of this case?")).

part of the attorney. Mass. R. Prof. C. 3.3(a) ("A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal . . ."). Thus, "[f]or there to be an ethical duty for Labaton to disclose to the Court its fee sharing agreement with Chargois & Herron under Mass R. Prof. C. 3.3(a) or 8.4(c), the ethical duty would have to be based on Labaton *knowingly* engaging in impermissible conduct." Joy Rep. at 43. Because there was no legal obligation to disclose the Chargois Agreement, it cannot be that Labaton Sucharow lawyers "knowingly" made some kind of unethical omission.[55] Simply put, it strains credulity to argue that nondisclosure of fee-related information is an ethical violation, where the Federal Rules of Civil Procedure do not require disclosure of such information in the absence of a local rule or a court order or inquiry..

Prof. Gillers appears to have invented his own disclosure requirement for the purposes of this case. *See, e.g.*, Gillers Day 1 Dep. at 144:24-145:1 ("I know of no authority that applies 3.3 to the duty to disclose a fee agreement."). Imposing discipline would punish Labaton Sucharow for following a clear rule, in the absence of any notice of purported wrongdoing. *See*, *e.g.*, Rubenstein Dep. at 63:15-16 ("I'm not making up a rule for one case."); *id.* at 73:18-19 ("I think it was made up after the fact to fit the facts of this case."); *id.* at 75:2-3 ("I am adamantly saying the rules were clear."); *id.* at 126:20-22 ("I think that lawyers have the right to rely on the rules, and the rule is the Court can ask for the fee agreements if they want."); *id.* at 198:6-10 ("[Y]ou know, the law is clear here, and the lawyers have reason to rely on the clearness, the clarity of the law. Rule 23 and Rule 54 could not be more clear . . ."). Any finding of wrongdoing would

[55] To be clear, there was no omission in the first place, but – assuming solely for the sake of argument that nondisclosure of the Chargois Arrangement could be called an omission – it certainly was not knowingly made in violation of an obligation. *Id.* at 44. ("For an omission to be the equivalent of a misrepresentation, the omission has to occur where there is a duty to speak."); Joy Dep. at 88:3-8 (explaining that Rule 3.3 applies "[o]nly in a situation where you have a duty to speak."). Prof. Gillers' citations to cases involving Mass R. Prof. C. 3.3(a) and 8.4(c) do not change the analysis, because those cases are wholly inapposite. Gillers Rep. at 71-72. Each of them involved an egregious non-disclosure. *See* Joy Rep. at 47-49. In none of those cases did a rule of procedure specifically govern the disclosure. *Id.*

be ad hoc, retroactive, and "random," which due process does not allow . *See In re Discipline of an Atty.*, 442 Mass. at 668, citing with approval *In re Ruffalo*, 390 U.S. 544, 554-556 (1968) (White, J., concurring) (discipline inappropriate "on the basis of a determination after the fact that conduct is unethical if responsible attorneys would differ in appraising the propriety of that conduct"); *see also* Rubenstein Dep. at 104:5-6 ("[T]here is nothing that the lawyers did here that was unusual.").

The Special Master should reject, in strong terms, Prof. Gillers' reckless accusations that Labaton Sucharow committed ethical violations by intentionally misleading the Court.

B. DISCIPLINE AND SANCTIONS CANNOT PROPERLY BE IMPOSED FOR FAILURE TO DISCLOSE THE FEE SHARING AGREEMENT TO THE CLASS.

In the absence of a procedural requirement to disclose fee agreements to class members, Mass. R. Prof. C. 1.2(a) and 1.4(a) do not independently create such a requirement. Joy Rep. at 50. As with Prof. Gillers' argument regarding disclosure to the court (see § VII.A, *supra*), a vague, subjective, and unprecedented interpretation of ethical requirements in contravention of the Federal Rules of Civil Procedure is not nearly definite enough to offer a basis for discipline. *See In re Discipline of an Atty.*, 442 Mass. at 668; *see also* Green Dep. at 178:18-23 ("I don't think that's the job that Rule 1.5(e) was meant to do. And you hit lawyers by surprise unfairly if you interpret the rule to do the work that judges are supposed to do in class actions under Rule 23.").

C. DISCIPLINE AND SANCTIONS CANNOT PROPERLY BE IMPOSED FOR FAILURE TO DISCLOSE THE FEE SHARING AGREEMENT TO OTHER COUNSEL.

Neither Prof. Gillers, nor any other expert, has offered the opinion that Labaton Sucharow had an ethical or legal obligation to disclose the fee sharing agreement to other counsel. *See generally* Gillers Rep. Nonetheless, the Special Master has continued to raise the

issue of such an obligation, perhaps in response to self-interested, after-the-fact grumblings from the ERISA counsel, who actually received a gratuitous move from their contractual 9% entitlement to a 10% allocation of fees at the suggestion of Larry Sucharow. *See* Sucharow Day 2 Dep. 28:22-29:6. What one person may perceive as fair, to another may seem an inappropriate derogation of contract terms. On the basis of anyone's perception of fairness, Labaton Sucharow should not be sanctioned or disciplined in the absence of a rule or other requirement.

D. EVEN IF LABATON SUCHAROW IN SOME FASHION FAILED TO MEET THE TECHNICAL REQUIREMENTS OF SAGGESE OR OF RULE 1.5(E), WHICH IT DID NOT, NEITHER SANCTIONS NOR DISCIPLINE WOULD BE WARRANTED.

If the Special Master finds that Labaton Sucharow did not perfectly comply with Rule 1.5(e) or the SJC's dictum in *Saggese* – presumably for not identifying Chargois & Herron, although there was no such requirement in the rule or the dictum – no discipline or sanctions are warranted, for at least two reasons.

First, as explained above, any alleged violation of Rule 1.5(e) was a technical procedural lapse at most. "Technical non-compliance with a state rule of professional conduct – particularly one regulating, rather than prohibiting, a practice – is not the kind of fraud or abuse of the judicial process that justifies sanctions under the federal court's inherent power." Wendel Rep. at 19.[56] Any procedural violation by Labaton Sucharow is especially benign because ARTRS has now expressly ratified the Chargois Agreement with respect to the State Street matter.

Second, no discipline is warranted because any non-compliance on Labaton Sucharow's part is a result of the *Saggese* decision's gloss, rather than the text of the rule in place at the time the State Street engagement began. It is fundamental that the codified rules of professional

[56] *See also* Green Rep. at 22-23 ("Imperfect compliance with a prophylactic procedural requirement of a professional conduct rule (as construed by a court opinion) is unlikely to signify that the lawyer in question poses a threat to future clients or to the public generally.").

conduct are the touchstone for any disciplinary adjudication. For example, SJC Rule 4:01 – "Bar Discipline" – states that: "Each act or omission by a lawyer, individually or in concert with any other person or persons, which violates any of the Massachusetts Rules of Professional Conduct (see Rule 3:07), shall constitute misconduct and shall be grounds for appropriate discipline . . . ." SJC Rule 4:01, § 3(1); *see also* James S. Bolan*, Ethical Lawyering in Massachusetts* § 1.1, MCLE (4th Ed. 2015) [Ex. 21] ("[The rules] set forth the standards of professional conduct for members of the Massachusetts bar and serve as the basis for professional discipline."). Likewise, in the District of Massachusetts, Local Rule 83.6.1 provides that "[t]he rules of professional conduct for attorneys appearing and practicing before this court shall be the Massachusetts Rules of Professional Conduct adopted by the Massachusetts Supreme Judicial Court, *as set forth as Rule 3:07 of that court* . . ." D. Mass. L. R. 83.6.1 (1) (emphasis added).

Therefore, while *Saggese* may have suggested or even changed how the courts would construe Rule 1.5(e), it did not change the codified rules that provide a basis for discipline.[57] During the intervening time period between *Saggese* and the amendment to Rule 1.5(e), attorneys' obligations regarding fee divisions were unclear. As the chairman of the Standing Advisory Committee that initiated the 2011 amendments explained: "[b]efore these rules were adopted, *there were not such clear guidelines as to what had to be done*." Christina Pazzanese, *Attorney Fee Rules Undergo Revisions in Massachusetts*, Mass. Law. Wkly., Jan. 12, 2011 [Ex. 22] (emphasis added). And, even when the SJC finally amended Rule 1.5(e), it allowed for a

[57] In that vein, research has not uncovered a single case between November 30, 2005 and March 15, 2011 disciplining a lawyer for an improper fee division under the terms of *Saggese* (or otherwise). Indeed, when searching a comprehensive Massachusetts Board of Bar Overseers database, not a single decision citing to *Saggese* has been found. Tellingly, the BBO appears to not have used *Saggese* as a basis for discipline. Mr. Lieberman's experience is consistent: "I have never seen a disciplinary case for a lawyer where the court has disciplined a lawyer based on a ruling of a court as opposed to a violation of a Rule of Professional Conduct . . ." Lieberman Dep. at 120:2-7. The Special Master should adopt the same approach.

three-month period between the amendment and the new Rule taking effect, reflecting that some time was necessary to adjust to the changes. *See* December 22, 2010 Order of the Supreme Judicial Court regarding SJC Rule 3:07 [Ex. 23]; *see also* Pazzanese, *Attorney Fee Rules Undergo Revisions in Massachusetts* [Ex. 22] (local attorney and former BBA subcommittee member explaining that "the rule changes will require the bar to do some broad educational outreach").[58]

The lack of a rule implementing *Saggese* raises due process concerns regarding attorney discipline, particularly with attorneys admitted *pro hac vice*, who rely on the Rules of Professional Conduct to understand their obligations. As the SJC has acknowledged, "[o]rdinarily, an individual case is an inappropriate mechanism for promulgating rules." *In re Saab*, 406 Mass. 315, 324 n.13 (1989). Even if Labaton Sucharow's conduct did not comply with the *Saggese* opinion – which, to be clear, it did – it would be inappropriate to impose discipline because Labaton Sucharow complied with the Rule then in effect. *See* Lieberman Rep. at 19 ("In my opinion, which is informed by decades of practice in the disciplinary realm, an attorney would not be expected to research case law in order to ascertain the relevant standards of conduct, and should not be sanctioned for failing to do so.").[59] Prof. Gillers

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[58] The import of *Saggese* is not clear, as Labaton's experts have testified. As Professor Joy noted, the text of the amended MRPC 1.5(e) did not even match the language in *Saggese*. *See, e.g.*, Joy Dep. at 69:4-19 ("So the fact that neither disciplinary body or the courts were following *Saggese* after *Saggese*, the fact that the bar didn't immediately change the rule, and then when they did change the rule, they didn't use the same wording as *Saggese* had, and then when they changed the rule, they had a period of time between the new rule and when it came into effect led me to conclude that *Saggese* [was] probably dicta.").

[59] Mr. Lieberman expanded on this point at his deposition: "[A]s a regulatory lawyer in disciplining or recommending discipline for a lawyer who, theoretically or arguably, didn't comply with the admonition or prospective ruling, but was in compliance with the rule as it existed in the Code of Professional Responsibility, I would be very reluctant to charge that lawyer with misconduct if the lawyer were relying on, and as he would have a right or she would have a right to do, the rule as it existed in the code, because the SJC, the Supreme Judicial Court, is ultimately the authority for implementing and changing the rule." Lieberman at 109; *see also id.* at 83 ("And if there is no notice that a rule requires, for

concedes as much. Gillers Day 2 Dep. at 395:1-5 ("There is a constitutional notice requirement for discipline of course. And so a lawyer can't be disciplined under a rule that didn't exist at the time the lawyer's conduct was committed."). It would be manifestly unfair to discipline Labaton Sucharow under these circumstances.

E. ALTHOUGH LABATON SUCHAROW DID NOTHING IMPROPER, IT WOULD CONSIDER REASONABLE REMEDIES TO ADDRESS ANY CONCERNS OF THE COURT REGARDING THE DOUBLE COUNTING MATTER.

Labaton Sucharow is firmly convinced that there was nothing improper in any of its conduct. However, the benefit of ending the heavy cost, distraction and stress of these proceedings would be of value to the Firm. It therefore would consider discussing reasonable remedies and adoption of best practices relating to the double counting issues, as long as such remedies are entered with no findings of bad faith or unethical conduct, and as long as the remedies are in lieu of sanctions and discipline.

If Judge Wolf believes that he would have reduced the aggregate attorney fee for the amount of the lodestar cross-check error ($4 million), although that seems unlikely, Labaton Sucharow would consider disgorging its one-third share of the amount of that error ($1,333,200). With regard to best practices relating to the double-counting, Labaton Sucharow incorporates its suggestions in its submission of November 3, 2017 Response by Labaton Sucharow LLP to Special Master's September 7, 2017 Request.

IX. THESE PROCEEDINGS HAVE DEPRIVED LABATON SUCHAROW OF BASIC FAIRNESS AND DUE PROCESS.

The proceedings now underway were commenced by an appointment pursuant to Fed. R. Civ. P. 23(h)(4), which states that in class actions, "the court may refer issues related to the

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example, disclosure of the name of the . . . lawyers who referred, it would be very, very difficult for a prosecuting lawyer, as I was for many years, to bring charges against that lawyer . . . because of notice and due process concerns.").

amount of the [attorneys' fee] award to a special master . . . as provided in Rule 54(d)(2)(D)." ECF No. 117 at 8. The Memorandum & Order of appointment directed that "[t]he Master shall investigate and prepare a Report and Recommendation concerning all issues relating to the attorneys' fees, expenses, and service awards previously made in this case." ECF No. 173 at 2. In turn, the Special Master informed customer class counsel that he was appointing Mr. Sinnott to serve as Counsel to the Special Master, and that Mr. Sinnott would be "attending all of the interviews, propounding written discovery and taking any necessary depositions" (although he would also attend the latter). *See* Email from Special Master, March 9, 2017 4:48 PM [Ex. 24]; *see also* Email from Special Master, March 9, 2017 7:29 AM [Ex. 25] (affirming statement that appointment of Mr. Sinnott would "allow[] [the Special Master] to function as a neutral.").

Labaton Sucharow's expectation was that the Special Master would function as an independent fact finder, not as a prosecutor or one committed to proving a pre-determined conclusion of wrongdoing. Unfortunately, the proceedings did not progress in that fashion,[60] which Labaton Sucharow attributes in significant part to an inherent flaw in the process itself:

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[60] By way of very limited non-exclusive example, Labaton Sucharow points to the following:

> Mr. HOPKINS: Because -- well, first of all, where does it end? If the secretaries in the firm got a bonus do I need to know that? You know, if –
>
> THE SPECIAL MASTER: Not quite the same as paying a lawyer for doing nothing 20 percent of a fee.
>
> . . . .
>
> THE SPECIAL MASTER: Had this relationship been disclosed to Judge Wolf, might he not have said, well, wait a minute, that's an awful lot of money to be going to a lawyer who hasn't done anything on the case, did no work, didn't refer this specific case at all, and maybe the class should get some of that money, or maybe the ERISA counsel should get some of that money rather than this lawyer in Texas who was not involved at all in this case? Isn't that why disclosure to the Court in a non-adversary proceeding, which this was, is a better practice?
>
> THE WITNESS: Let me say this: I've spent enough time with you now that I can feel your -- your passion's not the right word -- your --
>
> THE SPECIAL MASTER: Skepticism.

The Court ordered that an initial $2,000,000 be provided to the Clerk of the United States District Court for the District of Massachusetts "to pay the reasonable fees and expenses of the Master. ECF 173 at ¶¶ 13, 14. Thereafter, the Special Master "informed the court that recent, unforeseeable developments required further investigation. See Docket No. 207-1" ECF 208 at 2. On October 6, 2017, the Special Master informed the Court that, "as a result of the additional required investigation, additional funding for his work will be necessary," and requested that "the court order that Labaton Sucharow pay another $1,000,000 to the Clerk for that purpose." The request was granted. *Id.* For obvious reasons, Labaton Sucharow did not feel that it could object while the investigation was on-going without potentially causing itself harm, although the amount does raise questions under Fed. R. Civ. P. 53(a)(3).[61]

The imposition of costs representing 50% of the initial double-counting error, and almost 25% of the subsequent investigation of the $4.1 million Chargois fee does more than raise questions of fairness and unreasonable expense. It also inherently gives rise to an unconscious or subconscious motivation for the Special Master to find some significant wrongdoing on the part of one or more of the customer class counsel firms. Simply stated, where the firms have been required to fund $3,000,000 to investigate issues relating to their fee, a conclusion that no rules were violated causes the extraordinary amount to appear even more extraordinary. Whether and

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Hopkins 2d Dep. at 74:2-76:6.

> THE SPECIAL MASTER: . . . This feels a lot [] like "Don't Ask, Don't Tell." . . . If the judge doesn't ask – maybe it should be "doesn't ask, don't tell."
>
> . . .
>
> MR. RUBENSTEIN: It's not – I don't think it's a fair way of stating it because it implies that there's always hiding going on, and I just don't think that's a fair way of characterizing class action lawyers in general.

Rubenstein Dep. at 128:3-21.

[61] "In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay."

to what extent the manner in which discovery was conducted proves this concern justified is a subject for another day.[62]

Dated: April 12, 2018

Respectfully submitted,

By: */s/ Joan A. Lukey*

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[62] *See, e.g.*, n.60, *supra*.

EX. 162

Volume: 1

Pages: 1-324

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

HEARING

April 13, 2018, 9:35 a.m.-4:35 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

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P R O C E E D I N G S

MS. LUKEY: Thank you for this opportunity to make the closing arguments. Obviously, this case is very important to the firms involved because there is nothing of greater importance to a lawyer or his or her law firm than their reputation. And when allegations that relate to ethics are leveled against them, that's a serious, serious matter that shouldn't be taken lightly.

I'm sure we're all aware of circumstances in our lives where colleagues and friends have been charged, if not we ourselves, with ethics violations, and it's not a good or easy thing. It's a very serious thing which is the reason this jurisdiction at least, and I suspect all others, requires any findings that relate to ethics matters or, for that matter, to sanctions to involve intentional conduct, not inadvertent conduct.

My plan, your Honor, is to run through the very helpful outline, not necessarily in the exactly the same order that Bill forwarded to us a few days ago as to the issues in which you're

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interested. Obviously, I know you'll feel free to stop when you have questions, and that's perfectly fine.

The time I spend on the double counting issue will be limited, and with regard to that issue -- I am going to go over it -- will be limited to Labaton Sucharow because there's a different situation involving Lieff Cabraser.

The arguments that I make that relate to the Chargois agreement will in substantial part deal with the law that came in through the experts, not only for us but for the other parties. It's basically the same law. There will be some Labaton-specific issues that I address.

Going first to the double counting --

THE SPECIAL MASTER: Hang on one second. My pen just ran out of ink.

MS. LUKEY: Okay. I had to take JAMS' pens you want a --

THE SPECIAL MASTER: Brought a refill.

MS. LUKEY: All set?

THE SPECIAL MASTER: All set.

MS. LUKEY: Starting with the double counting issue I would suggest to the Court that the

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evidence indicated that what happened here was a matter of inadvertent errors; that at the end of the day the mistake was just that, a mistake, by which certain staff attorneys' time was double counted.

Now there are two different principles that were involved in what happened here, and they inevitably became conflated which is not surprising. One has to do with how do you effectuate a sharing of the cost burden among law firms, and the second is who then takes responsibility or takes the opportunity, since there's a certain stature involved in one's lodestar report in this field, to include the individuals on their firm's respective lodestars.

So what happened here was this: The Thornton Law Firm didn't have a regular situation where it had staff attorneys that were on staff or regularly brought in on a contract basis. Again, limiting myself to Labaton. As the Court knows, Labaton actually employs staff attorneys. You had the opportunity to meet several of them who worked on this case. They're a talented group with some pretty extraordinary experience and great credentials.

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The arrangement, the model that is used there is really beneficial for both sides. The staff attorneys have the ability to leave for three or six months, travel the world or whatever they want to do, come back for the next project. They have the ability to work defined set hours ending at a far more reasonable time, usually 5:30 or 6 than would an on-partnership-track associate's hour would be --

THE SPECIAL MASTER: Now spend as much time on this as you want, but let me just give you an indication.

MS. LUKEY: Absolutely.

THE SPECIAL MASTER: I was impressed with the staff attorneys for both firms. These were folks -- and I know different judges take different views of rates of which they should be, quote, billed. My heavy inclination is to find that these staff attorneys were doing what was essentially associate-level work.

MS. LUKEY: Yes.

THE SPECIAL MASTER: Either in some cases lower-level associate work and in other cases maybe mid-level associate work and made significant

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contributions to the results in the litigation. The rates at which they were billed seemed to be reasonable and commensurate with their experience and the value that they contributed to the firm -- to the firms.

So you don't have to persuade me on it. You can move on. I think that the time that we spent going to Labaton, seeing the staff attorney operation, meeting the staff attorneys, interviewing them and deposing the four or five that we interviewed was very helpful.

I was particularly struck by a number of 'em, one particular is David Alpert who had a significant background in the subject matter himself, and probably in terms of the value he contributed was worth as much as any associate or even partner to the ultimate outcome of the case.

So you don't have to spend anymore time. Judge Wolf may not agree with me on that. Other judges may not agree with me, but I thought that the rates at which they were attributed in the lodestar petitions were appropriate.

We may have a disagreement over the agency attorneys, but not necessarily related to the

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work but more in the nature of the relationship and the lack of risk that the firms undertook and everything else. And again judges disagree.

So you may disagree about that and point to that, but I was well persuaded that the work that these staff attorneys did contributed great value to the settlement, and the support they provided to the attorneys in the mediation contributed great value. So you don't have to persuade me anymore on that.

MS. LUKEY: Well, thank you.

Just quickly the only other issue for us on the staff attorney -- excuse me -- on the double counting issue is the specific bullet point that asked what was the agreement and how did it happen.

THE SPECIAL MASTER: Well, before we get to that, if you want to address the issue of whether agency attorneys who were retained from contracting agencies and the firms paid those contracting agencies should have been billed at the same rate as the staff attorneys employed by the firms, I want to give you an opportunity to address that because that is an issue that is troubling me.

MR. HEIMANN: I'll address that.

MS. LUKEY: We didn't have any staff

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attorneys. So I will leave that for Richard.

THE SPECIAL MASTER: Richard, you'll address that?

MR. HEIMANN: I will.

MS. LUKEY: The question you asked in the outline you provided was what was the agreement as to who was going to put it on the lodestar.

As I said, what happened was a conflation of two principles. There was no question that Thornton was going to share in the cost and the burden which is the way these things work. Frankly, there's no question but that there was then an innocent and inadvertent misunderstanding as to how those would then be handled on the lodestar.

Your Honor has already noted, and we have discussed and earlier suggested best practices, most of which have already been implemented in this area at Labaton about how to prevent what would be called a silo effect from the circumstance where you have people too specialized in their roles sort of trying to get efficiency and expertise.

The more senior people and the people who dealt regularly in the area of putting together settlements, the Harry Goldbergs, the Ray Politanos

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and then taking direction from them, Nicole Zeiss, although relatively new to the job, understood that the traditional practice is in fact that while another firm may bear part of the cost in order to be fairly be carrying their share of the weight in these long-term cases, some of which don't end well for these plaintiffs' firms, those individuals thought it was going on to the Labaton lodestar report because that's what they traditionally did.

THE SPECIAL MASTER: So can I infer from your comments that you would agree that there should not be -- two things: One, what you referred to as silos, what I've referred to as compartmentalization, which I do believe contributed to the reason why we're all here with one part of the firm not knowing what was going on in other parts of the firm. Do you agree with that?

MS. LUKEY: I think Larry Sucharow sat here and said it. I'm not going to disagree with the founding partner.

THE SPECIAL MASTER: All right.

MS. LUKEY: There was a problem with the compartmentalization which has been corrected and addressed.

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THE SPECIAL MASTER: It would have been helpful if Nicole Zeiss had known at least about the cost-sharing agreement as to the staff attorneys.

MS. LUKEY: There is no question, and my heart, frankly, has gone out to Nicole throughout this situation 'cause she's a relatively young partner. She did not know, and it would have been helpful for her to know.

And at the same time the relatively younger partners like Mike Rogers didn't know what the usual practice had been, and therefore, as he testified, was in agreement -- he didn't know if he'd actually said it to the folks at Thornton, but he was in agreement that they believed they were putting it on the lodestar.

So you had two different things going on at Labaton. It was a mistake. It's recognized. It had never happened before. They feel very confident with the changes they've now made. It will never happen again. They actually have now prohibited the situation where another firm reimburses them for cost.

THE SPECIAL MASTER: So, bingo, you've segued into my next question which is for best

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practice purposes, would you agree that allocating cost sharing through the allocation of employees, be they staff attorneys, associates or anything else, and reimbursement from one firm to another firm is not a best practice; that the best practice would be to simply figure out a reimbursement schedule based on maybe not just the staff attorneys but any other costs and implement that maybe at the end of the case or at some interim part of the case's gestation?

MS. LUKEY: Labaton certainly agrees it considers that the best practice. I think they may be a little reluctant to say that on behalf of the entire plaintiffs securities class action bar that they would tell them what the best practices are, but they agree that what your Honor's referencing is the best practice, and they have implemented it for all of their cases.

THE SPECIAL MASTER: All right. So moving next to the issue of the lodestar allocation to the Thornton firm. Here's where I am concerned. It appears from the discovery that Thornton was very concerned about getting its fair share of what it perceived as its fair share of any ultimate fee

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award.

And rightly or wrongly, Garrett Bradley focused on among other things -- focused on his words "jacking up the lodestar" -- his words -- so that he could be -- he, his firm, could be fairly compensated and that the lodestars of the Thornton firm would be commensurate with the lodestars of Lieff and Labaton.

And as we've seen, there was this back and forth between Garrett Bradley and, among others, Dan Chiplock as to what was an appropriate lodestar and how to achieve that and how it was effectively aimed at Thornton getting what it perceived as its fair share vis-a-vis the other firms and in Thornton's perception that it had not gotten its fair share in the BNY Mellon case. That was all context and background.

My question is wasn't the easiest way to have achieved that simply have been to have an agreement like there was that irrespective of lodestar Thornton got X percentage and then another X percentage of whatever the -- I can't remember the term that was used for the amount above the 60 percent; I think in one e-mail it was the gravy, but

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whatever it was, wouldn't that have been a better way to do that than to try to inflate a lodestar on what were really quite artificial factors?

MS. LUKEY: I'm reluctant to say that any other firm inflated a lodestar because I don't think it would be fair for us to do that.

THE SPECIAL MASTER: I don't want you to imply that they did. You don't have to imply that. I'm only asking about a line question, which I'm going to have for everybody, but wasn't the best way to do this to simply abide by the agreement that the three customer class counsel made at the beginning which was 20/20/20 and then figure out the rest later?

Wouldn't that have been a far better way rather than this artificial construct?

MS. LUKEY: Your Honor, I think it would have been a far cleaner way, and I suspect what the problem is is that different judges treat the lodestar crosscheck a little differently. And that may have caused a concern.

I will be honest with you and say last night I had a chance to review the documents that Lieff had pulled out for use in this demonstration,

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all of which had been previously produced, but I confess I have not read all of the thousands of documents in this case, and I saw some of the earlier communications which were only between the two firms, and clearly there were other issues at play because they had the prior case, and I had never focused on those before. I don't know that they're particularly important.

But do I think it would be cleaner and better for them not to try to match lodestars? Yes. And I think what ended up happening was, if I recall correctly, an even division among the firms, and I think the concern that may have led to what happened here is partially a product that we don't actually have totally clear guidance from the courts on this issue.

The first circuit has said that it does recognize contingent fees which would then allow the firms simply to do an even split if that's what they felt was appropriate, because remember here it's -- it is Thornton and Lieff that brought this case to Labaton because Labaton had the potential, it had an active pension fund in the Arkansas Teacher Retirement System.

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So would that have been better? Yes, but can I understand why there were concerns? Yes, because some judges even in the first circuit which says, okay, we honor contingencies and just use the lodestar as a crosscheck, and it's okay if the ratio isn't more than one to three usually -- usually, not always -- but that's usually okay, it would have been better.

But there are, as I understand it -- this is not my regular field -- there are judges who treat the lodestar, even though it's only intended to be a crosscheck here, as having greater weight than that.

THE SPECIAL MASTER: But presumably that concern that you might get a judge like Judge Stein in the Citigroup case who was very focused on lodestar, could that not have been addressed through an inter-counsel agreement as there was in this case?

Could that not have been addressed by an inter-counsel agreement; and then after hopefully there was a successful result, as there was here, then divide up the fee at that point?

That could have been addressed rather

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than this, you know, circumlocution of having people who didn't work for a firm, weren't employed by a firm appear --

MS. LUKEY: We're in total agreement with you on that one, your Honor. They have changed that. We agree that although this was not an aberrational circumstance where a firm that didn't have its own staff attorneys asked for -- then I think we said in our initial submission about ten times this had happened over Labaton's history, and seven of the times it was clearly carried on the lodestar for Labaton, and the others were different arrangements made at the end.

That's not going to happen again at Labaton because they've changed their practice. Do I think you should recommend a best practice that way?

THE SPECIAL MASTER: Yes.

MS. LUKEY: Yes.

THE SPECIAL MASTER: One thing I'm looking to do here, as I've said from the beginning is, to make recommendations on best practices going forward to Judge Wolf. He's free to adopt those or reject those, but I -- I don't think any of us would

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be here had that been the practice.

MS. LUKEY: And I agree. And, as I said, Labaton has already adopted it. The only reason I hesitated was purporting to speak for an entire segment of the bar would be, I think, inappropriate.

THE SPECIAL MASTER: Well, I want to give everybody an opportunity to address --

MS. LUKEY: But Labaton agrees that's certainly a best practice, and it's certainly already adopted it for itself. It gets too convoluted --

MR. HEIMANN: Do you want us to address this now on or wait 'til we're rather than waiting 'til the end?

THE SPECIAL MASTER: Why don't we not cut into Joan's time?

MR. HEIMANN: Okay.

THE SPECIAL MASTER: Why don't we not cut into Joan's time. Yes.

MS. LUKEY: Shall I then go on?

THE SPECIAL MASTER: Yes.

MS. LUKEY: Did you have any other questions that related to double counting?

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THE SPECIAL MASTER: Yes. I understand, I think, how this happened. Where I'm struggling is how it is that Thornton put these staff attorneys on their lodestar without some kind of explicit agreement.

I understand that there are some -- and there's been testimony that there was belief among lawyers at Labaton and certainly at Lieff that they may include them. But shouldn't this -- if that had ripened into an agreement, shouldn't this have been put in an explicit agreement rather than just relying on shadowy assumptions that other firms understand?

And the others are going to be able to address this as well.

We found no explicit agreement as to that. And I think everybody -- everybody agrees with it that there was no explicit agreement. I'm not sure there was even an implicit agreement. I think some lawyers at some of the customer -- the other customer firms, Labaton and Lieff, may have thought that that was reasonable for them to do it, but it seems to me that when you are making representations to a Court such as those that we're

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all now familiar with about lodestar and sworn declarations, that this should be front and center; that there should be an explicit agreement if it's going to be done and that the Court should be told that these are not employees of the firm that's submitting the lodestar quite explicitly.

MS. LUKEY: I think that would be a second best practice that one would consider if you weren't doing what Labaton decided to do which is not to permit this to happen at all. That's number one.

They're not going to allow their staff attorneys to be carried on anyone else's lodestar or to be reimbursed. In other words, they are eliminating that aspect of what is fairly traditional practice in saying we're carrying our own employees; we wouldn't allow another firm to reimburse us for the partnership track associates. We're not going to let them reimburse us for non-partnership track associates.

THE SPECIAL MASTER: There are all sorts of reasons to do that as I've been thinking about this. Malpractice.

What if one of these staff attorneys had

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made a terrible error in law upon which the lawyers rely that resulted in some awful thing happening? How do you allocate out the malpractice in that case?

MS. LUKEY: Well, that's --

THE SPECIAL MASTER: The potential for malpractice.

MS. LUKEY: The Labaton expectation because at the level where people were actually thinking about it believed they were putting it on their own lodestar had been the assumption that they're responsible for the malpractice of their own employees.

THE SPECIAL MASTER: Right. But if the cost is being --

MS. LUKEY: -- reimbursed --

THE SPECIAL MASTER: -- and they're going on the lodestar.

MS. LUKEY: But what it's going to do it's going to give the plaintiff an opportunity to sue two firms instead of one without question.

THE SPECIAL MASTER: My point exactly.

MS. LUKEY: And, as I said, Labaton has said no more. We're not going to do that. I think

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it's a different situation -- and I leave it to Richard -- when one is dealing with agency attorneys because there's a different way of handling that other than -- you can do it differently. You can just have a direct hire. We couldn't. These were employees.

It is no longer going to be permitted. It happens, but, as I said, there are only ten times that this had been done over the history of a firm that's been around for quite a while. So it wasn't common practice. But it won't happen again from Labaton's perspective.

Your second alternative as to how that might be done with notice to the Court and clear indications and express agreement make all kinds of sense, but you don't even need to go there if you've done what Labaton has done which is to say no more; we're not going to allow anybody to reimburse us.

THE SPECIAL MASTER: Okay. I think that's a higher best practice than the second.

MS. LUKEY: Well, after learning the curve of this, that's the way they decided to go, and that was adopted some months ago.

THE SPECIAL MASTER: Okay.

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MS. LUKEY: If there are no other questions on the double counting, I'll go to what --
THE SPECIAL MASTER: I mean I want to hear from Richard and Brian --
MS. LUKEY: Of course.
THE SPECIAL MASTER: -- on this but...
MS. LUKEY: It's up to you on timing. I'll either go directly into fee division. Shall I go to it?
THE SPECIAL MASTER: Fee division.
MS. LUKEY: All right. The fee division analysis is one that I will readily admit has caused considerable consternation and often frustration because it felt as if we were dealing with a moving target because, with all due respect to Professor Gillers who is here today, we felt the opinions that were being raised were changing and evolving.
So let me begin with the --
THE SPECIAL MASTER: Isn't that what's supposed to happen during an investigation?
MS. LUKEY: Not when the opinion's already been rendered, your Honor, and we had his report. And as the professor was confronted with responses -- because some -- again, with all due

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respect to a respected ethicist who may have gotten outside of his area a little with the Federal Rules of Civil Procedure, it became problematic.
And one of the things that I think was particularly problematic was that this was a case that probably did cry out for a Massachusetts expert -- there aren't that many of them -- and preferably one who also had Massachusetts practice experience which is what made actually Hal Leiberman was an interesting combination having practiced both as an attorney in the ethics field and as the deputy bar counsel in Massachusetts for many, many years and then gone to New York, and he was the deputy here; he was the actual bar counsel there, and it brought an interesting perspective.
In fact, Judge Wolf had indicated at the first hearing his initial thought on a special master was to bring in an experienced practitioner here, and he couldn't -- he asked a couple of them, and people didn't want to do it. It's hard for lawyers to take on other lawyers and law firms. We have friends and respect, and it's not an easy thing to do.
But Massachusetts presents an

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interesting problem because it's one of the states -- I believe one of the experts said about fifteen -- who absolutely not only permit bare referrals but embrace them.
There have been two occasions in my practicing lifetime -- so, admittedly, that's not forever, but it's 44 years -- in which the Supreme Judicial Court, which is the body that implements our laws, suggested a change, and in both times pulled back because the bar reacted strongly.
There's been no attempt, as I understand it at least, since the late 1990's to make this change again because there is a recognition that there is a reason as a policy matter for preferring bare referrals, and that is that it will encourage the lawyer who really doesn't have the expertise necessary for the client to refer the client to someone who can better handle the case.
And so the decision has been made that absolutely no services need be rendered, no assumption of liability need be made. And that is just simply the rule, and it doesn't matter what you label the particular payment or fee as. You'll notice that 1.5(e) doesn't have a label. It just

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talks about a fee division. And it doesn't matter what the dollar amount is.
In a moment when I get to 1.5(a), I will say it doesn't even matter whether it appears to be a fair or logical deal what percentage the referring attorney and the receiving attorney strike as their division agreement.
All of that is outside of 1.5(e). When this started, I'm not sure that was fully recognized. I mean I will go back to a little bit of history. I remember the day I got the call from Bill about Chargois & Herron, and I remember it because Bill said to me what do you know about Damon Chargois, and I said who.
THE SPECIAL MASTER: That's what we said.
MS. LUKEY: Well, I had to go back and figure it out. The documents that related to Mr. Chargois were not called for because in the discussion between counsel and Mr. Sinnott as we were all trying to narrow this to get the production quickly, the fee allocation request was taken out of the mix, and it obviously wasn't done with any intent to deceive because I didn't have a clue about

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Mr. Chargois at that point. It was simply not --
THE SPECIAL MASTER: Your clients did.
MS. LUKEY: -- a pertinent issue.
THE SPECIAL MASTER: Your clients did.
MS. LUKEY: Which clients?
THE SPECIAL MASTER: Labaton. They knew about Chargois.
MS. LUKEY: Yes, but the issue is did it matter.
THE SPECIAL MASTER: And that will be an issue I'm going to have to decide whether the requests that were ultimately agreed upon called for the documents that we ultimately got on Mr. Chargois. That'll be something we'll have to come to a conclusion on.
MS. LUKEY: Well, that's fine. I can only tell you what we concluded on our review was that there was one request only that would have called for anything that related to fee divisions and allocations. That was one that was withdrawn. It didn't have anything to do with anything Labaton did.
It was my colleague and my partner, Justin Wolosz, and I sitting down with Bill and

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Elizabeth and trying to got through it because the request was so broad, and there was a need for you to have the documents in I believe it was two weeks because you needed to start -- I don't recall now whether it was the interviews or the depositions but --
THE SPECIAL MASTER: No, no -- yeah, the timing was certainly compressed.
MS. LUKEY: That was nobody's fault, but it was compressed, and we just couldn't do it fast enough. So this was --
THE SPECIAL MASTER: Don't you think it would have been -- I understand you didn't know about Chargois, but don't you think it would have been a prudent practice at this very late date during an investigation into fees to simply, as Thornton did, to simply give us the Chargois documents?
Whether or not by the letter of the request that ultimately was propounded, would it not have been a better practice to simply at the very beginning given us the Chargois documents?
MS. LUKEY: Your Honor, if you're asking me what best practices would be as opposed to what

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constituted a disciplinary or sanctionable piece of conduct --
THE SPECIAL MASTER: I'm not suggesting this was sanctionable.
MS. LUKEY: The best practices with the benefit of 20/20 hindsight, which is usually I think how best practices end up being developed, of course it would have been better. If we had known that this was going to be a subject of interest to the special master, in retrospect, yes. It would have been easier to explain everything and do it all up front --
THE SPECIAL MASTER: It could only have been a subject of interest to the special master had the special master known about it.
MS. LUKEY: Well, obviously. But my point is if we had -- with the benefit of 20/20 hindsight, we would all rather have had all the depositions once, not twice, you included.
THE SPECIAL MASTER: My point.
MS. LUKEY: But we're in a circumstance where the existence of the fee is perfectly permissible, and -- as we'll get to in a moment -- there's no obligation to disclose to the Court and

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we say no obligation to disclose to the client. It is a private matter. And in Massachusetts --
THE SPECIAL MASTER: But in an investigation about the reasonableness and accuracy of the fees, was that a decision that the firm -- since you, apparently, didn't know about it as counsel, is that a decision that it was prudent for the Court -- for the firm to make not to give these documents to us in the first instance?
This -- look, this investigation started. It was, as Judge Wolf spelled out in some detail in his order and in my mandate, was all about the reasonableness and the accuracy of the fees. That's what it was about. That's how the door opened on this.
Would it not have been prudent to simply give us this stuff at the beginning, and let us sort it out rather than have to find it in a document production by the other firm?
MS. LUKEY: Well, let me say this, your Honor. The question in Massachusetts is is the aggregate fee reasonable. I hear what you're saying now with the benefit of 20/20 hindsight, but there is no rule and no case law suggesting that anything

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other than the aggregate fee is the matter to be reviewed.
As Professor Rubenstein -- it wasn't even our expert; he's Lieff's expert -- said it's a two-stage process. The issue and particularly in a place like Massachusetts which doesn't choose to assess the nature of what was done for a referral fee, the first step is what is the reasonable fee.
THE SPECIAL MASTER: So you -- you give the special master all the documents, and then you make the arguments. That seems pretty clear.
MS. LUKEY: Well, yeah, but let's think about how this actually happened. You gave us a document request. Counsel was unaware of any fee allocation. I'm not sure I would have considered it to have been relevant.
I might have reacted differently to the suggestion as to whether it was in or out, and I honestly don't remember if it's one of the ones that Bill pulled or that we said what does this have to do with anything. I just don't remember.
We then take what remains of the document requests, and we give them to the client whose regular law firm Mayer Brown in New York does

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the document review with the request that we gave them.
So the request -- now you may differ when you look at the request, but we went back -- when Professor Gillers' report included the footnote that implied there had been discovery misconduct, we went back and confirmed that the only request that we thought could even arguably apply had been withdrawn before it went to Labaton and Mayer Brown for review.
THE SPECIAL MASTER: We may have a disagreement about whether broadly interpreted other requests that remained in the production request called for. You know, Thornton must have thought it did because Thornton produced.
MS. LUKEY: Yeah, I don't know what Thornton thought, your Honor. And I'll have to leave that to Brian. I assume they weren't attempting to cause harm to Labaton or anyone else. I don't know what their reasoning was.
So it was --
THE SPECIAL MASTER: I mean --
MS. LUKEY: It was what it was. So from our perspective --

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THE SPECIAL MASTER: I don't view this as a primary issue, maybe not even a secondary issue. But I do believe that best practices and prudence would have required Labaton first to tell you about the Chargois Arrangement, and, second, to produce the documents to us in the first instance. We would have been long done.
MS. LUKEY: Well, I just want to be clear with you. I can't tell you what to determine about the scope of the request.
All I can say to you is I want you to understand that the process was such that the request that was cited in Professor Gillers' footnote wasn't in the list that we sent.
As you know, we disclosed each time that the document review was being done in New York --
THE SPECIAL MASTER: Yes.
MS. LUKEY: -- and the pull was there and not by us. So what we gave them did not have the request in it. And what you choose to do with the other requests, of course, is completely up to you.
THE SPECIAL MASTER: As I said, this is not a primary issue. We are where we are. But it

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is my view that prudence -- given the scope of the investigation or the scope of my mandate -- let me put it that way.
Given the scope of the mandate that Judge Wolf levied upon me in his order, it would have been most prudent of Labaton to produce to Chargois information in the first go-around and to have not done so -- and I'm not blaming you for this, Joan; they obviously didn't even tell you -- but had that information been produced in the first go-around, we'd be long since done at, I might add, a much lower cost.
MS. LUKEY: I understand what you're saying, your Honor. I just want to point out that I think what happened here is because we took the request as ultimately agreed upon in a negotiation where I didn't know that there was another set of documents, and that's what they were given to produce.
So, again, we may have had compartmentalization none, of which was meant to be malicious or intentional in any way. And that perhaps led us to where we are.
But let me just -- going back to where I

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was, 1.5(e) is the governing rule in Massachusetts, and we all had an interesting learning process with regard to 1.5(e) because I will be perfectly blunt, I started out with the current rule and made the mistaken assumption that the last time the rule was changed was when we made the major conversion from the disciplinary rule designations and then restructured with DR --

THE SPECIAL MASTER: Hm hm.

MS. LUKEY: -- I think it was 107 or 207, and then it switched to the Rules of Professional Conduct, and I did not tell my team to go back and see if there had been an intervening change because I didn't remember one, and I credit Josh Sharp sitting over here -- Mr. Kelly's colleague -- is the one who brought it to my attention with the usual skill of the younger set pulling it up on his iPhone in the midst of one of the depositions when it was exactly on point.

So what ended up happening was even our experts were working with what we gave them on the rules, and it turned out -- and I think everybody -- I'm going to make an exception to that in a minute, but I think we were all operating on that

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assumption, and Professor Gillers told me in his deposition that he actually knew that there had been a change, and I really have a question about why that wasn't highlighted or made known to the rest of us, but that doesn't excuse me for not figuring it out, and I didn't until Josh told me for which I am very grateful.

We then have the issue of what rule was applicable, but at the end of the day when we then went out and retained experts, they said to us it doesn't matter because you are in compliance with the old 1.5(e) with the dictum in Saggese and with the new 1.5(e). The new 1.5(e) imposed the writing requirement and the requirement that the consent be obtained at or before the time of the engagement.

Saggese prospectively said in what had to be dictum, because they weren't talking about the future, we're going to have a writing requirement, and we want it to be before the referral is made which every expert said the same thing, let's illogically you don't actually --

THE SPECIAL MASTER: You and I are going to have a big disagreement over what constitutes dictum in a judge's decision when a Court says going

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forward from here on after.

MS. LUKEY: Well --

THE SPECIAL MASTER: You and I are going to have a big disagreement about that.

MS. LUKEY: -- we may, your Honor, but I'm going to point something out to you which is that there's a rule-making process in Massachusetts followed by the SJC. They chose not to go through it for six years.

When they did go through it, two things of importance happened. One, they didn't match the terms of what they said in Saggese. They changed the timing to become much more logical at the time of the engagement, not before the referral was made, and they kept the reasonableness requirement, but they also imposed a 90-day period, a grace period before it took effect. So you don't have to do this for 90 days, but be forewarned it's coming.

The other thing is, as we presented to you, in that interim period there was not a single case or bar decision or ethics -- from the two ethics committees dealing with this or saying anything about a purported change in the rule.

But, more importantly, I think for our

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purposes here where there are questions of discipline and sanctions, what you did here from the several experts on our side is you don't sanction or discipline somebody for following the text of the rule. That's not what you do.

And, frankly, if you go back -- I'm not sure -- I think we offered this to you, and I think it was in the submissions somewhere at one point, but, of course, these were attorneys who were pro hac'd in. The pro hac application asks that you certify that you're familiar with the rules, not with the cases. I venture to guess as a practitioner here -- because there wasn't a big deal made about a change at the time of Saggese maybe because we all knew that there's a rule-making process before rules become applicable here, I venture to guess that a fairly significant percentage, probably well over half of the practicing bar, didn't even focus on the fact that Saggese was now adding a writing requirement. But, you know, all of that is academic and very interesting, but the fact of the matter is there is an engagement letter.

And the engagement letter, although we

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parsed the words, I had a hard time the first time you raised understanding what you were saying; but as we read the engagement letter, Arkansas said you have our permission to use local or liaison counsel, you have our permission to pay referral fees, and you have our permission to pay fees for other services that may be rendered.

Our experts say -- and I don't honestly remember whether Professor Gillers said that he thought that wasn't good enough, but our experts said, I think very credibly, that's written consent to the payment of a referral fee.

We also have the fact that -- you have to take this in the context of the history -- George Hopkins is not synonymous with Arkansas. It's an institution. And clearly Paul Doane, a lawyer himself, a Massachusetts lawyer, and Christa Clark, a lawyer in Arkansas, knew of Damon Chargois and Chargois & Herron.

And in the case of Ms. Clark who was the chief counsel, Eric Belfi actually said to her, okay, you said you can't have two unrelated firms as panel counsel, but we are going to go forward affiliated with them. We are going to work with

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them. And there is no counterevidence to that. George Hopkins then comes in, hasn't heard the name Chargois but expressly says, look, I don't want to be placed in the position of the gatekeeper. His testimony was interesting on that at the deposition.

It is a distraction. He confirmed this in his ratification declaration. It is a distraction from my role as the class rep if you say to me now I want you to pay attention to these local attorneys. You know, he used it in another context, actually, I think with regard to the ERISA attorneys something about the flies buzzing around or something of that nature --

MR. SINNOTT: Fleas I think he said.

MS. LUKEY: I don't think it was fleas. I don't think it was that bad, but it may have been. Anyway, he said something to suggest he doesn't want to be distracted from the role he is playing for the benefit of his beneficiaries as the plan and as class rep by having to deal with local attorneys, the hand holders.

THE SPECIAL MASTER: Again, might it not have been more prudent here in each case in which Mr. Chargois was going to receive a division of the

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fee for doing no work, not appearing or anything else, to have for its own protection informed the client?

Inform the client specifically of this preexisting arrangement with Mr. Chargois to pay him 5 -- well, 20 percent of any fee that Labaton --

MS. LUKEY: Five percent of the total settlement.

THE SPECIAL MASTER: Five percent of the total in this case but --

MS. LUKEY: Yep.

THE SPECIAL MASTER: -- would that not have been best practices and prudent?

MS. LUKEY: Again, I'm going to say this about what Labaton has already done in deciding what is a best practice for itself -- and, again, I feel reluctant to speak for an entire segment of the bar, but Labaton has determined and ended any relationships of this nature.

That's not easy for a plaintiffs' securities class action firm because those kinds of relationships tend to be in many instances where clients come from, and the service provided by the plaintiffs' securities class action bar is

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substantial.

I mean there are many a many situation, State Street and BNY Mellon among them, where but for the bar being willing to go forward and but for being able to find a named plaintiff like Arkansas to stand up, those practices will continue.

THE SPECIAL MASTER: I don't doubt that. And I'm going to say that in my report that the service provided not just to institutional investors in these kinds of cases but to the public is substantial and that the risk that the plaintiffs' bar undertakes in these cases is substantial and that they have to be appropriately compensated at the same level as those firms who they can expect to see on the other side.

I find that a totally unobjectionable -- not just unobjectionable but totally reasonable approach. That is much different than saying that if you go out you get a guy to do door opening which is effectively what Mr. Chargois did -- he didn't do anything more than that -- and you make a deal with him to pay him 20 percent of your fee on every single case that comes from that client, that's one issue.

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But even if you do that, even if you do that, the next question is who do you disclose it to.

MS. LUKEY: Well, what if you --

THE SPECIAL MASTER: Who do you disclose it to and how detailed should the disclosure to be seems to me at the very, very least best practices are that -- if for no other reason than its own protection, a law firm says to the client, hey, we have this existing arrangement.

You remember this guy who first introduced us? He's going to get 20 percent of every fee that we get going forward, and we're going to include it in every single retention letter, and we want you to know about it. Is that not a better practice than some vague reference -- and we may disagree about sentence construction -- but than some vague reference about referral fees?

We weren't even sure at the beginning of this part of the investigation what to call what Mr. Chargois had. I counted up one night when I was reading -- I counted up at least six different appellations that people used for the Chargois Arrangement.

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MS. LUKEY: Well, a rose by any name, your Honor. I hear what you're saying, and as long as you are distinguishing between best practices on the one hand and improper or wrongful conduct, ethical or in violation of Rules of Civil Procedure on the other, I don't take issue with you.

If anything, this case, this investigation has certainly highlighted in retrospect with the benefit of having seen where the pitfalls are way better practices and best practices that could be implemented and by Labaton have been implemented.

I also don't take issue if the special master makes a recommendation that for the plaintiffs class action or securities class action bar generally the best practice going forward would be to, even when not required in a state like Massachusetts, to put in the engagement letter to whom the referral fee will be paid.

That is not an obligation in Massachusetts. Is it a better practice to protect the firms? Yes. And in that sense it's a best practice.

THE SPECIAL MASTER: And while we're

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talking about best practices, at the very least should the firm have not gotten a signed written agreement with the Chargois & Herron firm as to what the terms were which could then be attached to the retention letter?

MS. LUKEY: I hope your Honor recalls how hard they tried to get this --

THE SPECIAL MASTER: Oh, I remember that. But all the more reason why something like this should be disclosed to the client.

MS. LUKEY: Let me respectfully suggest to you if you look back on the evidence, especially the expert evidence, there is also the issue of a contractual obligation; and whether or not that was in writing, that's not an agreement covered by the statute of frauds. They were on the hook to Chargois & Herron.

The best practice that you're suggesting would be a nice balance to strike. What wouldn't be a best practice or would create a lot of problems is simply to declare with regard to an existing and binding contract that that's not invalid here, may not be invalid in the state of the other party, and it creates an impossible rock and a hard place

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situation for the firm. Labaton's response is that it has ended that relationship and any others that were similar in nature.

But we have to focus. In terms of determining whether anything was done improperly here, we have to look at the specific agreement and the specific circumstances and the fact that George Hopkins actually said he didn't want to know the identities because of the problems locally if he had to deal with these attorneys. He said something very interesting in his declaration. I want to make it clear. You met George Hopkins several times. I didn't get to write his declaration. You can just bet on that. He dictated it to me. And then he still rewrote it before he signed it.

THE SPECIAL MASTER: I have no doubt that Mr. Hopkins has very strong views on a whole range of issues.

MS. LUKEY: Many issues.

THE SPECIAL MASTER: But I will tell you I was troubled by his declaration both prospectively and retrospectively on a number of issues one of which was he an adequate representative for the class taking the positions that he's been taking. I

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don't want to know. I don't want to know any of this, that concerns me as a judge as to whether the class representative is an adequate representative for the class where you have the head of that class representative saying I don't want to know this, I don't want to know anything about this. Because he's -- just let me finish here.

He's got to be aware that he is not speaking just for himself. He's not even speaking just for Arkansas. He's speaking for a class. And when the class representative says we don't want to know anything about this, I've got serious concerns about adequacy of representation of the class.

MS. LUKEY: I have to tell you if there's going to be any point on which we disagree today, that is going to be the one about which I feel most strongly. George Hopkins did more as a class representative than I have ever seen in any class action anywhere in 44 years.

THE SPECIAL MASTER: You're not going to get any disagreement from me on whether he was more involved, more engaged and contributed more value than not just the average class representative but almost any class representative, but that doesn't

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give him a pass, and it doesn't give him a license to say I don't want to know about this, I don't want to know about fees, I don't want to know about local fees. That doesn't give him a pass on that.

MS. LUKEY: That's not fair, your Honor. There was a single issue he did not want to be involved in, and it was perfectly permissible under Massachusetts law. He did not want to know about the fee divisions particularly with regard to local attorneys. He had a very good basis for that.

And he actually made it very clear how strongly he felt and that he felt that in not telling him the name Labaton had followed his instructions, and to have done otherwise would have violated those instructions.

THE SPECIAL MASTER: We may well disagree on that. I found his declaration and his deposition testimony on those points troubling in view of his role as the head of the class representative and the obligations of the class representative to the entire class, and especially a class like this, which was effectively a hybrid class that consisted of three different lawsuits.

Now did everybody overlook that in the

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context of the larger good of the settlement? Probably. With the benefit of hindsight, should it have been overlooked? Probably not. But that's hindsight.

MS. LUKEY: Well, there were three class reps. At the end of the day I understand at the time of the settlement that the judge made the determination to name I believe -- I believe at least he made the determination to name George Hopkins as the class rep when he decided not to have three subclasses, but the fact of the matter is we had three unrelated lawsuits that were put together for convenience for pretrial purposes only.

The other two class reps each received the same rep fee, $25,000 each, that Mr. Hopkins did, even though he's the individual who was actually there negotiating. He actually had meetings with everybody's blessing and with Judge Wolf alone, with the WilmerHale lawyers alone. He was in there fighting tooth and nail for that class. And he had a good faith basis for believing that if he had to deal with the breakdown within the reasonable fee among the classes, that would be an inappropriate distraction.

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Knowing -- he didn't -- he didn't need to know what the three customer class firms were doing in terms of how they decided to allocate. He didn't need to know that there was someone who facilitated an introduction but for which there wouldn't have been any State Street litigation. That has nothing to do with the responsibilities of the class rep.

His responsibility, which he took more seriously than I have ever seen ever, was to be in there fighting for the class to get the best settlement that could be obtained for the class. And there is no question the value he brought to that in that the number that was achieved related in significant part to George Hopkins. He didn't have to know about attorneys fighting.

I have to tell you reading the e-mails that I was focused on for the first time last night, it's distasteful. Who wants to see lawyers having disputes with each other about their fee? It's business. It has to happen. But it's distasteful.

In the larger firms we don't do referral fees, and that's part of the reason. But George Hopkins didn't want to be drawn into the morass of

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disputes among lawyers about what they should be paid.
THE SPECIAL MASTER: Whether that's an adequate explanation to excuse him from knowing -- and to tell the lawyers I don't want to know about where potential class funds are going to go, that's a decision I'm going to have to make.
Look, I will say George Hopkins provided a remarkable service, not only once the case was filed but in spotting the California case and in bringing that to Labaton's attention. As he put it -- I think it was him who said he smelled a rat after he read about it.
Look, he contributed great value, and I want to say that. That doesn't give him a pass to say I don't care where class funds are going as to local counsel, as to this or that, I don't want to be told, I don't want to know anything particularly when you have a class as broad as this class was.
MS. LUKEY: Your Honor, I'm going to refer now to Professor Rubenstein who is so much smarter than I am to say nothing if more experienced in the field of class actions that it's not even a joke.

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He said to you -- you and he sparred -- I reread it last night -- on the issue of whether these were class funds or funds that were appropriately already designated as attorneys' fees. He told you -- and there is -- he's the one who wrote the current edition of Newberg on class actions. He told you the courts across the board look at this in two stages. And I'm sure there's a good reason for that.
They make the decision on what constitutes a reasonable attorney's fee first. They do that so when the notice goes out to the class about the settlement, the aggregate amount can be in that notice. You know -- you probably haven't had a chance to actually read everything because it got there pretty late, and I apologize for that, but you know that last month Judge Wolf was dealing with another one of these cases, and it was Arkansas again. Only this time it was Bernstein Litowitz who was their counsel.
In that case when the lawyers came in to see him to make their presentation, their hearing on the settlement and then on what would go in the class notice -- and, actually, I think this one was

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a subsequent one; it was on the class notice 'cause he was unhappy with it -- a couple of things of interest happened. One, for the first time I believe in Massachusetts Federal District Court history the judge asked if there was an allocation to anyone else. I have to assume that comes from discussions where he's vaguely aware at least of what's happening here. He actually asked a question is there anyone else who is receiving an allocation.
The other thing he did was to instruct the lawyers to go back and take Labaton's class notice in this case and use it as the model for the notice to the class and to include in it the aggregate percentage. What he specifically said was -- and I'm paraphrasing -- but don't say up to 25 percent, say to the class in this instance the attorneys are requesting 25 percent. He said if we decide you're going to get less than 25 percent, no one's going to complain, but I want them to know that's the number that could be the applicable number.
They have since gone back with the notice based on the -- and there was one other case notice he also referenced them to, but they used the

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Labaton notice because it was obviously available to Arkansas very easily, and he's approved it.
So we don't have a situation where the rule is that you do it all at once which is what you were sparring with Professor Rubenstein about. You don't say here are all the class funds, now let's decide what goes in the notice.
You first decide what the reasonable attorneys' fee is, and then you do the notice so you can put that aggregate amount in there.
THE SPECIAL MASTER: But deciding that is a function of what's in the fee, of what's included in the fee. The lodestar crosscheck. What the aggregate fee is. Other factors.
MS. LUKEY: I'm going to respectfully disagree with you, your Honor. What matters to the class is the aggregate fee. The judge never even asked what class counsel were -- how they were dividing it among themselves. I believe he had some awareness of the ERISA break-out because it matched the allocation more or less what was expected for the class --
THE SPECIAL MASTER: Well, and that was in the settlement agreement.

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MS. LUKEY: Right. So it's a different circumstance, but he didn't care how these three firms were splitting it up, nor does it matter in terms of what's a reasonable percentage to take how they were splitting it up.

In fact, if you think about it, the lodestars to the crosscheck, even if you use the corrected number that this would be two times -- that is, 25 percent would be two times the hourly fees -- the fact that Chargois is taking 4.1 million of that is reducing the benefit to the class counsel, but it's not having any impact on whether that's a fair number of hours, fair percentage.

If anything, it would be understating -- it would be overstating what the attorneys -- or I'm sorry -- understating what the attorneys did because they're not going to get all of it.

And you do that first. What's a fair fee. It just is -- I don't know what the case is in Detroit, your Honor. I do know particularly with the help of Professor Rubenstein that no judge in Massachusetts has ever asked what the allocation is. They want to know whether the fee in its totality, its aggregate amount, is fair to the class.

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THE SPECIAL MASTER: Well, I'll tell you what I do know as a judge at the fairness hearing -- at the very least at the fairness hearing, if not at the preliminary approval stage, some lawyer who's never appeared in the case, never done any work, has no connection whatsoever to the case is getting 5.5 percent of a substantial fee, I want to know that.

MS. LUKEY: Do you ask?

THE SPECIAL MASTER: You know, I would now. For sure I would. But I shouldn't have to ask.

MS. LUKEY: Well, respectfully --

THE SPECIAL MASTER: Lawyers should tell them.

MS. LUKEY: Well, let me move --

THE SPECIAL MASTER: We may disagree on that. A judge only knows what a judge only knows. And I shouldn't have to ask.

As a judge, I should be able to rely on the lawyers to tell me everything and not -- you know, and not play this cat and mouse game of, well, we don't have to tell because maybe the rules say -- are unclear about whether we have to tell.

There is an inherent duty of candor to

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the Court to tell judges at these critical stages, especially in these class actions -- especially in these class actions -- there is an inherent duty upon counsel to tell judges of anything that is material that a judge has to decide without the judge having to ask about whether the settlement is fair to the class.

MS. LUKEY: Your Honor, I'm going to disagree with you again because we as practicing lawyers which is all I've ever been -- I haven't been a judge -- can't possibly know what factors any given judge thinks are material.

We have to rely on the rules and the case law. Where you start here is with two Federal Rules of Civil Procedure, and they are not ambiguous. They are not leaving it up in the air. Rule 54(d)(2) specifically tells you what you have to tell the Court when you're going in for approval of a fee; and what it says is if the Court inquires or if there is an order, then you must tell the Court about a division of the fees. And lest there be any doubt in the class action context that there's a different rule, Rule 23(h), which is the fee allocation rule there, says you will follow

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54(d)(2).

So a lawyer looking at that doesn't have to walk in and say here's everybody who's sharing in the fee. The judge can ask. Would it be a good thing -- and, you know, maybe the plaintiffs' bar here isn't going to like me for saying this, but would it be a good idea for the District of Massachusetts to adopt a local rule as some other districts have or the first circuit for that matter or for Judge Wolf to have a standing order saying tell me what all the fees are? You know, with the benefit again of 20/20 hindsight so that nobody has to go through this, sure. Because if I were to make an educated guess, it wouldn't have mattered.

All Judge Wolf wanted to do was to protect the class. That was his fiduciary duty. In the fee allocation process it's the Court that ends up with the fiduciary duty because there's an inherent conflict between lawyers who are seeking fees and the class --

THE SPECIAL MASTER: Should a judge not be concerned at either the preliminary approval stage or the fairness hearing stage about a lawyer who has done no work on the case, never appeared in

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the case, has some preexisting agreement getting 4.1 million dollars of fees -- a judge should not be concerned about this? Whether the judge asks or not.

MS. LUKEY: He should not be concerned in Massachusetts because it doesn't matter under the Massachusetts rules. We pay the but-for price. This case wouldn't have existed but for Damon Chargois, whatever I may think of Damon Chargois, but Damon Chargois' partner was Tim Herron. Tim Herron was Senator Faris' friend and neighbor. Senator Faris gave Damon the permission to make the call to Doane --

THE SPECIAL MASTER: Well, let's not go too far with that. To your point about George Hopkins, my guess is once George Hopkins got on the scent of the FX trading practices of State Street, he would have found somebody.

Whether it was Labaton or Lieff or somebody or one of the other monitoring counsel -- I think there were five monitoring counsel -- one of the other monitoring counsel, George Hopkins would have found somebody.

MS. LUKEY: He may have. He may not

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have. It was Labaton that was willing to respond. The FX exchange cases were not popular cases because they weren't traditional securities class actions, and the plaintiffs' securities class action bar was uneasy about them. Labaton was willing to give it a shot.

THE SPECIAL MASTER: So to say that this case doesn't happen without Damon Chargois is a bridge too far.

MS. LUKEY: Well, I'm saying what Professor Rubenstein said to you. You said to him what's the benefit to the class. I'm not the expert. He is. He said the benefit to the class is the but-for analysis.

In a jurisdiction that permits bare referral fees --

THE SPECIAL MASTER: Okay. That's his view. It may not be my view.

MS. LUKEY: I understand it may not. I'm saying --

THE SPECIAL MASTER: I cannot imagine George Hopkins once he is on the scent -- or, as I think he put it, he smelled a rat -- not finding a law firm to take this case. Labaton did a great

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job.

MS. LUKEY: Yes.

THE SPECIAL MASTER: Lieff did a great job. The Thornton folks did a great job. All of that is true in prosecuting the case, but to say that there would not have been a State Street case without Damon --

MS. LUKEY: How about saying there would not have been a successful State Street case?

THE SPECIAL MASTER: Well, I don't -- look, none of us knows --

MS. LUKEY: None of us knows.

THE SPECIAL MASTER: -- none of us knows that. To say that without Damon Chargois given George Hopkins' laser-like focus once he got on the scent, that's a bridge too far.

MS. LUKEY: Respectfully, it's as speculative for you to say that he would have found another law firm as it is for me to say that he wouldn't have had the same result. We don't know that.

We can only deal with the facts we have, and the facts we have are that Damon Chargois -- for whom I have very little use, by the way, after

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meeting him -- didn't add value by making that introduction, by being able to pick up the phone and tell Paul Doane that Senator Faris had given him name and number? Really? Anything to that effect to me is speculative.

But the fact of the matter is in Massachusetts a referral fee is a referral fee. Bare as it can be, it doesn't matter. I think, your Honor, that you have struggled throughout coming from the majority -- one of the majority jurisdictions with this notion. It's not an extreme notion to those of us who have only practiced here and grown up here. We see its value. We see its shortcomings. It's the law in Massachusetts.

Nothing is required -- several times in this hearing you asked questions, and I understood how concerned you were. You asked questions that were framed in terms of 4.1 million dollars going to someone who had done no work, not appeared in the case, wasn't on the pleadings, etcetera, and it troubled you.

THE SPECIAL MASTER: I think what troubled me -- that troubled me. But what also troubles me is no one was aware of it. Not

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Mr. Hopkins. Not -- apparently not the Lieff firm. Not the Court. That troubles me even more than the payment of the fee itself. That does trouble me, yes.

MS. LUKEY: Well, then let's go from the rules -- we just talked about the rules which do not require disclosure, the Rules of Civil Procedure -- to the candor rule, 3.3.

First of all, the candor rule as Professor Joy explained to you and I think some of the experts referenced it, there has to already be -- there has to be an obligation to speak. Let me get you the exact language if I can find it.

What 3.3 says is that a lawyer shall not knowingly -- I'm only going to refer to the relevant subsection -- make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

So, first of all, we have the knowing requirement. And then we have the fact that there has to be a false statement or a glaring omission which would be sufficient to constitute a false statement in a circumstance where the omission would

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be relating to something which the Rules of Civil Procedure, which, by the way, will trump these rules if there's a conflict, says you don't have to disclose.

So you're asking -- even if it turns out that your Honor's interpretation is correct, that Rule 54(d)(2) and 23(h) should be ignored because a judge really would want to know, even though he didn't ask and had never asked -- even if that were true, how could one possibly say there was a knowing violation of the duty of candor in the face of the language of 54(d)(2) and 23(h)?

THE SPECIAL MASTER: To me this is simpler. It really is. Is the Chargois Arrangement a material fact that a client would want to know, that the class would want to know and the Court would want to know before making a determination as to whether or not this money should be paid? Is it a material fact?

That's where the duty of candor is. If it's a material fact, then they should have been told.

MS. LUKEY: Your Honor --

THE SPECIAL MASTER: And the question

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I'm going to have to decide is given the construct of the rules that Professor Rubenstein shared with us, given Professor Gillers' construct of the duty of candor, whether this material fact should have been made known to the client, to the class and to the Court and, quite honestly, to co-counsel who were sharing the fee.

MS. LUKEY: We will come back to that because that's a separate issue. If you would allow us to.

THE SPECIAL MASTER: Yes.

MS. LUKEY: But in terms of -- starting with the Court, because that is dealt with specifically in the rules, with all due respect to Professor Gillers, he has admitted he's not an expert on the Rules of Civil Procedure, and he's not an expert on class actions.

What you heard from Professors Green, Wendel, Joy, Rubenstein and Hal Leiberman was it's the judge's obligation to ask if it's material to him. And I'm going to respectfully say I think Judge Wolf is being placed in an impossible situation by who you're talking about here 'cause the criticism that's going to be leveled, at least

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by the bar, is going to be if someone had an obligation to say something because it was a material fact, it was the judge whose obligation it was to ask if it was material to him.

I don't believe it was material to him. Until that hearing last month, I don't believe Judge Wolf has ever asked about an allocation of fees. You talked about the fact that you expect all of these reports to end up in the press. And I can't help but think after, you know -- I can't remember how long Judge Wolf's been on the bench, but let's say 35 years because he went on as a young person, and with the respect that I have for him, what the press says about his failure to ask in a circumstance where I don't think he had any duty to ask because I, honestly, don't believe he considered it material what Labaton and the other class counsel did with the fees after he determined what was reasonable.

But he's going to have -- whatever criticism gets leveled against the law firms, it's going to be leveled against him, too, and I don't get why we're going there in a circumstance where the rule makes it clear and where he obviously

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decided he didn't need to know. If he thought it was material, he would have asked.
THE SPECIAL MASTER: We'll decide that.
MS. LUKEY: Well, fine.
THE SPECIAL MASTER: My very clear view is that judges should be made aware of anything that is material for them to know in approving a class action settlement. Judges only know what they're told. That's all they know.
And the question in this case -- one of the questions in this case is going to be should the judge have been told about this preexisting arrangement given the nature of it and given the way it was originated, given the way it was implemented, given the fact that there was no written agreement, given the fact that the client wasn't told of the arrangement, given the fact that co-counsel weren't told of the arrangement, should the judge have been made aware of it?
That's a critical issue in this case irrespective of Rule 54(d)(2) and --
MS. LUKEY: -- 23(h).
THE SPECIAL MASTER: -- 23(h) and the interplay between those rules should the judge have

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been told.
MS. LUKEY: I hear what you're saying.
THE SPECIAL MASTER: That is a critical question. And, you know, as a judge who has to preside over these issues, is that something I would want to know? You betcha.
MS. LUKEY: I hear what you're saying. I'm simply saying that when you level this criticism against the law firms, even though they were in compliance with 54(d)(2) and 23(h) --
THE SPECIAL MASTER: Joan, that's a different question. That's a question of whether there should be discipline or sanctions. That's a different question.
MS. LUKEY: Your Honor, anything you want to say in terms of best practices going forward are not a matter with which I would take issue with you right now. We might have some issues as to what they were as practitioners.
I'm here because there's a question of whether my client is going to be disciplined or sanctioned which destroys a reputation and can destroy a law firm for conduct that was absolutely permissible under the Federal Rules of Civil

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Procedure and the Massachusetts Rules of Professional Conduct.
Whatever criticism is leveled against them regrettably is going to be leveled, perhaps in a great amount, against the judge who doesn't deserve it in my view. If he wanted to know, he would have asked. I know Mark Wolf as do you. If he thought it was material, there is no question in my mind he would have asked. His concern was with the fairness of the aggregate fee to the class.
If Labaton had wanted to take its whole share and invested on a gambling boat on the Mississippi River, that might not be something a lot of people up here would love, but it doesn't affect the class.
So if -- unless you have other questions on disclosures to the Court where we, apparently, have a strong disagreement, I'll go to the clients. Okay.
Typically in the analysis, as I think Professor Joy said, any issue about disclosure to the clients will flow through the issue of the obligation to the Court. The reason for that is as follows: The nature of the relationship between

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class counsel and a class once certified is a different breed of attorney/client relationship as Newberg makes clear and as Professor Rubenstein testified.
And it is a different type of fiduciary duty than those that exist between a lawyer or a law firm and his individual client here as in Arkansas.
So that's the reason that the case law developed that says that the Court ends up with the fiduciary duty during the fee process rather than the law firm. That's the reason in turn that the ethicists say that any obligation to the class flows through what the obligations to the Court are. And if there is no duty of disclosure to the Court, as there was not here, there is no doubt of disclosure to the class. The requirements for what must be disclosed to the class are in Rule 23.
There is a requirement to disclose the aggregate fee. That's the requirement. There is no requirement in Rule 23 to disclose fee splits. There has never been a case in which class counsel has been required to go to the class and tell the class about the allocation of its own fee, and there is no authority for that anywhere. And the reason

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for that is Professor Rubenstein's two-step process.
The Court first determines what constitutes a reasonable fee and then determines what goes in the notice to the class. And as Judge Wolf just determined recently, that what goes in is an aggregate amount without language like "up to" which is you tell them this is going to be the fee. That is what has to be disclosed.
I mean we had different rules were kind of being thrown at us along the way. Rule 1.2 which is the scope of representation and 1.4 which is communication I don't remember being in Professor Gillers' report, but they've been referenced. And the fact of the matter is that there's nothing in those rules in 1.2 or 1.4 that would require disclosure or otherwise override the aggregate requirement of Rule 23.
THE SPECIAL MASTER: Let me ask you a question. Judge Wolf toward the end of the confirmation hearing said I'm relying heavily upon what's been submitted to me here.
Professor Rubenstein didn't think that was enough to trigger a duty of disclosure. All right. We can disagree about that.

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What if he would have said something to the effect of -- would there have been a duty of disclosure if Judge Wolf instead had said something to the effect of is there anything else I should know about the fees in this case so that I may carry out my fiduciary duty to the class? What if he had said that?
MS. LUKEY: Well, it's a hypothetical that didn't happen, your Honor. I think it would depend --
THE SPECIAL MASTER: Well, I'm trying to understand Joan where the line is. I mean where is the lawyer's duty of disclosure?
MS. LUKEY: If I may, your Honor --
THE SPECIAL MASTER: Does a judge have to actually come out and say -- 'cause apparently Judge Wolf did in the last one --
MS. LUKEY: Are there fee allocations here.
THE SPECIAL MASTER: -- is there a fee allocation.
MS. LUKEY: Yes.
THE SPECIAL MASTER: A judge has to actually come out and say that.

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MS. LUKEY: If he wants to know under 54(d)(2) he has to say it. I want to say, by the way, I believe Professor Gillers at his deposition acknowledged that that general language at the end was not enough. I pushed him on that. It's in my -- I've got the page cited in the written submission. I believe he indicated that's not alone enough.
THE SPECIAL MASTER: For purposes of Rule 54(d)?
MS. LUKEY: I don't remember the context. I just remember him saying, okay -- that's a general statement, anything else I should know. If the judge hasn't indicated that he considers it material how the counsel are whacking up the fees --
THE SPECIAL MASTER: How could he know whether it was material unless he's told what the agreement is? And what is constituted?
This is utterly circular. He has no interest in knowing if he doesn't know because he hasn't asked.
MS. LUKEY: Well, respectfully --
THE SPECIAL MASTER: It's utterly circular.

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MS. LUKEY: Respectfully, your Honor, from the perspective of the practitioner, if something's perfectly permissible under Massachusetts law, why would we even assume that a judge might consider it remotely material?
I know you're bothered by the fact it's a 4.1-million-dollar bare referral fee, and I know equally well that's perfectly okay under Massachusetts law. It may not be okay under the law of some other jurisdiction, but it is here. We've lived with that our whole -- the Massachusetts practitioners have lived with that our whole careers.
It's the law. We've never known any other rule. It's all right. You can get a referral fee for doing absolutely nothing.
THE SPECIAL MASTER: When the experts -- when the experts testified about what a referral fee was and why somebody could receive a referral fee for doing nothing, they all testified that the policy behind it was that -- to assist a client in finding somebody better qualified to handle a case. That's the policy behind it.
I believe it was Camille Sarrouf who

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said I have had hundreds and hundreds of cases when the people come in to me and say I have this problem, and Mr. Sarrouf says this is not something I can handle, but I know a lawyer that can handle it better.

And that's the policy. And that is what serves the public; that somebody will be handling it better. That's not what happened in this case. Not even close.

MS. LUKEY: I respectfully disagree. What happened was the introduction to allow the panel counsel relationship to exist. The reason for panel counsel is precisely because that's the pool from which litigation counsel are selected. That's why panel monitors exist.

He caused Labaton to become panel counsel which means the cases that flow, which are a product of being panel counsel, came to Labaton through him. Saggese talks in terms of referral of clients. The focus is on the Doe case where Saggese got a $90,000 fee for doing nothing, much smaller case, much smaller circumstances. But he was getting a third, not 20 percent.

But the language of the case is referral

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of clients. There are circumstances in which that happens and the panel monitoring circumstance -- the feeder for the actual cases is the paradigm of that situation. You pressed Hal Leiberman really hard on this.

THE SPECIAL MASTER: I did.

MS. LUKEY: And he said to you that is common practice. That's the way it's done. And what everybody in this room has to be mindful of is we're doing this in the context of the plaintiffs' class action bar in securities and securities-like complex cases.

Board of Bar Overseers handbook, which we cite, has some really interesting language in it that talks about how they look at and assess when something is proper or improper. They actually take into account the practices in the area -- the legal area and geographically. They actually say that it matters what the standard of practice is in Massachusetts which is why initially we gave you what was a fact witness on the standard of practice in Massachusetts, Camille Sarrouf.

And only after you selected Professor Gillers and I raised the issue with you because I

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continue to believe you can't have an expert on law and that all of these experts, except for Camille and Hal, should -- and Mr. Dacey should have just been filing legal briefs because they can do that, but they can't be experts, but that is something to be considered. Massachusetts law and area of practice law.

And the plaintiffs' class action bar has certain typical practices which happen to include that an introduction, for example, to an institutional investor is going to be an ongoing relationship. There's nothing in the rules that says that that's improper, and there are no cases that say it's improper.

THE SPECIAL MASTER: Well, then disclose it. If that's the answer. Disclose --

MS. LUKEY: If you want to disclose, ask.

THE SPECIAL MASTER: Disclose it to the client. Disclose it to the class. Disclose it to co-counsel and disclose it to the Court. That's the answer. It may be perfectly fine.

MS. LUKEY: Well, Court and client -- I'll turn to co-counsel in a moment. Court and

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client disclose it on the basis of no existing case law. There is no authority for that, and there is no rule for it.

Again, your Honor, whatever you want to say in terms of best practices and changes that should be made, that is clearly within your purview. But to suggest there's been misconduct that's either sanctionable or subject to discipline would be totally unfair and inappropriate because there isn't a single case that says it, and there isn't a single rule that says it.

We're in Massachusetts. We're in the first circuit. Nothing happened here that was wrong. Nothing. I turn, if I may, then to the issue of disclosure to other counsel. I'm going to point out to you that Professor Gillers does not offer any opinion that there should have been disclosure to other counsel. Because if, as I just said, there is no rule and no case that requires disclosure to the Court and the client, well, we're worlds removed when it comes to disclosure to other counsel in terms of anything that's governed by rules or by case law.

We start with ERISA counsel because,

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indeed, I do think that Lieff and Thornton stand in a different position from ERISA counsel. ERISA counsel also didn't disclose their agreements and arrangements, their fee allocations to class counsel.

THE SPECIAL MASTER: But didn't those folks appear on their lodestar?

MS. LUKEY: No. In one instance -- there are two that aren't in the lodestar, and there's one that doesn't appear anywhere in this case.

And now he may have had an appearance in before the case transferred, but in terms of what's in the docket in this matter once it was a consolidated heading, there was no disclosure. He was never made known. Class counsel never complained about it.

THE SPECIAL MASTER: Who is that, please?

MS. LUKEY: I can't remember the name. And, actually, I have to credit this one to Richard's the one who has raised it twice in arguments. And I will defer to him on who it was. We know it happened. It was in the -- you will

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recall that we asked you to do an emergency interrogatory --

THE SPECIAL MASTER: Yes.

MS. LUKEY: -- in the midst of some of this going on --

THE SPECIAL MASTER: Yes, yes.

MS. LUKEY: -- because I was convinced, because I had heard through the grapevine, that there was somebody else and there was. It was someone who when the matter was going to be a standalone case would have been a more traditional local counsel just as before George Hopkins, Damon Chargois would have been a traditional local counsel. The handholder, the person that takes care of matters locally.

That person didn't do anything in the consolidated case, didn't participate in anything, etcetera, wasn't on the lodestar, got a payment. Don't know what it was. We just know they disclosed the fee agreement in response to the interrogatories. They didn't disclose it because they're bad or unethical people; it's because there isn't a requirement to disclose it. There was no reason that class counsel who had a contract with

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ERISA counsel had to tell 'em how they're whacking it up among themselves. It's really not the business of ERISA counsel.

THE SPECIAL MASTER: So how can the ERISA counsel serve the interests of their clients who are the named representatives in the other two cases if they're not told about 4.1 million dollars coming out of counsel fees and ask their counsel -- ask their clients, their representatives is this okay?

MS. LUKEY: Well, your Honor, you can't have it both ways. At the point in time when the class was certified -- this is not the practical truth probably because this was a highly unusual situation when you kind of smash together three different cases and call them one class, but at that point the attorneys became the class counsel, became their attorneys.

The fiduciary duty became the Court's duty. The ERISA counsel were still in the fee allocation process. The ERISA counsel were still I'm sure actually actively involved, but they weren't functioning in that role.

So it's nice to say, oh, if we'd known

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-- they can say in retrospect if we'd known, we would have told them --

THE SPECIAL MASTER: So who is protecting the class? And particularly in these two other cases that have now been consolidated, who is protecting them?

MS. LUKEY: On the fee issue?

THE SPECIAL MASTER: Yes.

MS. LUKEY: According to the case law, the Court is protecting the class because the lawyers -- all of the lawyers have an inherent conflict of interest at that point.

THE SPECIAL MASTER: Correct.

MS. LUKEY: So it's the Court. That's what the law says. Whether you like it or not. Whether you want to change it. That's what the law says.

THE SPECIAL MASTER: So the Court has an obligation, but the Court can't -- according to you and your experts, the Court can't protect its -- or fulfill its fiduciary obligation unless it asks.

MS. LUKEY: That's what the law says. It's not what I say. It's what the law says.

THE SPECIAL MASTER: Well, we'll -- I'll

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have to decide that, Joan.
MS. LUKEY: The courts -- well, if you can cite me to a case, I'll be grateful, your Honor, or a rule. But the Court's obligation is to determine that the fee that is paid is a fair and reasonable fee. That's the Court's obligation.
THE SPECIAL MASTER: Fair and reasonable in light of all the circumstances, and one of the circumstance here is that a lawyer who did no work in the case, never appeared in the case, had no connection with the case was getting a substantial amount of money.
MS. LUKEY: Do you know what, your Honor? If you -- and I mean this with all respect. If you had practiced --
THE SPECIAL MASTER: That usually means you don't respect. But okay.
MS. LUKEY: No comment.
If you were a Massachusetts practitioner, if you had spent your years here as a judge and a lawyer, you wouldn't be bothered by this. The problem is that you're in an ABA Model Rule jurisdiction, and the notion -- I understand you find it abhorrent.

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THE SPECIAL MASTER: These class members, Joan, were all over the country.
MS. LUKEY: But the case was here.
THE SPECIAL MASTER: But the case was here. But the class members were all over the country. They had different interests. They had different class representatives. This was a polyglot class.
It was not a single -- once the case was consolidated for pretrial purposes, it was a polyglot -- effectively a polyglot class consisting of a myriad of claims, a myriad of interests, and what I'm not understanding -- we'll deal with the question of what Rule 23(h) requires, what Rule 54(d) requires. We'll deal with that.
But I simply don't understand how a judge can perform his or her fiduciary duties to the class if a judge is not told at the very least where a substantial amount of money is going to lawyers who never appeared to the judge, was totally -- totally non-transparent not just to the Court but to other lawyers.
MS. LUKEY: Your Honor, why do you think there have been 127 of these proceedings in the

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District of Massachusetts and no Massachusetts federal district court judge until Judge Wolf did it presumably in reaction to something you told him in this case who has ever asked? I'll give you the answer. You can come up with your own.
But the answer is because in Massachusetts bare referral fees are legal and permissible and ethical.
THE SPECIAL MASTER: One answer may be also that this issue of a lawyer being paid a very substantial share of the fees has never been aired before, never been brought out. That might be why.
MS. LUKEY: Because it's permissible.
THE SPECIAL MASTER: It might be as simple as that.
MS. LUKEY: Respectfully, your Honor.
THE SPECIAL MASTER: It might be as simple as that.
MS. LUKEY: We've had a lot of judges over the course of those 127 cases -- Judge Wolf wasn't being derelict in his duty. Every judge in this district who practiced in this district, who became a judge in this district has grown up with the rule that I know and have no problem with and

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that you are troubled by.
As a matter of principle, it should not matter, by the way, in determining ethics or discipline whether the fee was $10,000 or 10 million dollars. That's irrelevant.
What's relevant is is this a jurisdiction that permits a law firm to pay whatever amount it agrees to pay to someone who refers them or introduces them as happened in this case. It is permissible in Massachusetts, and it is very hard I understand for someone --
THE SPECIAL MASTER: What do you think the public would say about this? What do you think the public -- just the normal person on the street?
MS. LUKEY: I don't think the public would care.
THE SPECIAL MASTER: You don't?
MS. LUKEY: As long as the attorney fee -- if they accept the procedure, which has always been the procedure everywhere which is you decide the fee first and then you decide what goes in the class -- so you figure out first what's a reasonable fee -- I think the reaction of the public to this circumstance would be twofold: One, boy, Labaton

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was stupid to agree to 20 percent, maybe give the guy 5. Pretty high fee. Two, the rule says the judge should ask. If the judge thinks it's material, he should ask.

I'm not criticizing this judge because it's not material in Massachusetts. It is not material under our rules which differ from the majority rule. I know that. But Judge Wolf didn't ask because it isn't material. I am convinced of that just as of all of his colleagues over the years have not asked, just as no expert, including Professor Gillers, can point to a single case where they have asked or where any Massachusetts court or disciplinary body or ethics committee has ever said that not disclosing it when not asked is in any way wrongful or impermissible. If it's not wrongful or impermissible and the overall fee and aggregate is totally reasonable, then it's not material.

The last thing that I would be addressing subject to your questions is the issue of co-counsel. You have seen that in May of 2011 there was an attempt -- an early attempt by Labaton to firm up an agreement between the firms. That didn't actually come to pass for a while. Different terms

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ultimately entered into it.

But as it happens, in that draft letter there is an actual statement about the fact that there is a referral -- there's a referral fee to be paid to an attorney, and I think it's framed in terms of the total -- I think it's actually referred to as 6 percent -- I can't remember if it's 5-and-a-half or 6 percent -- and that Labaton is proposing that comes off the top because all three firms will be benefiting from the but for analysis.

That letter was sent by Chris Keller to Garrett Bradley to get his opinion on -- I suspect nobody was really focusing on the referral fee issue so much as they were focusing on the overall agreement and how are we going to divide the fees at the end of the day.

But clearly there was notice, and I believe that there was a reference along the way to the fact that Garrett -- I mean Garrett knew Damon Chargois. You got the testimony. He knew that Damon was a local -- an attorney who had done a referral. So the Thornton firm knew all the terms. I mean I don't know what else they were supposed to be told. They knew that it was being paid as a

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referral fee; they knew what the amount was; they knew who the person was --

THE SPECIAL MASTER: Garrett Bradley testified that he didn't know that Damon Chargois was not doing local counsel work.

MS. LUKEY: Well, it's pretty clear in that letter it says as a referral fee to be paid. It doesn't say our local counsel is going to do X. But let's -- because by that time whatever Damon may have thought earlier because in fact -- I'm sorry -- whatever Garrett may have thought, Damon was -- did do local counsel role in other situations; but once George Hopkins came in, he ceased to do it with regard to Arkansas because George preferred to have the direct relationship and his communications completely with Labaton.

But -- and I'm not suggesting to you in any way that Mr. Bradley was intentionally being untruthful in his testimony. I'm sure that he looked at it, and he thought of him as local counsel. He knew him as local counsel in other situations, and he likely didn't focus on the fact that there's a letter that says what do you think of this, we're going to take this percentage fee for a

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referral fee. Not for local counsel fee. Not for liaison. For a referral fee.

And, again, because they all knew each other, I'm sure people melded in their own minds the cases in which Damon actually was doing local relationship work and Arkansas post George Hopkins. I mean how are you supposed to distinguish? His involvement was to introduce them to clients in Texas and Arkansas, not just to the Arkansas Teacher Retirement System. It's asking a lot to --

THE SPECIAL MASTER: So you believe that -- cutting through this, you believe that Garrett Bradley knew enough?

MS. LUKEY: Yes. Now I turn to --

THE SPECIAL MASTER: One of the things I'll have to sort out here, and I'm not sure it matters, but from January of 2015 on Garrett Bradley was wearing two hats. He was of counsel to Labaton, and he was the managing partner at the Thornton firm. I don't know how to divvy up that knowledge. If it's necessary but --

MS. LUKEY: I don't know that you can. As you know, we don't think it's particularly pertinent. All they have to know is they're

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agreeing to pay a certain amount of money; and unless they ask -- and there's no suggestion that anybody here was concerned about it -- I don't know that it matters. But do I think that -- I think it's asking a lot to ask Garrett who knew Mr. Chargois more generally, not just in the context of Arkansas, to be able to distinguish or remember what his role was in one matter as opposed to what his role was once George Hopkins became the director at Arkansas.

So I think there was adequate notice. With regard to Lieff, I can tell you that there was a very sincere effort to determine whether that letter ever got finalized and sent. There is no evidence that it ever did.

THE SPECIAL MASTER: Which letter? I'm sorry.

MS. LUKEY: The draft letter that laid out --

THE SPECIAL MASTER: The 2011 letter agreement?

MS. LUKEY: Yes, the May 2011 letter which said and there's a referral relationship; we need to take 6 percent off. As far as we know, as

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far as we've been able to determine, it did not go, and it would have gone to multiple partners, and we would have been able to figure it out. Somebody would have found it.

THE SPECIAL MASTER: So what -- as far as you've been able to determine, what do you think happened to that letter? Do you think it was drafted and not sent? What happened?

MS. LUKEY: We can't track it. I think it was drafted and not sent, but I can tell you Chris Keller thought it was sent. But -- but, you know, it's just -- it's a little bit akin to some of the other letters here.

Letters did in fact encompass -- for example, the letters back and forth with Chargois, talked about what the deal was going to be. There were a variety of letters at times among the three firms. Things tended not to always get signed --

THE SPECIAL MASTER: What are we to make of this fact which seems to have been the case, the correspondence that we've seen other than this December -- this 2011 letter refers to Damon Chargois as local counsel or the local; a number of these communications Labaton is on it and doesn't

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correct it back to Lieff.

MS. LUKEY: Well, the problem is in how -- in attaching too much significance to the phrase "local counsel." Obviously, when I think of local counsel if it's a phrase of art, that refers, to me at least, to someone in the jurisdiction where the lawsuit is pending who in those states that don't admit pro hacs without an attorney who is a member of the local bar which Massachusetts is one of, that's a local counsel, the person who serves that function.

THE SPECIAL MASTER: Or a person who is having a relationship with the client as effectively a liaison counsel and serving the counsel in that locality.

MS. LUKEY: I wouldn't call that a local counsel because of the confusion it causes with the one up in Massachusetts --

THE SPECIAL MASTER: We've had several people testify to that.

MS. LUKEY: I understand. So you've got -- I think what you've got is a variety of interpretations, probably all in good faith, being attached to a phrase which only -- which is only a

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phrase of art when used in the context of the court rules where local counsel has a meaning. Massachusetts has a court rule saying you must have local counsel if you're appearing pro hac. I think there's talk about changing that, but that's what it is right now.

So the phrases that I saw -- and there were on some of the communications Labaton people and not others -- refer to him as the local -- the local. Local Arkansas counsel was what Larry called him. I think there was one reference to the liaison or something of that nature.

THE SPECIAL MASTER: Garrett Bradley referenced him as the local counsel who provided something like significant value to the case --

MS. LUKEY: Unless Garrett --

THE SPECIAL MASTER: -- or important value to the case.

MS. LUKEY: Unless Garrett was referring to the but-for piece, I'm not sure what he was referring to.

But there also could simply have been confusion about the fact that in point of fact Damon Chargois did act as a local or liaison, except with

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regard to Arkansas post George Hopkins. He was a relationship person, and he was good at it.
(Telephone interruption.)
THE SPECIAL MASTER: Turn on your -- turn on your mute, please.
MS. LUKEY: Somebody on the phone, you need to mute.
THE SPECIAL MASTER: Lynn, is that you?
MR. SINNOTT: Hello, Lynn?
THE SPECIAL MASTER: Lynn?
MS. LUKEY: You need to mute.
MR. SINNOTT: Mute, please.
MS. HYLENSKI: It's not me.
MS. LUKEY: No, it was a male voice.
MR. SINNOTT: For once we didn't accuse you, Linda.
MS. LUKEY: So I understand why there may have been confusion among people because it's easy to think of a person and confuse his role in multiple cases, and I don't think it's relevant to anything.
So I think there --
THE SPECIAL MASTER: Here's where it's relevant I suppose to the extent it's relevant. I

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think it was probably relevant to Bob Lieff and the Lieff firm.
But to this inquiry where it's relevant is is this part of a larger pattern of Labaton simply not telling anybody about the nature of the relationship with Damon Chargois? And what does that mean?
MS. LUKEY: Well, that's not in front of us, and I don't have a clue. I don't have any evidence. You have no evidence. And I don't think, respectfully, Judge Wolf's order would say go down to Arkansas and Texas and check what they're doing down there.
I don't know the answer. You don't know the answer. What's important to us is what happened in front of Judge Wolf and to the clients here --
THE SPECIAL MASTER: It may be relevant circumstantially to the larger question to why nobody was told about Damon Chargois and the nature of the relationship.
MS. LUKEY: Your Honor --
THE SPECIAL MASTER: It may be relevant to that.
MS. LUKEY: He was a traditional liaison

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counsel otherwise. So what is it you think they're not being told?
The problem here is that post George Hopkins he stopped doing that. So that's where you've got the issue, and that's why this case is relevant to this Court because he was initially supposed to be in that role. That's what the Labaton folks said.
And Lord only knows, Mr. Chargois sent an e-mail telling them how important he was and how much time he put in and all the political capital he expended and the great things he had done for them, and then he sat in front of us and said I didn't do anything. Which may be unique to concerns he has of his own in Texas --
THE SPECIAL MASTER: Well, in fairness to Damon Chargois, he said I didn't do anything in this case.
MS. LUKEY: Okay.
THE SPECIAL MASTER: He said I didn't do anything in this case. He did not say he didn't do anything at the inception of the relationship.
MS. LUKEY: My point is this: We're supposed to be looking at the circumstance of

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whether in this case a reasonable fee ceased to be reasonable because there was a referral fee being paid that was perfectly permissible under Massachusetts law, and that from what I have gathered from the questioning might not have been an issue to your Honor if it weren't so large, and it was so large because the size of the fee and the settlement were so large.
The principle does not change. If it's okay to have a bare referral fee, it's okay at $10,000, and it's okay at 4.1 million dollars. If it's not okay to have a bare referral fee, it's not all right at 10,000, and it's not all right at 4.1. We are in a jurisdiction where it is all right.
THE SPECIAL MASTER: So the only thing the Court needs to be concerned about is the aggregate fee, not how it's shared, not whether lawyers did anything to contribute to the value of that fee?
MS. LUKEY: In Massachusetts that is correct, your Honor.
THE SPECIAL MASTER: Okay.
MS. LUKEY: Unless if the judge has a reason that he's concerned, he has the right to ask.

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But I again am not faulting Judge Wolf for not asking, just as none of his colleagues has ever asked. Because it's all right in Massachusetts. And they know that.

What are they going to do? Call someone on the carpet for a referral fee that's permissible? Suppose the judge did out of curiosity ask, and they told him. Suppose he then said I think I'll keep back 4.1 million and give it to the ERISA lawyers because they weren't paid enough. Can he do that? Probably not actually.

THE SPECIAL MASTER: Or give it to the class.

MS. LUKEY: Well, then he has taken what was a reasonable fee and has made it unreasonable for the lawyers. So that would probably precipitate an appeal.

THE SPECIAL MASTER: Or give it to the class.

MS. LUKEY: That's what I'm talking about.

THE SPECIAL MASTER: If the judge knows about this, the judge can then make a determination at that point.

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MS. LUKEY: I -- well, there is no such thing as unfettered discretion, your Honor. I'm not suggesting that the first circuit would necessarily reverse when that occurs, but it's certainly a possibility.

The point is that if the judge thought that that's something he might be inclined to do, he could ask. But if we look at the few situations in which questions have been raised, it's typically either going to be something like the shared -- the investment risks shared in litigation which is in the category of cases where there's a negative impact potentially on the class.

As Professor Rubenstein indicated, if he had seen e-mails that said, uh-oh, we got to hurry up and settle this because we have to pay that Chargois obligation or something of that nature, then that would change the equation. But that wasn't the case.

Nobody was -- at least let me put it this way: As far as we know -- because there is no other evidence -- none of the lawyers here was motivated to do anything differently because of the Chargois agreement. In fact --

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THE SPECIAL MASTER: Well, we do have some testimony from the ERISA lawyers that they would not have accepted the fee split had they known about Mr. Chargois.

MS. LUKEY: So, what, they would look then for a windfall? Because, first of all, they had a contract as to what they were taking and they were given --

THE SPECIAL MASTER: Based upon what they were told.

MS. LUKEY: Your Honor, that contract was on the basis of the trading volume of customer class dollars versus ERISA class dollars.

THE SPECIAL MASTER: But they thought they knew about it at the time.

MS. LUKEY: Respectfully, your Honor, for an interested party to say I would have acted differently is pretty speculative, but the fact of the matter is that's not going to change what the trading volume was. The trading volume's the trading volume.

Right now, as we have in the record, it appears it's going to come out at 9 to 9.5 percent. A.B. Data is trying to finish, but it needs to be

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able to get the last data from the group trust which are a mixture of customer class and ERISA investors. And it's been unable to collect some of that. But there is nothing to indicate, at least at this point, that it's going to exceed the estimated 10 percent. Looks like it'll come in a little under that.

So for the ERISA counsel to say, oh, if I had known, I would have done something differently would involve a windfall.

THE SPECIAL MASTER: It would possibly though have gone into the mix of the negotiations between the customer class and the ERISA class counsel as you've been referring to them.

MS. LUKEY: That's speculative, and I'm going to point to two things. I'm not here to criticize anyone, but I'm going to say two things. I already mentioned that there's a fee split that wasn't brought to the attention of the Court or other counsel on the ERISA side, and I don't like have to do this, but we went over it at the deposition the other day there are Mr. Sarko's e-mails saying I'm not telling the Department of Labor; I'm avoiding their questions; let's be

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careful what we say.
I'm not going to take issue with his decision in that regard, your Honor. I'm just going to say we need the same rules applied across the board to everyone. If there is an issue about what needed to be disclosed, that same principle applies to the ERISA lawyers.
It's not fair to say only the customer class counsel have certain obligations. The truth is none of them had these obligations. Mr. Sarko didn't do anything wrong. The ERISA attorney who did not disclose in my view did not do anything wrong. Nobody did anything wrong.
And if the worst case scenario here is that the Labaton attorneys were a little bit careless in making sure that the Lieff attorneys got the full information that the Thornton firm got, that's something for which they should apologize to Lieff. But there is nothing to suggest that it was intentional. Nor is there anything to suggest that Lieff was hurt by that, except insofar as you do something in these proceedings that hurts their reputation in some way.
They knew what they knew that affected

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them, how much they had to pay. If they want to say I would have reacted differently, you know what, that's something between Lieff and Labaton.
If they want to say if we'd known that, we would have negotiated a different deal, that's their right to do it. But it's not an appropriate subject for a proceeding in which you're looking into whether the Court and the clients were treated fairly.
THE SPECIAL MASTER: It's all circumstantial, Joan, to -- circumstantial evidence of whether or not there was a pattern from the inception of the case not to disclose the nature of the Chargois relationship and what he was being paid for.
That's an issue in the case, whether or not there was a pattern within this case by Labaton of non-disclosure at virtually every point.
MS. LUKEY: Well, respectfully, there are only a set number of points where it could be. There was a disclosure via the draft letter and the fact that Mr. Bradley was familiar with Mr. Chargois, and they also actually participated in the seminars together and so forth.

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But I think it's a little unfair to say that he should be able to remember in his own head --
THE SPECIAL MASTER: Which seminar? The networking.
MS. LUKEY: This is the networking seminars in Florida or wherever they were at various years. I think it's a little bit unfair to him to suggest that he should be able to keep straight in which matters for which client Damon had one role versus the non-role he ended up having once George Hopkins came into Arkansas.
With regard to Lieff, again I think that's a matter for discussion between the two of them. But certainly the fact that Chris Keller tore apart his files and that the effort was made so strenuously to find it suggests that he thought he had notified them. It was a mistake. Apparently, he didn't. But at very least, we know that Lieff was aware of what the amount was and who the recipient was.
If they thought he was doing more in this particular matter, then Labaton's sorry for that, but there's nothing to suggest they were

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intentionally trying to hide it. What's unfortunate here is that Lieff got a little bit pulled into some of this because of it, but that wasn't by any intent of Labaton.
As we've said with regard to the Court, that's the cleanest one, and it's actually the issue from which all else flows. The rules say only disclose if you're asked. No judge in Massachusetts had ever asked until Judge Wolf asked when it was brought to his attention more recently. It isn't the practice the phasing of the determination of the reasonableness --
THE SPECIAL MASTER: I'm just curious what was the answer?
MS. LUKEY: I don't know. I think they said there were no other fee allocations, but I don't know. I only looked at the excerpts that what were pulled for me.
It was actually -- it's kind of a throw-away question. He said it very casually. He passed it very quickly. It was like two lines. But then what followed was to say put the aggregate -- I don't want you to put "up to." I want you to put 25 percent.

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So, respectfully, I think it's unfair to suggest that they were hiding anything from anyone. With regard to the client, Mr. Hopkins had very good reasons for not wanting to know what the local attorneys were.

THE SPECIAL MASTER: And what about once the ERISA folks were members of the class but still, apparently, part of the class representatives -- I think we've determined that the other day -- no obligation to tell them either?

MS. LUKEY: No. There is no obligation to tell them. Rule 23 governs. And Rule 23(h) is very specific. Follow Rule 52(d)(2) [sic]. There was no obligation to tell them.

THE SPECIAL MASTER: 54(d)(2).

MS. LUKEY: 54(d)(2). Thank you.

That obligation would have flowed through the Court because the nature of the relationship, as has been explained, is, well, yes, it's kind of an attorney/client relationship but not like with your one on one. It's kind of a fiduciary duty but not the same kind.

THE SPECIAL MASTER: So who is speaking for the members of the class that the ERISA

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representatives were part of when George Hopkins says I don't want to know, I don't want to know anything?

No ERISA members said that. No ERISA representatives said that. So who's protecting the ERISA members?

MS. LUKEY: Well, at the end of the day once the class is certified, then you're in a circumstance where the fiduciary duty is the Court's which is why you look to what the Court is referring to.

THE SPECIAL MASTER: And counsel had no remaining fiduciary duty after that?

MS. LUKEY: To make disclosure?

THE SPECIAL MASTER: Yes.

MS. LUKEY: No. Of a fee allocation after a fee determination of what's reasonable? No. They can do whatever they want with the fee --

THE SPECIAL MASTER: Well, there is that interim period between August 8th of 2016 and November 2nd of 2016 in which the class is preliminarily certified -- the settlement class is preliminarily certified, and at that point they are clients.

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And is there no obligation at that point to inform the ERISA -- at least inform the ERISA class representatives? Whether through their counsel or directly of this relationship.

MS. LUKEY: At that point they weren't the ERISA class representatives anymore. There was only one class rep once that had happened. But --

THE SPECIAL MASTER: What did the settlement agreement say, if anything, about the ERISA class representatives in the two cases and their role in the larger settlement class? Was the settlement agreement silent on that?

MS. LUKEY: I do not know. I know they got a fee, but I do not know which would have related to the prior period --

THE SPECIAL MASTER: They certainly did get service awards.

MS. LUKEY: But that could have related to the previous period. I don't know the answer to your question, your Honor. I didn't look at it for that purpose.

So if there are other questions I can answer, I'll be glad to. Otherwise, I've talked long enough.

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THE SPECIAL MASTER: This is going to be a flowing situation.

MS. LUKEY: Yes.

THE SPECIAL MASTER: So if Bill wants to ask a question.

MR. SINNOTT: Just a couple quick questions, Joan.

MS. LUKEY: Sure.

MR. SINNOTT: First a factual question. When you talk about ERISA not disclosing a firm in the case, what firm are you referring to?

MS. LUKEY: Well, as I mentioned, I can't remember. It's a local Massachusetts firm that when the case was a stand alone was the local attorney to allow the pro hac in. We can get it for you --

MR. HEIMANN: It's Sarko's local counsel.

MS. LUKEY: Sarko's local, okay.

THE SPECIAL MASTER: Then if they were local counsel, wouldn't they have appeared on the case?

MR. HEIMANN: I believe they were on the complaint that was filed initially. What was being

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suggested is they were no longer on the pleadings once the case was -- was it MDL? I can't remember.
MS. LUKEY: No, it was just consolidated.
MR. SINNOTT: Was that Hutchings Barsamian?
MS. LUKEY: Yes.
MR. SINNOTT: My recollection, and I believe that when we sent this the supplemental interrogatories out, all of this information came in and was disclosed was that they had actually worked as local counsel; that they had filed an appearance in the case and, in fact, had filed the complaint.
MS. LUKEY: In the standalone case, but in terms of what was in front of Judge Wolf, there was nothing.
MR. SINNOTT: But you'd agree that there was -- it was apparent to everyone what they had done in the case?
MS. LUKEY: Wouldn't have been apparent to Judge Wolf. They weren't in the lodestar. They didn't enter an appearance, and they never appeared.
THE SPECIAL MASTER: If they were on a pleading that was filed in a case that was before

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Judge Wolf --
MS. LUKEY: It wasn't.
THE SPECIAL MASTER: -- they appeared.
MS. LUKEY: Well, I shouldn't say that so clearly. I don't know whether he had the original complaint or not.
THE SPECIAL MASTER: Well, it was consolidated.
MS. LUKEY: They are not on the docket for this consolidated action. They did not file a lodestar.
THE SPECIAL MASTER: In the consolidated action but in the original complaint that was filed?
MS. LUKEY: As I understand it, they, apparently, were on the original, but they were not on the consolidated docket I believe. And they are not in the lodestar. They did not file a separate fee declaration.
THE SPECIAL MASTER: Okay.
MR. SINNOTT: Another question, Joan.
MR. SARKO: This is Lynn Sarko. I just want to clear this up.
The Andover complaint was filed with Judge Wolf. Our local counsel is listed as counsel

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of record. Our local counsel actually filed things on the docket in that case. Our local counsel reported to the Labaton firm.
Nicole Zeiss decided -- told us that she was not going to include their time in the fee application because it was de minimis but was going to include the expenses. That's all in the record. I just don't want people to misstate the record in this argument.
THE SPECIAL MASTER: If we don't have that information, would you please provide it to us? If you've already provided it us, that's fine.
MR. SINNOTT: I'll pull the interrogatory.
MS. LUKEY: That's not my understanding. But we did it based on the interrogatories and checking the docket, and we didn't find anything. But if I'm wrong, I apologize. That's what we understood to be the case.
THE SPECIAL MASTER: Okay.
MR. SINNOTT: Joan, so that I understand correctly, you're not saying that the Federal Rules of Civil Procedure 23 and 54 trump Rule 3.3, are you?

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MS. LUKEY: I am saying if there is an issue on which there is a flat-out inconsistency, then the federal rule would govern.
However, here you wouldn't even need to get there because the federal rule is a specific rule about when you must disclose. Rule 3.3 is a general rule about the duty of candor. Under standard statutory construction which also applies to rules, the specific trumps the general.
So if you have a specific requirement or indication there is no requirement to do and act and you have a general discussion of something like candor, then the specific requirement that says you don't have to disclose trumps the general requirement of candor in the sense that you cannot be obligated as if it were wrongful conduct which is what the candor rule is to disclose when the specific rule says you don't have to.
THE SPECIAL MASTER: I'm curious about this. If a lawyer discloses for purposes of a fee petition that A, B, C and D are going to get X amount of money but doesn't disclose that lawyer -- where did I leave off? Did I say E? -- was disclosed doesn't disclose that lawyer X is going to

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get money and lawyer X has never appeared, lawyer X is non-transparent to the Court, was the statement true because it's partially true, or is it false because it's not fully true?

MS. LUKEY: Two things: First, it's a hypothetical that's inapplicable because there was neither a request, nor was there a filing that said the three customer class firms will each receive X. That never happened. Wasn't asked for.

Secondly --

THE SPECIAL MASTER: But there were lodestar petitions filed, and the judge could infer that each of these firms that appeared to him in the lodestar petitions and in the case were going to get some allocation -- maybe not knowing what allocation but some allocation.

MS. LUKEY: But that's a crosscheck to see whether the percentage is reasonable. What you're doing if you're not putting in one of the lawyers is understating something, not overstating it. So that's not going to hurt the crosscheck.

You could choose, as Labaton does for example, not to include in your lodestar attorneys who have under a certain amount, a de minimis amount

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which is like five hours for some set period, they don't disclose them. That doesn't make it unlawful or deceptive because they're understating the number that they're asking the Court to use for the crosscheck of their contingent fee.

So leaving someone out -- if it's going to disadvantage anyone, it's going to disadvantage the petitioner putting in the lodestar report. So I don't see that.

But, secondly, one of the issues here is at what point does it cease to be relevant to whom you choose to distribute funds. So let's -- we didn't have a circumstance where the judge asked how much each firm was getting.

But let's say he did and he asked Labaton how much are you getting, and Labaton says, well, we're getting a little under 25 million dollars. And they don't say but we have to give 4.1 million or their percentage -- 1.3 million -- away. If they wait a week, if they wait two weeks, the funds are in their account. It's their funds. When's it okay? I mean that's the problem.

You can't -- it's not like there's being a payment that's not funneling through the law firm.

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How long do you have to hold it before it's no longer anybody's concern? That's part of the reason why that there is no arbitrary rule that says if you're willing to give away part of your money you have to tell the Court.

THE SPECIAL MASTER: Bill, did you have --

MR. SINNOTT: Just to follow up on what you said before.

Just so I understand it and the special master understands it, Joan, you're saying that a specific procedural rule trumps a general rule of professional conduct?

MS. LUKEY: You can drop the word "procedural" and the word "rule of professional conduct" from that. I'm saying specific governs over the general.

So you don't even have to get into the issue of is a Federal Rule of Civil Procedure if it conflicts with a professional rule going to govern in terms of whether a person can be disciplined or sanctioned for their conduct in the federal court where the federal rule applies.

I believe the answer to the latter

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question is that the federal rule is going to govern, but you don't have to get there. It's easier to use the standard rule of statutory construction which is you've got a specific rule on when you have to disclose a fee allocation, a fee division. And then you have a general rule that says you need to be candid with the Court.

THE SPECIAL MASTER: Let me ask this: What are we to make of I think it was comment 14-A and the comment which then incorporates 3.3(d) -- wasn't it 3.3(d)?

MS. LUKEY: It's 3.3(d).

THE SPECIAL MASTER: -- on ex parte proceedings?

MS. LUKEY: I'm glad you mentioned that 'cause I didn't go back in my outline to that. I also didn't go back to 7.2 because it appears that's no longer a matter -- you didn't ask about it, but I can come back to it if you want.

THE SPECIAL MASTER: I think we did. Didn't we?

MS. LUKEY: No. 1.5 and 7.2 we didn't talk about. I can talk about that but starting --

THE SPECIAL MASTER: Wait, wait, wait.

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MS. LUKEY: Did you ask about it?
THE SPECIAL MASTER: I'm pretty sure we did. We asked about 7.2, 7.
MS. LUKEY: No, the list doesn't have it.
MR. HEIMANN: You asked about 7.3 but not 7.2.
MS. LUKEY: You didn't ask about 7.2, but I can come back to that, your Honor, if it was left out.
THE SPECIAL MASTER: I want to give you an opportunity to address 7.2 and 7.3.
MS. LUKEY: I will come back to those --
THE SPECIAL MASTER: And I think we put 1.5(a), too.
MS. LUKEY: Yes, I skipped over some of them and forgot about them, but I can go back to those issues.
THE SPECIAL MASTER: What am I to make of 14-A and 3.3(d)?
MS. LUKEY: Okay. First of all, 14-A is obviously a subsection of 14, and in the comment on 14 it specifically says that nothing in there will change or affect any substantive legal requirement.

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Rules 54(d)(2) and 23(h) are substantive legal requirements. So this would not overcome those. This general rule of candor with the note would not overcome that.
The second issue is the rule is pretty specific. You don't -- I'm sorry. The note is pretty specific. You don't look at something to see if it is like a non-adversarial proceeding or a joint petition.
It says if you have a joint petition such that it is then a non-adversarial situation, it would be treated like an ex parte proceeding which has a somewhat stronger rule of candor. Doesn't apply if you've got another rule that governs as you do with 54(d)(2). But this was also not a joint petition. You can't say it was non-adversarial.
The fact that State Street made the decision that it wasn't going to get in the mix doesn't make it non-adversarial or ex parte. State Street was there. State Street just made the strategic decision --
THE SPECIAL MASTER: Why would a higher duty of candor exist if there was a joint petition and State Street was part of that than if it was --

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MS. LUKEY: No, no.
THE SPECIAL MASTER: -- solely a proceeding brought for fees by one side's lawyer?
MS. LUKEY: No. The higher duty of care -- of candor -- excuse me -- applies in the circumstance where you have a joint petition such that there's nobody who even can argue the opposite point.
So here --
THE SPECIAL MASTER: Then why are we focusing on State Street? I don't --
MS. LUKEY: Well, because it's not a joint petition. They're at the settlement conference where this occurred.
They're perfectly -- they did not join in the fee petition. Had they heard something that troubled them, they had every right and opportunity to object. They didn't.
THE SPECIAL MASTER: But as a practical matter, this was a non-adversary -- as to the fees, this was a non-adversarial proceeding.
MS. LUKEY: Only because State Street chose not to object. Trust me if --
THE SPECIAL MASTER: And there were no

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objectors. So it was a non-adversary proceeding.
MS. LUKEY: Well, no one objected because it was a good deal, your Honor.
THE SPECIAL MASTER: So why does the comment not apply? It was, effectively, a non-adversarial proceeding, and why does that not raise the implications of 3.3(d) or the duties under 3.3(d)?
MS. LUKEY: First and foremost is because what note 14 says in which 14-A is a subset and when originally presented to us 14-A was put in front of one of our witnesses without 14, which was really not altogether fair, because A is a subset.
Fourteen says if there is a substantive legal provision that governs what -- none of this applies; and whichever expert it was in front of, we then asked are Rule 54(d)(2) and 23(h) substantive legal provisions, and he said yes. Of course, they are. And they're governing rules of federal procedure. So that note, you know, if you drop the first paragraph, you miss that.
But if you get to the paragraph to which the subparagraph was qualifying, the answer is it's not applicable at all because there are two rules on

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point. And the rules on point say you disclose only if you're asked. So that's why.
The other thing is the rule -- if we're going to get even down to just 14-A -- doesn't say if you have a proceeding that's not joint but it's like being joint because they're not objecting, there's no one objecting, then you treat it differently. You treat it as requiring more candor. It's specific. It's got to be a joint petition so that the other party doesn't have the opportunity to object because they're part of the petitioning activity.
Here State Street had every opportunity to object, but, you know, frankly 25 percent's a reasonable fee. They weren't going to object to that. But the more important point is 14-A qualifies 14. Fourteen says if there's a substantive law on point, this doesn't apply.
THE SPECIAL MASTER: Okay.
MS. LUKEY: So there's that. I should go back quickly to 7.2 and 1.5 --
THE SPECIAL MASTER: While we're on this -- I want you to come back, but, Bill, did you have something on this?

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MR. SINNOTT: Yeah, just on this particular point. So if Judge Wolf were to find that this was a non-adversarial proceeding, would you agree that 3.3(d) applies?
MS. LUKEY: I'd have to look at it, but I wouldn't -- I don't agree the note applies, and I presume I'm not going to agree that 3.3(d) applies, but I'm not --
MR. SINNOTT: In an ex parte proceeding a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision whether or not the facts are adverse.
MS. LUKEY: No, I'm not going to agree. It was not an ex parte proceeding.
MR. SINNOTT: But what I'm saying is if Judge Wolf rules that it was an ex parte proceeding, would that rule apply?
MS. LUKEY: Well, with all due respect, if the opponent is sitting there and has the opportunity to comment -- and I suspect if we go back, the Court probably said do you have anything to say, Mr. Payne -- I don't know that, but I would suspect it -- then I don't know how a judge as good

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as Judge Wolf would say that's ex parte.
I mean I know what an ex parte proceeding is when I slip in for a TRO, and I don't tell the other side. This is not ex parte. They're sitting there. So, you know, were the judge to say that, then I would say the question of materiality has to be determined by what the law says, and the law in the form of the Rules of Civil Procedure says that's not material.
You don't have to disclose it unless you're asked. So that would be my answer to that.
MR. SINNOTT: All right, Joan, the other thing I'd ask before you go onto 7.2 is Arkansas was the lead plaintiff in a number of other cases in other jurisdictions--
MS. LUKEY: Yes.
MR. SINNOTT: -- where there was a requirement of written notice of the division of fees with Chargois.
Why didn't Labaton notify Arkansas of the division of fees in those other cases?
MS. LUKEY: I haven't the slightest idea what they did in the other cases, Bill, so I can't answer that question.

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MR. SINNOTT: Do you think it reflects upon their motivation in this case?
MS. LUKEY: No.
THE SPECIAL MASTER: Circumstantially?
MS. LUKEY: Respectfully, no. The only evidence that was cited for a basis as I recall in Professor Gillers' opinion for the fact finding that you folks made -- he didn't make it, but he then reiterated it about this being secret and pains being taken to hide it related to the use of blind copies or separate communications.
And given, as George Hopkins said, that he had -- he had a very valid reason for not wanting to know who the local attorney was -- any local attorney because that creates issues for these folks who are in charge of huge investment funds. They don't want to be besieged or lobbied by these local attorneys.
So that's the reason that blind copies were used. I have absolutely no evidence and neither, respectfully, do you of what happened in any other jurisdiction or what the rules were in any other jurisdiction. I don't know what happened. I don't know what may have been said in a period

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before George arrived. I don't know.
All I know is that Eric did in fact tell Christa Clark who carried over for a period of some months at least that there was an ongoing relationship with Chargois & Herron. That's all I know. That's all the record shows. So I do not know.
THE SPECIAL MASTER: Anything else on this point?
MR. SINNOTT: No, judge. Go ahead.
THE SPECIAL MASTER: Just so we're clear, we did in our e-mail to you say please describe how you would characterize the Chargois & Herron contact with Paul Doane and/or Senator Faris taken to secure an introduction to ATRS including your view on whether the arrangement constitutes a solicitation, recommendation, introduction, referral and/or endorsement. We did not use the Rule 7.2, but that's pretty clearly the implication.
MS. LUKEY: That's fine. I assumed it was probably an oversight, and I didn't get to it because I was tracking through the order here. But 7.2 is not -- 7.3 is the rule that would be implicated by what you just said. 7.2 is

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advertising.
THE SPECIAL MASTER: We used the phrase recommendation which is 7.2.
MS. LUKEY: Fine. Frankly, I skipped it by mistake. It's in my outline so I will go to that.
THE SPECIAL MASTER: Tell us what you think about it.
MS. LUKEY: All right.
THE SPECIAL MASTER: Whatever we call it.
MS. LUKEY: Yes. And I think there's a difference, and I should also comment on 7.3. If I could do that quickly and easily.
THE SPECIAL MASTER: Please.
MS. LUKEY: 7.3 in Massachusetts if you read it, that's the solicitation rule, only applies to a lawyer making in-person contact with an individual who is not representing an organization.
In other words, it is designed to apply, for example, to soliciting someone after they lost a loved one in an airplane crash or to a car accident because the exceptions in Massachusetts one might say swallow the rule. It says a lawyer shall not by

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in person, live telephone or real-time electronic contact solicit professional employment for a fee unless the person contacted -- exception number one is a lawyer; Paul Doane is a lawyer, and I gave you his bar number in the submission -- but number 4 and, more importantly, which is the basis for what I just said a moment ago, the first section of number 4, which is the applicable section, says unless the person contacted is a representative of an organization including a non-profit or government entity in connection with the activities of such organization.
So if you reach -- obviously Arkansas Teacher Retirement System is an organization, not an individual. It happens also to be a governmental entity.
If you read it, that would then say that it's okay to contact the executive director of an organization which happens to be a governmental organization about its activities, investment -- we're coming in, and we're asking you to let us bring a suit for you because of investment impropriety.
So in Massachusetts at least, 7.3, the

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non-solicitation rule, is extraordinarily narrow, and it's inapplicable here. I suspect, frankly, that's why Professor Gillers doesn't reference it in his report. It's a very -- bless you.
Turning then -- I also didn't do 1.5(a) but let me go first to --
THE SPECIAL MASTER: -- 7.2.
MS. LUKEY: -- 7.2 and 1.5(e).
This was the first theory that I was told about, at least when I pressed Bill about how we could be having an issue on the fee allocation in Massachusetts where bare referral fees are permitted, he told me that we would be hearing from Professor Gillers when we got his report about an interplay between 7.2(b) and 1.5(e).
That interplay as -- not long after that -- excuse me -- we got that report. That interplay reads something like this: 7.2(b) is the governing rule for the circumstance in which a lawyer can pay somebody a fee. There's then listed there an exception that incorporates 1.5(e).
But if you go to --
THE SPECIAL MASTER: I think you said "can" pay. Do you mean "can't" pay?

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MS. LUKEY: It lists exceptions where you "can" --
THE SPECIAL MASTER: Correct.
MS. LUKEY: -- pay.
THE SPECIAL MASTER: 7.2 is broadly the -- it's the prohibition for a recommendation, paying anything of value for a recommendation.
MS. LUKEY: Right.
THE SPECIAL MASTER: And then there are exceptions carved out to that.
MS. LUKEY: Right.
THE SPECIAL MASTER: Exception I believe it's 5 permits payments under 1.5(e).
MS. LUKEY: Right. So it's a lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may pay fees permitted by Rule 1.5(e).
THE SPECIAL MASTER: Correct.
MS. LUKEY: Professor Gillers suggest you then go look at 1.5(e) which is actually the applicable rule, it's not the default rule on fee divisions, and you find the requirements there.
He took the position that obtaining the consent was a condition precedent that had basically

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not been met, and therefore 1.5(e) was out of the equation, and you're flipped back to 7.2 where you now have automatically committed an ethics violation.
The problem is that's not the correct interpretation of the rules or an interpretation that has ever been implied -- been applied in Massachusetts. In Massachusetts if you have a fee paid between two law firms which unquestionably is what happened here -- Labaton paid Chargois & Herron a fee -- that's the fee division rule.
As it turns out and as I did argue at the beginning, the requirements of 1.5(e) as existed at the time even using the Saggese gloss -- I'll accept that for the moment -- is you get the consent in writing before you do the engagement or as you're doing the engagement, and it has to be a reasonable overall fee.
THE SPECIAL MASTER: So let me understand your argument here, and I confess I didn't fully understand which expert it was who testified on this. So was it Peter Joy?
MS. LUKEY: On which?
THE SPECIAL MASTER: 7.2(b).

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MS. LUKEY: Wendel and Green --
THE SPECIAL MASTER: Wendel, that's right.
MS. LUKEY: -- both testified exclusively on this issue because we thought that was the whole focus and then Joy --
THE SPECIAL MASTER: So let me understand this. If a lawyer does not comply with 1.5(e), does that then not implicate 7.2(b) --
MS. LUKEY: No.
THE SPECIAL MASTER: -- and the general prohibition?
MS. LUKEY: It isn't a general prohibition. That's the problem. That's not how 7.2 has been interpreted in Massachusetts in the circumstance where it's a lawyer fee split. 7.2 advertising rule does not apply to lawyer fee splits.
Damon Chargois is a lawyer. Chargois & Herron which received the payment is a law firm. Labaton Sucharow split its fee with Chargois & Herron. That's under 1.5(e). The board would look to see -- the Board of Bar Overseers would look to see whether you complied with 1.5(e).

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If you didn't, they don't then go to 7.2. They've never done that.
THE SPECIAL MASTER: So here's the concern I have on this, and I'm undecided on this yet. Does simply having a law degree and being a lawyer and recommending somebody or doing what Mr. Chargois did in this case -- we had a lot of back and forth and quibbling about what he did by his own testimony, but -- and paying a fee for that totally insulate a lawyer from the proscriptions of 7.2(b)?
MS. LUKEY: Yes.
THE SPECIAL MASTER: I think that's what the expert testified.
MS. LUKEY: That's correct. And that's probably the reason --
THE SPECIAL MASTER: And I've got to decide whether to accept that or to accept Professor Gillers' view.
MS. LUKEY: Well, I'm going to say this: There is no case anywhere in the country that has done what Professor Gillers said, even when you belatedly came up with the bar opinion in New York, doesn't say that. The only thing it does is to have

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a paragraph on 1.5(e) or its equivalent and one on 7.2, but it doesn't say how they relate to each other. I can't even tell what the facts are.

THE SPECIAL MASTER: 1.5(e) carved out and recognized as a specific exception, and I have to say I was very skeptical and troubled by the explanation that it's mere surplusage.

MS. LUKEY: Well, if you knew Massachusetts rules and statutes, you'd find surplusages all over the place.

THE SPECIAL MASTER: That was his answer.

MS. LUKEY: It's the truth. It wouldn't trouble a Massachusetts judge. We have drafting with issues shall we say, and the fact of the matter is the only rule that's ever been looked at in Massachusetts when two lawyers or law firms split a fee is 1.5(e) --

THE SPECIAL MASTER: That may go to the issue of sanctionability, discipline, all of that. It may go to that. But as a matter of statutory construction what the expert was asking me to accept was that there was no purpose whatsoever of the carve-out in 7.2(b)(5) to the rule, just ignore it

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because it's surplusage. I find that hard to accept.

Look, I did legislative drafting for a lot of years in Washington, and, you know, we covered over a lot of stuff when there were disagreements, but what we certainly tried not to do was put something in a statute that was intended to be meaningless.

MS. LUKEY: Well, no one ever does it with that intent, your Honor. It's just that it happens when rules are being drafted. It was not one expert, by the way. I'm not sure you asked all three, but if you go to the reports, Wendel, Green --

THE SPECIAL MASTER: You're right, Green said it also.

MS. LUKEY: -- and Leiberman all said it if asked. It's in their reports, if not asked. 7.2 doesn't apply --

THE SPECIAL MASTER: So there's no implication that I should draw at all from the fact that 1.5(e) is a specific carve-out to 7.2(b)? No implication at all? It's just surplusage --

MS. LUKEY: No, because you should be

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looking at 1.5(e) to begin with. Rule 1.5 is the fee rule; 1.5(e) is the fee division rule; 7.2 is the advertising touting rule --

THE SPECIAL MASTER: So under no circumstances, no matter what a lawyer does, if he's driving a taxicab -- so no matter what a lawyer does, if he has a law degree, and he says, you know, I know this great firm, you should hire this firm, by the way, I want a percentage --

MS. LUKEY: Your Honor, that's a hypothetical --

THE SPECIAL MASTER: -- 7.2(b) is not implicated at all?

MS. LUKEY: I'm not going to go that far, and it's not applicable here. The person's not functioning in any way as a lawyer. Chargois & Herron was a legitimate law firm. Chargois & Herron was --

THE SPECIAL MASTER: In this case they performed no legal services.

MS. LUKEY: Let's talk about what happened here. In this case what Chargois did was to get permission from Faris to call Doane, no doubt use Faris' name to ask Doane for a meeting involving

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Chargois for Chargois & Herron and someone from Labaton Sucharow.

They agreed -- Doane agreed to the meeting. You suggested at the time of your questioning perhaps it related to the fact that Senator Faris' committee had oversight or funding responsibility for the fund. That's not an unrealistic assumption. But the fact is what Chargois did was to facilitate a meeting so that they could jointly ask for the opportunity to become monitoring counsel.

And, again, the monitoring counsel is the precursor because that's the pool from which the litigation funds were paid. So together that was the plan; they file a petition asking jointly to be monitoring counsel.

Christa Clark responds the system isn't set up for two non-affiliated firms to be a single monitoring counsel, but do what you want in terms of working together. She's told later by Eric Belfi that they are working together.

So what happens here is Chargois & Herron --

THE SPECIAL MASTER: So nothing changed

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when they stopped working -- quote, working together? And they did stop working together as to Arkansas cases.
MS. LUKEY: Well, they stopped working together in the sense that --
THE SPECIAL MASTER: Labaton didn't stop paying --
MS. LUKEY: Right.
THE SPECIAL MASTER: -- but they stopped working together.
MS. LUKEY: Well, because Mr. Hopkins didn't want a local firm to be involved. So you're correct. That wasn't the intent. That's what happened later.
But in the meantime what you're focusing on right now is the call that Mr. Chargois made to set up the meeting, and then he went to the meeting with them, and they jointly pitched being co-monitoring counsel. One position on the panel.
So that's functioning as a law firm. If you're focusing on them in a moment in time which is what you would do for purposes of this rule analysis, he's asking -- he asks for the meeting to be happening jointly. It happens jointly. They're

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both asking to be monitoring counsel. They are functioning as law firms. That is a 1.5(e) circumstance. Then the only thing that you need to know is what did 1.5(e) say at the time. Said you had to have consent. It had to be a reasonable fee. How did Saggese gloss it if it did? It has to be in writing. That happens. They get the engagement letter. They get the consent. And 1.5(e) is complied with. That's the end of the inquiry.
But let's say that there was a deficiency. It was an imperfect compliance. Let's say the writing had to be more specific, you then go to look at what happens in the case law. First of all, if you look at the board, the board's only interested if a client is complaining that something happened. There's no client complaint here.
The courts are only interested if there's a contract dispute between the attorneys, and they don't decide it on a disciplinary or sanction basis. But it's still 1.5(e), and in all those times and in all those cases, not just in Massachusetts, anywhere in the United States as far as I know, there's no case that says if you find imperfect compliance with 1.5(e) you get bounced

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into 7.2. 7.2 was the anti-touting rule --
THE SPECIAL MASTER: Okay, I understand your argument on 1.5(e) and imperfect compliance with it.
MS. LUKEY: Hm hm.
THE SPECIAL MASTER: Then it's a violation, however technical, of 1.5(e), and 7.2(b) is not implicated.
MS. LUKEY: Right.
THE SPECIAL MASTER: What if there's no attempt at all to comply with 1.5(e); it's simply a bare recommendation -- you know, just accept for the moment this. If a lawyer is simply making a bare recommendation and nothing more, is 7.2(b) implicated then?
MS. LUKEY: No. It's a hypothetical that doesn't apply, and you and I had our issues as I got upset with some of the hypotheticals during the case, during the investigation, but, no, it does not.
A lawyer fee split is decided under 1.5(e). If there's no effort comply, that may make a whole lot of difference in terms of what the Board of Bar Overseers is going to do. The federal court

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here happens to have for the last several years it can use its own disciplinary procedure -- it never has -- for 1.5(e) as far as I know. It usually doesn't use its own procedure; it usually refers, but that would not be -- it would be a question of what's the penalty in that circumstance, but it doesn't flip into 7.2.
7.2 is the taxi driver who's not acting as a lawyer, even if he has a degree and is a licensed member of the bar, which is a little hard to expect that would be happening unless the license is no longer valid, handing out the lawyers' business cards at accident scenes as he drives by or the touter who goes down the emergency room --
THE SPECIAL MASTER: But then 7.2(b) in that hypothetical would be implicated.
MS. LUKEY: That's correct. Yes, absolutely.
THE SPECIAL MASTER: Okay.
MS. LUKEY: So I mean from my -- I know our experts were very adamant with you about someone -- if it's a lawyer getting a fee, it's a lawyer getting fee, but, you know, I doubt very much they're thinking of the cabdriver who has a

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suspended license to practice law because he misbehaved or something. I'm sure they weren't thinking of that.

But if it's a law firm getting a split on the fee, the answer is it's 1.5(e). And it's also, I think, unfair to refer to this as a bare recommendation when you think of the facts, even as Chargois chose to spin them now as contrasted with what he was telling Labaton at the time, it was a request for a meeting for the two firms so they could ask to become monitoring counsel. And then one of the experts pointed out that it was Labaton that was selected on its own merits, not on anything that was said at that point by Chargois.

So I mean I have to tell you the suggestion that there's an interplay of this fashion between 7.2 and 1.5(e) is way out there. Way, way out there.

THE SPECIAL MASTER: Well, whether it's way out there or whether it doesn't apply are two different questions. But the rule on its face -- on its face -- implicates 1.5(e).

And, you know, the experts can say all they want; that it's surplusage, not intended to

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have any impact, but the rule -- as you keep telling me, the rule is the rule is the rule. So to accuse Professor Gillers of inventing something out of whole cloth which is what you're doing --

MS. LUKEY: Yes.

THE SPECIAL MASTER: -- I think is very unfair to him.

MS. LUKEY: I respectfully disagree.

THE SPECIAL MASTER: It is a reading of the rule that has support in the textual language of the rule.

MS. LUKEY: When I asked him how he could read the two rules together in that fashion at his deposition, he replied that it was a syllogism or syllogistic for those of us who at one point or another have taken logic courses, we know the dangers of referring to a syllogism because the deduction that works in one instance doesn't work when you continue with the -- the example that we're always taught is a dog has four legs, and a dog is an animal --

THE SPECIAL MASTER: That was my logic --

MS. LUKEY: Right, the same one for

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everybody. So now there's a creature grazing in the grass over there going "moo;" it has four legs. The syllogism, therefore it is an animal works.

The next part of the syllogism which is the reason that people who deal in logic don't deal with syllogisms is --

THE SPECIAL MASTER: -- that it's a dog.

MS. LUKEY: -- the creature has four legs, therefore it's a dog. So I thought it was an apt word for him to use. That's the problem.

The syllogism doesn't work which is why it has never been done. I am sorry if it's offensive to you or to Professor Gillers, but I do think it's of whole cloth --

THE SPECIAL MASTER: Well, I think to say that it is made out of whole cloth and has no root anywhere I do think is unfair to Professor Gillers. Whether I accept his view or not is something else, but the textual language of the rule invites as one interpretation that interpretation.

You can try to persuade me otherwise, Joan, but you're not going to.

MS. LUKEY: I respectfully disagree. I'm just telling you that --

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THE SPECIAL MASTER: Because I don't believe that drafting bodies put in language for no reason, and that may be my own background having drafted legislation but --

MS. LUKEY: You were drafting in Washington, sir.

THE SPECIAL MASTER: And with that maybe we should take a break.

MS. LUKEY: Fine with me.

THE SPECIAL MASTER: You've been going for almost three hours.

(A recess was taken.)

MS. LUKEY: I offered to defer to my colleagues, but they told me to go ahead and finish 1.5(a) which we didn't get to. It'll be very brief.

Obviously, that's the rule that deals with the clearly excessive fee. It's the position of the customer class law firms that that refers to the aggregate, not to individual pieces of the fee which would be the necessary interpretation here because of the bare referral fee. Much along the lines of what you were talking about about surplus language, 1.5(a) starts with as a factor to be considered in whether a fee is excessive the time

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and labor required. With a bare referral fee there is no time and labor required.

Also we would point to the Saggese decision which is instructive because of a $90,000 fee on a 320 I think something dollar judgment was discussed only from the perspective of whether proper consent had been obtained, and the Court had no problem at all with the notion of $90,000 for no work.

So I guess the only other issue on 1.5(a) is what does clearly excessive mean in this case. And although I know your Honor's position on the but-for analysis, if one considered that but for the facilitation of the introduction that Mr. Chargois conducted, this was not clearly an excessive fee on that basis.

I will answer any questions. Otherwise, I would simply stop and turn it over to others.

THE SPECIAL MASTER: Okay. Who's next?

MR. KELLY: I'm up, judge. All right. So maybe I can start with the basic simple premise that everyone in this room can agree upon, even Richard. And that would be, look, everyone makes mistakes. And clearly the mistakes were made in

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this case. Whatever walks of life, people make mistakes. Lawyers make mistakes. Judges make mistakes. That's why we have court of appeals. But when judges make mistakes and they get reversed, no one says, oh, that's intentional misconduct. It's a mistake.

Baseball, Golden Gloves winners, they make mistakes; they make errors every year. So I think we're holding these lawyers in this case to an impossible standard here. I mean starting with the double counting itself, right. If there's any mistake in this case that's significant that would have mattered to the judge, it would be that one 'cause it was about 4 million dollars in the overall lodestar.

Now that is clearly I think, as we've seen from the testimony of multiple people throughout this case, an inadvertent error, and I think the special master, you indicated that yourself in one of the depositions. I think it was when you were questioning Garrett Bradley back on September 14. You had an exchange with him, and you said that it was a mistake, yes, and I think inadvertent. And that was after there had been some

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reference to Chiplock's testimony, Zeiss' testimony, Sucharow's testimony about what happened here with this double counting. And it's unfortunate obviously.

The press brings it to their attention, and they are appropriately mortified because it's not a sophisticated mistake. If they were trying to scheme together to fool Judge Wolf, they could have done it a lot better than this.

And I'm not faulting anyone, but clearly, as Joan explained, it was a young partner, Nicole Zeiss, who didn't give a close read to all the documents, right? All she had to do was spread out on a counter like this the various declarations, and she would have noticed the obvious mistakes. There's a few staff attorneys over here that are also over here. You know, we're double counting.

But, again, she did not give it close enough read, and it's a mistake. And that's not something that should give rise to sanctions. It's something the law firms appropriately notified Judge Wolf about; and when they did so, they pointed out that even though it's 4 million bucks, even that is not really material to the total aggregate fee that

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Judge Wolf allowed.

THE SPECIAL MASTER: So there are two parts to the inadvertence question. The question as to whether it was inadvertent that they were double counted, the qua appeared on the same staff -- the same staff attorneys appeared on different firms' lodestar, was that inadvertent?

MR. KELLY: Absolutely.

THE SPECIAL MASTER: The question -- the question as to whether it was inadvertent as to Thornton in not receiving explicit permission to include folks who were not employed by the Thornton firm on its law -- on its lodestar and then tell the judge that these people were employed by the firm, that's not inadvertent.

MR. KELLY: Well, okay, I disagree strongly, and here's why, and there's two reasons why, okay? Miss Lukey alluded to the fact that there seems to be some moving targets throughout this process. And, you know, I understand this is an investigation to figure out what rules apply --

THE SPECIAL MASTER: How many investigations did you quarterback as an AUSA, Brian? Did you keep track?

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MR. KELLY: Multiple. Multiple.
THE SPECIAL MASTER: Did they all exactly end up where they started?
MR. KELLY: No. In fact, that's a good point. In fact, often times when I did a grand jury investigation that went on for months, cost millions of dollars, I did not feel at the end of it I had to get a particular result. A lot of times I declined prosecution, and I would hope this process ends in the same way.
It's involved multiple months, lots of money, lots of time, and I would think hopefully at the end of this if the evidence and the law is evaluated fairly, that no sanctions are recommended.
And with respect to your question -- with respect to your question about how did this -- you know, why is it on their lodestar? There was a clear albeit implicit agreement.
Now the reason I say it's a moving target, because up until today -- up until this morning, the continued question to us was where's the explicit or implicit agreement. Where is it? Then this morning all of a sudden it's dropped. Now it's where's the explicit agreement. There's no

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written agreement. It is clearly an implicit agreement.
And when I questioned Professor Gillers, he hadn't even seen our submission where we laid it out, and we made the submission late yesterday. I'm going to lay it out again right now so that it's clear that the parties knew Thornton was paying for it. Of course, they were going to get credit for it at the end. It makes no sense for them to pay for these staff attorneys and then not get credited in their lodestar.
THE SPECIAL MASTER: This is where you and I are going to disagree -- in the lodestar. Thornton could have easily paid for it and got it credit in its fee easily --
MR. KELLY: Well --
THE SPECIAL MASTER: -- as a piece of the larger fee recovery.
That would have been perfectly appropriate. But instead it chose to put these staff attorneys on its lodestar who were not employed by them and tell the Court that they were employed by them.
MR. KELLY: Okay, a couple things,

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judge. I think you're ignoring an important chronology here and that is the firms agreed -- these three customer class firms agreed to the fee in August a month before they submitted it. There's no motive. There's no incentive to lie about lodestar to the judge in September.
These firms have battled it out, and, yes, each firm wants a bigger piece of the pie, and that's business. They want more than him. He wants more than her. And so forth. And that's where you have chronologically the e-mail that's been waved around, you know, in a sensationalistic fashion the Garrett talks about jacking up the lodestar. Okay, yeah, he did say that. And yes, he does want to protect his firm's interest vis-a-vis these two firms. They're friendly enough, but they're competitors, and they're all trying to get their piece of the pie.
He and his firm had had experience in the past where they didn't think they got their fair share. You know, this -- this case they had substantial amount to do with. It was Mike -- Mike Thornton was critically important to the whole idea of it --

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THE SPECIAL MASTER: I'm not questioning any of that. My question is why did they put these staff attorneys on their lodestar and tell the Court they were employees of the firm?
MR. KELLY: Well, there's multiple questions there. Why did they put them on their lodestar? They paid for them. And there was an implicit agreement amongst counsel that that was okay. And let me just direct your attention to that, okay, and then I'll address the other point.
Now -- and we laid this out again in our November 3rd submission which again was not provided to Professor Gillers before he adopted all of the facts in his report. You know, some of the most clear testimony from this was from Mr. Chiplock I believe. He testifies at length in two different depositions that he understood there was an agreement. Quote, it was completely understood by me when I talked with Garrett that would be how it worked because it was obvious to me that if you pay for the work that's being done, that you include their hours in your lodestar when you report it at the end of the day. It was just obvious. That's his testimony.

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Now Lieff -- that's not just Lieff's point of view; it's also Labaton's point of view. They got two different partners. And, by the way, that was Chiplock's testimony on 6/16 at page 136, lines 10 to 22.

But Labaton, they had two separate partners who testified, Mike Rogers and Eric Belfi. And they both said they assumed or if they had been asked at the time would have assumed that the Thornton Law Firm was going to claim the staff attorneys in its fee declaration. That's again June 16th, the Rogers deposition, page 91, lines 18 to 23. And for many of the same reasons cited by Mr. Chiplock, Rogers said, well, quote they were paying for it up front. I assume they would want to get paid on the back end.

THE SPECIAL MASTER: So is your argument that an assumption is an agreement?

MR. KELLY: Well, I think as we footnote in our submission last night if you look at the dictionary -- The American Heritage Dictionary --

THE SPECIAL MASTER: I haven't seen the --

MR. KELLY: -- the word "implicit" is

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defined as implied or understood though not directly expressed. That's an implicit agreement, and it's a logical agreement. There's nothing nefarious about it because let's say -- let's say Thornton did not claim these ten staff attorneys. Let's say Lieff and Labaton did. So what?

Judge Wolf would have seen the same amount of time. You know, so it's not like Thornton has a motive to make it up --

THE SPECIAL MASTER: Nobody's debating that, Brian --

MR. KELLY: Well, that's why it's material --

THE SPECIAL MASTER: -- whether he's seeing the same amount of time. What is material is why we're all here, because they were included on the Thornton fee petition. Whether Dan Chiplock assumed that it was going to happen or Mike Rogers assumed that it was going to happen, there was not an explicit agreement on it that allowed -- I'm not even sure there was an implicit agreement. Chiplock says he assumes. Rogers says he assumes. But let's assume that there was some kind of implicit understanding that they would claim 'em.

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The whole reason we're here is because your folks put these on their lodestar and then told the Court that they were their employees and that they were the charges of their employees -- current charges of their employees, and I think -- which was pretty clear at the hearing that's what Judge Wolf was reacting to.

MR. KELLY: Well, I think where you're wrong is that you're trying to put the double counting fault in Thornton's lap. And I think if you look at the Goldsmith letter to the Court in November, it quite clearly states words to the effect that these certain -- like the Alpert hours were mistakenly put on Labaton, and some others hours were mistakenly put on Lieff because those were the hours Thornton paid for. And I'm not faulting them. The mistake is adding the hours to their lodestar, not our mistake. So I don't know why it's being viewed as Thornton's mistake. It's their mistake.

If you look at the Goldsmith letter, that's the way it's framed, and it is in fact, as I said, it's an honest mistake. It's a screw-up. You know, it's not very sophisticated. If you put these

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-- if Nicole Zeiss whose job it was to look at this stuff and submit it to the Court and put these three declarations down and just looked at 'em, it's obvious. So there's no -- the idea that you would make -- if you're trying to fool Judge Wolf, that's not the way to do it, okay. He's a very sophisticated judge. There's no way that can be viewed as an attempt to mislead him.

She made an honest mistake because she did not give a close read to the documents. It happens. Everyone makes mistakes. And -- but that's the point. It's the same thing what Garrett testified to. He said when you questioned him I gave it obviously not a close read, and then I signed it. That's his testimony back in June 19th on page 84, lines 23 to 24.

He, obviously, didn't give it a close read. He signed this boilerplate declaration, and he didn't go line by line and scrutinize it and say, oh, shoot, this staff attorney's down in New York City's not here. I mean -- but to make this admittedly sloppy effort and suggest that it's an intentional effort to mislead Judge Wolf is, frankly, way off base. I'm urging you not to

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recommend sanctions. Could it be done better in the future? Of course. But -- but put this in context, okay --

THE SPECIAL MASTER: Do I then just ignore Garrett's persistent attempts to -- or persistent indications that he's very concerned about the lodestar, he's very concerned about how to jack up the lodestar and his e-mail in which he says to Mike the best way to do it is to -- this is the best way to jack up the lodestar? Do I just ignore that?

MR. KELLY: Well, to paraphrase Ronald Regan "there you go again." Okay. You keep going back to --

THE SPECIAL MASTER: There I go again quoting from Garrett's e-mail.

MR. KELLY: There you go again ignoring the date context, okay, judge. I'm serious. You got to look at the date context here.

THE SPECIAL MASTER: I thought you were going to say quoting Ronald Regan "trust but verify."

MR. KELLY: That's later. That's later on. Look, you got to look at the chronological

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context, okay. Garrett says that in -- let me get the dates -- to jack up the lodestar starts in February 2015. There's no doubt these firms are jockeying for position. They want more. They're aggressive lawyers. They're good lawyers, and they all think they deserve more.

You see it within law firms themselves. Partners jockey for position. They want more credit. They want more pay. On a bigger scale we got this going on with these three law firms, and Garrett's no shrinking violet. He's trying to protect his interest. And, yes, he says let's jack up the lodestar vis-a-vis any of these guys. If anyone hasn't bitched -- excuse my language. If anyone's got a complaint, it's these guys, not Judge Wolf.

And all of this gets hashed out, and they reach an agreement in August of 2016. We have that in the record. The agreement is in the record. There's testimony about the agreement.

The agreement itself is at TLF 056305. And the actual testimony that we had a fee agreement in place in August comes from Mr. Chiplock on September 18th, page 135, lines 6 through 9 --

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THE SPECIAL MASTER: The fee agreement, you're talking about the 20/20/20 agreement?

MR. KELLY: Yeah, amongst the lawyers.

THE SPECIAL MASTER: Yeah, okay.

MR. KELLY: Before that, yeah, they're trying to, you know, say, listen, I did more than you, okay. But they're not trying to mislead the Court.

They get an agreement amongst themselves in August. So by September, the next month, they don't care; they have no motive to misrepresent their individual lodestars to Judge Wolf. That's why -- that's one of the reasons why it's a mistake. It would be such a stupid -- they have no incentive --

THE SPECIAL MASTER: So, Brian, why put these folks on the lode -- the question that I asked Joan. Why put 'em on the lodestar at all? You're going to get what you're going to get. Why put them on the lodestar at all?

MR. KELLY: They don't have to, but they did. They paid for it. Nothing required them to. But that's the way they thought it should be done, and maybe, you know -- and it's not ideal.

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Now maybe in terms of best practices simplicity and clarity is better. And maybe this should have been laid out in a much simpler form, and we wouldn't be sitting here. But it wasn't, right? But doing it the way they did is not sanctionable or not intentionally misconduct to Judge Wolf. It just isn't.

So, you know, Ms. Zeiss, she didn't carefully read the three declarations. Garrett doesn't carefully read his boilerplate. And, look, the point I think I was trying to make before I got off the track a little bit is on his boilerplate declaration that he sent, it's important that what he didn't do -- he didn't correct it, right? And I think that's a little different from he didn't take pen to paper and write out a declaration and say, all right, let's submit this to Judge Wolf. I think -- you know, then I think it would require a little bit more thought, little bit more care --

MR. SINNOTT: But, Brian, doesn't the interchange between Dan and Garrett about the BNY Mellon case in the context of what appears to be Garrett feeling like Thornton didn't get their just due in that case, doesn't that color the motivation

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there that in this case, you know -- and, you know, I mean however you read up the "jack up the lodestar" comment -- that his objective was for them to document the participation by consciously making an effort to put it in there on their lodestar?

MR. KELLY: Okay, and that's why dates matter. Just like Professor Gillers said facts matter, dates matter. That's all going on before they come to their agreement amongst the counsel, and could Garrett have felt, well --

THE SPECIAL MASTER: Wait, wait, wait. No. The initial e-mail to Mike "jack up the lodestar" was before the 20/20/20 agreement I think. But I -- I think it was. But the interchange with Dan was after the 20/20/20 agreement.

MR. KELLY: Well, the initial "jack up the lodestar" as I understand it is February 2015. If I can get the other one, I can take a look --

THE SPECIAL MASTER: That was the one -- I think it was the e-mail in which he says they're not playing nice in the sandbox and --

MR. KELLY: Well, the final August 2016 agreement that I'm talking about is not the 20/20/20 --

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THE SPECIAL MASTER: Oh, you're talking about the final agreement now.

MR. KELLY: Amongst lawyers, yes. Because up until then, yeah, they're jockeying for position. And were they perhaps -- and I think this is -- I think Garrett testified to this that, you know, he and Mr. Chiplock did have an issue about the BNY Mellon case 'cause Mr. Chiplock did point out that your lodestar wasn't big enough, and Garrett conceded, yeah, he was right. We didn't have -- we did get less in that case because our lodestar wasn't big enough. He pointed it out. He insisted upon it.

And so everyone brings to their next experience memories of their past experience. And everyone remembers, well, you know, from my perspective, my firm has to make sure it does its share of the work. We can't just sit here up in Boston and let Labaton and Lieff do all the work and at the end of it say, well, we want 36 percent. They're going to say, now wait a minute, we paid for all the staff attorneys; we housed all the attorneys; what did you guys do besides come up with the original idea --

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THE SPECIAL MASTER: That's different than putting them on your lodestar. That's different than putting them on your lodestar. I'm not questioning whether you guys should have gotten your share, your fair share of the total fee. You know, that's a different question as to how you do it and what you tell the Court about what you're doing.

MR. KELLY: Okay, but it didn't change the overall lodestar. In other words --

THE SPECIAL MASTER: Well, in this case it did. It changed it by 4 million dollars.

MR. KELLY: Okay, but again you are trying to shift the double counting mistake all to Thornton, and I, respectfully, submit that's not what happened. If you look at the record, that's not what happened. If you look at the e-mails that we pointed out, that's not what happened. If you look at the Goldsmith letter, that's not how it's framed.

And so there should not be some negative inference --

THE SPECIAL MASTER: Actually, the Goldsmith letter says virtually nothing about how it

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happened, only that it happened.

MR. KELLY: I think if you look at bullets 1 and 4 on page 2 it's reflected that, you know, the hours of Thornton were mistakenly put on -- the hours were mistakenly put on Labaton. So I mean I think it's clear if you read that second page and those bullets. But I'm not faulting Lieff and Labaton for it either. And I'm not faulting Miss Zeiss. It was a mistake because, as I said, everyone makes mistakes. She didn't carefully read 'em, but ultimately -- ultimately you have to bear in mind what did Professor Rubenstein say.

In this case -- and I think, you know, as an expert he is very impressive, world-renowned in this field, and he gave some very strong testimony, and his prior affidavit -- the first affidavit I think pertained to this -- that in a case like this the multiplier could have been much higher. So before the double counting mix-up, it's 1.8. When they corrected the double counting, it was 2.0. It could have been 3 or 4 --

THE SPECIAL MASTER: Brian, you're certainly not trying to tell me that because the fee was appropriate to the circumstances in the case it

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doesn't matter what you tell the Court. You're certainly not trying to tell me that?
MR. KELLY: No. And I think that's twisting around what I'm saying because it's always important what you tell the Court. You always have to be a hundred percent careful. You don't want to have sloppy efforts in any courtroom, especially in a federal courtroom, especially in a fee like this. No doubt about it.
But what we're dealing with now is reality. What did happen here. And it wasn't an A effort, you know. You know, it was a C effort, frankly, and that's not what should have happened here given the stakes involved, given the money involved, but that does not mean that these attorneys should get sanctioned.
That does not mean -- and they've already paid a price, judge. They've already paid a heavy price, not just in terms of money that had been basically garnished from them and has funded this investigation but a reputational harm, and in the media. It's been dragged through the media, and it's been, you know, suggested they've done all sorts of wrongdoing.

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That's a serious collateral problem for them, and it's yet another reason I'd urge you not to at the end of the day include Professor Gillers' report to whatever you submit to Judge Wolf. And if you do, in fairness all of our expert reports should be attached as well, but I would suggest you don't attach it because it's going to go into the media. It's going to get bandied about. And if you selectively decide some things are accurate, some things aren't, why should you have any of them in your report?
THE SPECIAL MASTER: No, I think we've decided, just so everyone's clear, to include all of the reports in the record.
MR. KELLY: Well, for the record, my preference would be just to have none of them, but certainly all of them is better than one.
THE SPECIAL MASTER: Don't you think Judge Wolf would want to see all of them?
MR. KELLY: Yes, I'm sure he would. I'm sure he would.
And I should make clear for the record when I'm being a professor and giving out grades about a C effort, the C was with respect to the

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presentation of the paperwork. The case itself is an A effort -- A plus.
THE SPECIAL MASTER: I understood, Brian.
MR. KELLY: Because --
MR. HEIMANN: Thank you, Mike.
THE SPECIAL MASTER: Let me go back to my own college experience. I went to a college in which most of the professors thought that C was an honorable grade. As I often tell people, I achieved honorability much before I went on the bench.
But you wouldn't say that a C is an honorable grade here for what occurred, would you?
MR. KELLY: I'd say there was a lot of grading --
THE SPECIAL MASTER: -- by what occurred, I mean --
MR. KELLY: -- and you know, C's a pretty bad grade now. And if you want to give him a C minus, so be it, but one of the points I was trying to make with respect to Garrett's declaration that he signed, it's a boilerplate template.
The exact same language albeit in different paragraphs were in the submissions of

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Lieff and Labaton, okay. He didn't write it --
THE SPECIAL MASTER: But as to Lieff and Labaton, they were true.
MR. KELLY: Well, I'm not casting stones at them. But certainly they didn't have regular billing rates. They're a contingency firm, too. They didn't have a customary rate. So if you want to start nitpicking and say, ah-hah, there's an inaccuracy; this must be sanctionable, you could do it to them, too, but that wouldn't make sense.
I think the law is clear -- let's talk the law. Rule 11 sanctions is not strict liability. It's not. There's first circuit law right on point. So there's got to be some sort of strict liability for a declaration that, frankly, was -- there was no motivation to try to trick Judge Wolf on this and -- you know, and ultimately was immaterial because the multiplier could have been so much higher.
THE SPECIAL MASTER: All right. Let's talk about what was immaterial and what wasn't.
Let's assume that instead of getting a C here, Garrett Bradley got an A because he went over the declaration that he signed; he read it, and he stopped, and he said, well, wait a minute, we can't

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say this; we have to say that we are including these people on our declaration because we paid for them, but they are not employed by our firm. These are not the current rates that our firm charges for these. These are the rates that have been approved by other courts for these people. Let's assume he says all of that which is accurate.

MR. KELLY: Yep. I think Judge Wolf would have said, thank you, I appreciate that; that's very interesting. I'm glad you specified. Same result.

THE SPECIAL MASTER: Before we even got --

PHONE LINE CONFERENCE: The following participant has entered the conference: Laura Gerber.

THE SPECIAL MASTER: Before we even got to Judge Wolf, don't you think Nicole Zeiss would have read that and said, well, wait a minute, these people are on the Thornton petition; I better check to see if they're on Labaton's petition and Lieff's petition? When she got that back from Garrett Bradley, don't you think she would have said that? That would have been the stop and think moment.

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MR. KELLY: Well, maybe though if you're going to make this hypothetical where he got an A effort and lined it up, maybe the other firms would have had an A effort and done it the same way because there was an implicit agreement if they're paying for 'em, they're going to claim 'em.

So, again, you're I guess fault shifting right at Thornton for no apparent reason. This was a collective screw-up no doubt about it, but they corrected it after the media made its inquiry. And, you know, I know Judge Wolf is not going to be pleased that a boilerplate affidavit was submitted to him that was not entirely accurate.

But at the same time he's probably going to look at it and say, well, what would be their motive to try to trick me with some boilerplate? There is no motive. It's sloppy --

THE SPECIAL MASTER: Well, one might be that Judge Wolf potentially, as some judges might, if your lodestar didn't include these or they didn't include -- or their lodestar was lower because yours was included, he might have said, well, wait a minute, the hours on this don't add up to the kind of multiplier they're asking for.

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Whatever he might have said, my only point is had Garrett -- had Garrett accurately given him the facts as to what the true situation was, we might not be here. Nicole Zeiss might have caught it. She might have caught it, and it would have been a red flag for her to look at all of the fee petitions and then do what you said she didn't do which she didn't do, put 'em side by side and compare.

MR. KELLY: You know, that's -- we can speculate all day long, yeah, we might not be here. But what if the other two attorneys who did their declarations had done theirs perfectly as well? We might not be here. But we are here because that wasn't done.

And I'm not trying to argue with you that it's not a sloppy effort, and it shouldn't happen again in the future, and that, frankly, you know, Garrett is -- does not seem to be the person who goes line by line in a boilerplate affidavit and check it to make sure before he signed it, but I can assure you he will in the future.

He's not going to be signing anymore declarations without scrutinizing them, especially

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ones that go to Judge Wolf or any federal judge. It's really -- you know, it would be an act of madness to intentionally create a boilerplate affidavit to try to fool Judge Wolf in a situation like this when he doesn't have to. He doesn't have to at all.

And, you know, again the multiplier just went from 1.8 to 2 when you corrected that mistake. And, frankly, if you do a little math, if you back out all of Thornton's time, the max it goes to is two-and-a-half. So, you know, Judge Rubenstein -- I mean not judge, Professor Rubenstein -- maybe it's Judge Rubenstein, but Professor Rubenstein, you know, the multiplier testimony he gave is very important to the analysis in materiality, and it doesn't excuse sloppy behavior.

I'm not saying, well, it doesn't matter; you can be sloppy in your pleadings. You can't. There's no question that you shouldn't be sloppy in your pleadings. But Rule 11 sanctions are not covered under strict liability grounds, and I don't think they're warranted here.

I mean the courts have been pretty clear on that. They're a little forgiving to mistakes

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that attorneys make because attorneys are human, too. We make mistakes.
THE SPECIAL MASTER: Let me ask you a question. And this is a question that I asked Professor Vairo. The issue is poised up by the media inquiry which comes in the first instance to someone at Thornton -- I guess the Thornton media person, but then it immediately comes to Garrett. And the testimony is that he calls the other lawyers, the other firms and says something's going on, and everyone scrambles around and tries to figure out what's going on.
That happens even before The Globe article comes out, right?
MR. KELLY: The inquiry occurs before there's an article, correct.
THE SPECIAL MASTER: And the letter is written by David Goldsmith on the 10th.
MR. KELLY: Yes.
THE SPECIAL MASTER: I think the inquiry came on November 8th.
MR. KELLY: Eighth.
THE SPECIAL MASTER: The letter's written on the 10th.

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MR. KELLY: Yes.
THE SPECIAL MASTER: Garrett doesn't say anything about his declaration, apparently, to anybody at all until Judge Wolf issues his order in February.
MR. KELLY: Okay, but --
THE SPECIAL MASTER: He doesn't make any attempt to -- until he's caught, he doesn't make -- caught in the sense of his declaration being untruthful, at least strictly untruthful, he makes no attempt to explain it at all or to call attention to it.
MR. KELLY: Because I think you heard testimony or evidence to the effect of the focus is on the double counting. That's the mistake that matters. It's 4 million bucks of double counting. That's what everyone's worried about --
THE SPECIAL MASTER: And Garrett's declaration is totally divorce from the double counting?
MR. KELLY: It's not a significant --
THE SPECIAL MASTER: Really?
MR. KELLY: It's not a significant -- it's inaccurate, but it's not a significant mistake

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that would have them running around pulling their hair out like, shoot, I should have told Judge Wolf the staff attorneys are down in New York, or, shoot, we don't have regular billing rates. Well, no kidding. They're contingency fee firms. Of course, they don't have regular billing rates and, so one way to read it is, well, class action firms they don't have regular billing rates. Their regular billing rates are always determined at the end based on prior cases. So it's not the focus.
The media inquiry is about the double counting, the simple --
THE SPECIAL MASTER: Brian, I'm just going to come right back at you on this because one is -- as was explained to Judge Wolf at the hearing, one is a matter of nomenclature. Strictly speaking was the use of the word "charged" totally accurate? Maybe not. But it's a matter of nomenclature.
Garrett's misstatements were not nomenclature. Garrett's misstatements were out and out misrepresentations.
MR. KELLY: Well, they are inaccurate. But none of them rise to the level of the seriousness of the double counting mistake.

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THE SPECIAL MASTER: No, but you're trying to -- my point is only this: That you're trying to glom onto the representations made in Labaton's fee petition and in Lieff's fee petition as to rates charged -- and, by the way, I think there was testimony from Lieff that they actually have private clients that they do charge, but my only point is could they have used a better term?
I think in the depositions everybody agreed that best practices would be a better definition. One of the firms -- I believe it was Carl Kravitz's firm that actually changed the template. Kravitz's firm actually changed the template to accurately reflect -- fully and accurately reflect, but there's a big difference between using a term a little loosely like "charged" if there wasn't a charge -- if there wasn't a record of charging and telling the Court that these are our employees, and these are the rates that my firm currently charges for these employees. There's a big difference there.
MR. KELLY: Well, because it goes back to he did not, as he testified, give it a close read. Now if he had given it a close read and

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studied it, yes, he would know it's inaccurate then.
But that does not mean he made a knowingly false submission to the Court. And that's where this whole business of objectively if he knows something does that therefore mean he's knowingly make a false submission? No. If he doesn't closely read this document --
THE SPECIAL MASTER: So knows doesn't mean knows?
MR. KELLY: No, it --
THE SPECIAL MASTER: Is it read into the rule if not explicit -- we can get the rule -- isn't there a should have known after inquiry --
MR. KELLY: In every brief someone files -- tell me if you submit a brief to the United States Supreme Court, you're not going to study that a little bit more closely than a pleading in -- and no offense to a Massachusetts district court DUI case, you're going to study that supreme court brief like your career depends upon it, and unfortunately --
THE SPECIAL MASTER: And what about a sworn declaration to Judge Wolf in this case, you're not going to study that carefully?

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MR. KELLY: Well, certainly it should have been studied more closely in this case, but he didn't. He didn't. He should have, but he didn't. And because he didn't -- because he did not give it a close read as he admits under oath, it explains why the boilerplate had these stupid mistakes.
It's not as though he had a master plan to trick Judge Wolf with a boilerplate declaration. He got it from experienced lead counsel, Labaton, who has far more experience in these procedures than he does. He says I think it was his first rodeo just like Nicole Zeiss, she was a young partner; they didn't have a lot of experience in doing these things.
It doesn't excuse the fact that he should have drilled down and read line by line by line and analyzed it closely. Yes, he should have, but he didn't. And because he didn't that explains why it was submitted, and that's when -- there's no knowing attempt to trick the judge.
THE SPECIAL MASTER: So let me ask you this: There are -- within Rule 11 there are all sorts of what I'll generically call filings that are called out, pleadings, statements, all sorts of

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pleadings that are called out for the same level of attention.
In my own mind there is no higher requirement of a lawyer for Rule 11 purposes than a sworn declaration. That's not just a pleading. That's not just a filing. That's not just a statement. That is a sworn declaration.
MR. KELLY: But I think --
THE SPECIAL MASTER: Does that matter at all?
MR. KELLY: I think that gets to my point, judge, to put in context of what he didn't do. He didn't fix a boilerplate declaration. He did not draft this declaration. He did not sit down and say, all right, what am I going to say to Judge Wolf about the fee in here and write it and then make his fee declaration, and I'm not trying to split hairs, but I think it matters.
If you prepare an affidavit for the judge, and you write it all up, and there's blatant mistakes in there, that's on you. Now if you take a lazy read of a document that you think is part of a traditional package to be submitted to a Court, and it's a boilerplate template that everyone else is

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using, and you don't study it, and you just go sign (indicating), not great. But I put it in a different category. I put it in the category of lazy effort, stupid mistake, shouldn't have done it. But you're not deliberately trying to mislead the Court. I just don't see it here.
And this is not just advocacy. I just don't see it. People make mistakes all the time.
THE SPECIAL MASTER: And then once this all comes to light November 8th and the letter, he doesn't do anything to say -- to write a separate letter to Judge Wolf and say in addition to the double counting questions or within the double counting questions, there's another problem that I want to immediately call to your attention.
MR. KELLY: Well, I mean, frankly, everyone could have done with respect that to boilerplate template at that point, but they're not concerned with it. They're concerned with the double counting.
THE SPECIAL MASTER: But the double counting at that point has already been called out to the Court, Brian. The double counting has been called out to the Court. The Court was told it was

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inadvertent.
At that point he's got three months --
three months to say in addition to what we told you in the David Goldsmith letter of November 10th, you should also know that there were -- he can call it whatever he wants -- mistakes made, inadvertent misstatements, whatever he wants to call it. He should then call that out to the Court, and at that point maybe under some construction of Rule 11 he's availed himself of the safe harbor.
MR. KELLY: Well, at his first opportunity when he goes into court he admits it. He could have sat there and said, you know, let me consult --
THE SPECIAL MASTER: You really think Judge Wolf would have let him sit there?
MR. KELLY: I think Judge Wolf in fact said something to me in that hearing to the effect of if he'll let you talk or something like that. There was an allusion to that as to maybe he should consult his own personal counsel rather than company counsel, and Garrett just said, oh, no, waved him off and had his colloquy and admitted the mistakes. So I think that should be to his credit that he did

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it then.
He didn't say, oh, let me think about this, let me go get private counsel; I'll tell you right now what happened, and he did. And all I can tell you is with respect to the delay in November to the first opportunity he had in court, the focus after they sent that letter and -- at the time they sent that letter and afterwards was this constant wringing of the hands of how could we have made such a stupid mistake. This looks terrible. You know, Judge Wolf is going to be furious. He's going to, you know -- he's going to really be upset and really going to be negative consequences about this 4-million-dollar mistake. That's the mistake they're worrying about.
Now best practice, should they had sensed, you know, what else could be a mistake in this pleading? Let's all check our templates. Let's do it. Probably would have been better. But I don't think it's evidence of a willful intent to mislead Judge Wolf that warrants sanctions. I just don't see that.
Let me segue into another issue which is kind of like the elephant in the room, and that's

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not me, even though I've gained a few pounds here, judge. The issue --
MR. SINNOTT: We agree.
THE SPECIAL MASTER: We all have.
MR. KELLY: The issue which I think may be tainting Thornton and Garrett in particular in this case is the situation with Michael Bradley that's been, you know, referenced in some of these -- the report and some of the special master's remarks.
But I think, you know, what we have to remember with him is, you know, look, there's nothing illegal -- and there's certainly not even anything improper with using your brother in your business. And it's a law business, okay. The guy's not a plumber. He's a lawyer. And he did have some experience unique to him on the state -- that fraud task force he was on. So it's not as though he didn't have any ability to analyze --
THE SPECIAL MASTER: I got to tell you, Brian, when I heard that, it didn't past the smell test as a justification for $500 an hour. It didn't past the smell test.
MR. KELLY: Well, but the -- one step at

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a time. It's certainly permissible to use your brother in your business, and he's a lawyer, okay. But that's been suggested 'cause he's mostly in state courts and doesn't do a lot of high profile cases, that it's somehow improper to use him. It's not.
And let's put it on the table in terms of what was the value he brings? He did this -- all his work he does it contingency fee based, right. Thornton is not a big firm like these other firms, right. There's a value to not taking money out of your pocket and paying people like --
THE SPECIAL MASTER: He also did it on his spare time. He was not -- that was his testimony. That was Michael Bradley's testimony.
MR. KELLY: Yep.
THE SPECIAL MASTER: He did it on his spare time, did not infringe at all upon his earnings, upon his other work that he was doing whereas -- and I'm going to push you on this -- all these other firms and all the lawyers in the other firms could do it on the if come --
THE REPORTER: I'm sorry, could do it on the?

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THE SPECIAL MASTER: If come. You can put that in quotes -- could do it on the if come. They're doing that as part of an effort that is taking up their time, that is draining their resources, that is draining their attention from other cases or potential cases. That wasn't the case with Michael Bradley. This was totally gravy. It was used in another context. This was totally gravy.

MR. KELLY: Okay. And so do you know who has got a complaint with that is the other two law firms. If they don't like the fact that they have Michael Bradley getting -- adding to Thornton's lodestar vis-à-vis them, they can complain and say, listen, we don't like this guy; he's only doing two hours a night; he's not as good as our staff attorneys. That's among these private lawyers to fight about --

THE SPECIAL MASTER: It becomes our problem -- it becomes my problem because my mandate is to look at the reasonableness -- accuracy and reasonableness of the fees that were paid. It becomes my problem.

MR. KELLY: Okay. Okay. Let's go then

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to math. Mathematics. Take Michael Bradley's time --

THE SPECIAL MASTER: 406.1 hours.

MR. KELLY: Throw it into the Boston Harbor over there. Do you know what effect mathematically that has on the multiplier? Zippo. It remains 2. He's irrelevant.

You know, it's kind of unusual that the brother was used. It's kind of unusual he's got a state court background. It's kind of unusual he did a contingency, but ultimately it's irrelevant. His time means nadda.

THE SPECIAL MASTER: There's one other factor, and your answer to this might be the same, and that is the work that he performed, accepting at face value that he performed it -- even though we were not able to independently track it because we didn't have access to the database -- we had access to his e-mails, and his calendars so I'm willing to accept that he did the work -- that he performed the work, even though we could not independently verify it.

But let's assume that he did it was as a matter of quality significantly different than those

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that the staff attorneys for Labaton and Lieff did. These staff attorneys for Labaton and Lieff were by virtue of their background uniquely qualified to do this work, number one. The Lieff attorneys had been through the war -- the BNY Mellon war and had developed expertise in this area.

The Labaton attorneys had developed some expertise -- as I pointed out earlier, David Alpert who was the only one -- well, there may have been one other staff attorney -- that billed it at a comparable rate to Michael Bradley not only had extensive experience in FX litigation but had extensive substantive experience, but much more than that -- much more than that, if I'm looking at reasonableness of rates charged and fees, I'm looking at that, I have to also look at the work that was done.

The folks in this case for Labaton and for Lieff prepared memorandum. They prepared deposition books. They did more than simply look for HotDocs. They did a lot more. They did -- as I said earlier, they did associate-level work. The work that Michael Bradley did by his own testimony was at best -- at best, paralegal work and probably

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not even that.

It was simply clerical word search work; and, as he testified, he only found a few I think he said highly relevant documents whereas the other staff attorneys were finding all sorts of relevant documents and writing memoranda about 'em and doing deposition books.

The nature and quality of the work that was done was vastly different.

MR. KELLY: Well, I don't disagree with most of that. I do think the --

THE SPECIAL MASTER: Well, how do I evaluate it?

MR. KELLY: Well, all right. I don't disagree with most of that, and I would say that the staff attorneys were extremely well qualified, and they did do a lot of work. That doesn't mean there aren't different roles on a team for different types of players.

Some people can pitch. Some people can -- can't. And some people are highly skilled. Some aren't. But that does not mean there's --

THE SPECIAL MASTER: And the Cy Young -- using your baseball analogy further, the Cy Young

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Award-winning pitchers are paid much more than the guys who are kicking around back and forth from Pawtucket to the Red Sox.

MR. KELLY: Well, then I would submit Richard's the Cy Young award winner; the staff attorneys are Pawtucket. He got a lot more than the staff attorney did.

And so what I would suggest is, you know, you can quibble about, you know, which attorneys should have got more, which attorney's better, which --

THE SPECIAL MASTER: All right, let me ask you straight out what do you want me to do about -- assume -- you can see where I'm going with Michael Bradley. I'm not indicating that he should be zeroed out. What do you think he should be evaluated at? The value of his work.

MR. KELLY: Well, as I said, even if his value was zero, which it should not be, it doesn't affect the multiplier, okay. So I think his -- you know, I want to just -- just for the record make sure I don't -- it's not conceded in any way that he didn't do work.

You're not saying you're going to make

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that finding, but, you know, we do have two exhibits from Professor Gillers' deposition which I'll cite again, Exhibits 22 and 23, from that deposition. One of them is the Hoffman and Michael Bradley e-mail back and forth about how to use --

THE SPECIAL MASTER: Let's assume he did the work. Let's assume he spent every nanosecond of the 406.1 -- every nanosecond of the 406.1 hours that he billed. Let's assume that. I'm not saying I'm going to assume that, but let's just assume that.

MR. KELLY: All right.

THE SPECIAL MASTER: What is a fair -- in your view a fair value that his work should be billed at?

MR. KELLY: Well, you know, it's a tough question because of the Hot Document that he found, was it the one that led, you know, Chiplock to figure out a better theory? I don't know --

THE SPECIAL MASTER: We don't know that because he did not tell us. He could not tell us anything about any of the documents he found.

MR. KELLY: But in fairness, judge, you know, the Catalyst system, which is the subject of

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Exhibit 22, it doesn't have the data anymore. If we had that thing up and running, we could tell who did what when. We've got e-mails from him specifying his time. I don't know exactly what value in the --

THE SPECIAL MASTER: Brian, you like to cut to the chase so let's cut to the chase.

MR. KELLY: Fair enough.

THE SPECIAL MASTER: Are you trying to tell me here today that Michael Bradley's time was worth as much as David Alpert's time?

MR. KELLY: No, but -- but his time was contingent time, and Alpert's is a very talented lawyer in his own right, and he deserved the rate he got. He probably could get a higher rate. Bradley, maybe not so much.

But Bradley at least agreed to do it with the possibility of getting the goose egg, zero. If these guys didn't win this case which was no slam dunk, he would have got nothing. So part of me says --

THE SPECIAL MASTER: But he was doing it on free time. He wasn't losing money. He wasn't taking a risk. The only risk he was taking was that he would do this work and maybe potentially not get

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paid for it.

MR. KELLY: Well, free time. I mean you might want to spend your time with your family. You might want to spend your time watching the Red Sox beat the Tigers. You might want to spend your time other ways, judge.

THE SPECIAL MASTER: He just lost a hundred bucks an hour.

MR. KELLY: That was poor advocacy. Sorry, your Honor. Seriously --

THE SPECIAL MASTER: But at least you didn't say he might have been watching the 2013 playoff game --

MR. KELLY: Right.

MR. VALLEE: That really hurt.

MR. KELLY: Yeah, he did it at night and so forth. And it's -- you know, he's not as significant as the rest of the staff attorneys for sure, but he did do work. We have records of his work.

People can quibble later his rate was too high, but the fact that he's Garrett's brother is in and of itself interesting but so what? He's a lawyer.

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THE SPECIAL MASTER: You don't think -- you don't think some people might look at it and say, hmm, feather betting?

MR. KELLY: Well, that's with respect to a public position. These are private lawyers. If they want to spend their money amongst their family because they want to put their family to work, they're allowed to do that.

THE SPECIAL MASTER: So should Judge Wolf be concerned about the public's perception here about what appears -- I'm not saying that this will influence the ultimate decision that Judge Wolf would make on this, but should he be concerned about how this looks on the front page of The Boston Globe --

MR. KELLY: Well, I don't think we can --

THE SPECIAL MASTER: -- and the relationship of his brother.

MR. KELLY: I don't think we can analyze everything under the light of the poison pen of the injury ESPYs, right. I mean the press is going to d what they're going to do.

They don't like lawyers to begin with.

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They don't like lawyers getting 75 million bucks, but, guess what, if you don't have lawyers like this, you don't have big cases like this. A lot of lawyers don't want to do things on a contingent fee basis. I don't. I want to get paid. These guys, they want to take big risks, well, they're going to get big pay if they win. So the public doesn't like that no matter what.

And if the public understands that there was a real harm here that wasn't being addressed; and, as Rubenstein pointed out, these guys didn't piggyback on some government work and then just make a case, they thought it up themselves, and they took the risks, and they won.

THE SPECIAL MASTER: I hope you're not putting Michael Bradley -- look, Michael Bradley's a fine guy. He came in, likeable guy. But you're not putting him in the same category of the firms here who took the risk, made the investment, devoted the resources, and I include within that this firm, the Thornton firm -- you're not putting him in that, are you?

MR. KELLY: In a much, much smaller scale. Like them, he took a contingency fee risk.

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Unlike them, he doesn't have the vast experience and skill, but he is a member of the team, albeit small, and he got a small fee.

And if you analyze it mathematically, at the end of the day it's a pittance and has no effect on the multiplier that Judge Wolf was giving. It really doesn't.

THE SPECIAL MASTER: I take it from your rather lengthy answer that you don't want to give me what you think would be a fair value for setting his rates at? You don't have to if you don't want to, but I --

MR. KELLY: The rates they charge me at I'm not so sure is a fair value, but they get some high rates. So it's hard for me to judge. And, you know, what was the New York rate? Four and a quarter? What was it? You know, was he as talented as them or as experienced as them? No. But he was contingent. They weren't. Every day they got a paycheck. He didn't.

And so he was totally wasting his time if he -- if they didn't win. So that's worth something, judge. And I think Rubenstein himself if you look at the expert -- I'm no expert. Look at

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the expert. And Rubenstein's affidavit, he said it was reasonable. So I'll rely upon the Harvard law school professor expert rather than my own seat of the pants --

THE SPECIAL MASTER: You're bootstrapping Michael Bradley into the rest of this group including the rest of the staff attorneys, and I'm not sure if I'm prepared to do that.

MR. KELLY: I think Rubenstein --

THE SPECIAL MASTER: But hang on. The guy who's picking me up at the airport wants to know if I'm going to be on the 4:45 flight. So unless, Richard, you're going to waive oral argument, I'm going to tell him I'm not going to be on the 4:45.

MR. KELLY: All right. Well, I'll try to cut to the chase --

THE SPECIAL MASTER: No, no. I'm going to tell him I'm not going to be on the 4:45.

MR. SINNOTT: So take another hour, Brian.

(Off the record.)

MR. KELLY: I'm not going to wade too far into issues that you've already gone back and forth with Miss Lukey, but I think a couple points I

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would like to re-emphasize, if I could, because I think they're important.
You know, the data shows -- and I think they're finalizing the data -- that the work that the ERISA counsel did was less than 10 percent. So the notion that they somehow got shafted here is not sound.
They got less than 10 percent, and yet these consumer class attorneys agreed to 10 percent. So I think that's an important factor to bear in mind as to whether or not they got shortchanged in any way. That's just a data point.
In terms of Ms. Lukey's point that the total aggregate fee is what matters, I couldn't agree -- well, with the caveat that there's no excuse for sloppy paperwork being submitted to a federal court, I couldn't agree more that the total aggregate fee is what Judge Wolf would be most focused on because he, as the fiduciary for the absent class members, is going to be focused on that number. And I don't know why it's not being discussed or focused upon more than it is.
But to put this whole exercise in context, you have to go back to June when Judge Wolf

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who's a man -- as a judge who's very careful with his words, who's always prepared and does not say things willy-nilly from the bench, he tells these lawyers in no uncertain terms after he asks Goldsmith about what, you know, attorney fee range they're looking for, and Goldsmith says 25 percent range, Judge Wolf says that's great.
THE SPECIAL MASTER: Wait, wait, wait. Is this at the hearing -- the preliminary hearing?
MR. KELLY: This is on June 23, 2016.
THE SPECIAL MASTER: Okay.
MR. KELLY: Before these guys even submitted anything.
THE SPECIAL MASTER: This is before the preliminary.
MR. KELLY: Yes. This is Judge Wolf telling these attorneys with respect to 25 percent, that's great because when I became -- when I became a judge, I did a lot of studying on this. And the range was about 20 to 30 percent. Whatever the authoritative treatise at the time was, and, you know, I usually start with 25 percent in mind.
So this aggregate number of 25 percent was important to Judge Wolf. He signaled that to

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these lawyers, and it remains I think the big picture issue which has to be remembered here because that's what he imposed. And none of this unfortunate paperwork sloppiness takes away from that.
You know, he imposed 25 percent, and I think you can assume -- I think it's unfair to assume that Judge Wolf didn't know enough to ask questions. If anything of any federal judges I've been in front of, he is not shy about asking questions. I think you well know -- I mean a lot of his questions led to the uncovering of FBI corruption. He asked questions no one wanted to ask, and he's not a judge who's afraid to ask a question.
And if he wanted to simply say, hey, what are you lawyers making, and how are you divvying it up, he obviously could have if he was really interested in doing so. And I understand you know --
THE SPECIAL MASTER: And so I should infer from your -- I should infer from your argument here that he's got no interest in the Chargois -- in your view, no interest in the Chargois Arrangement,

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no interest in the 4.1 million dollars being paid to Mr. Chargois out of the -- arising out of the arrangement that he has no interest in that because he didn't ask?
MR. KELLY: No, I think that's a different question. I think he'll be interested. It is interesting how this was all whacked up and decided on who got what, but I don't think he's going to say this is material to my determination because --
THE SPECIAL MASTER: I'm talking about at the point at which he approved the fee. You want me to infer from your statement that he was focused only and solely on the aggregate fee and whether that was fair and that he was not interested in the fact that Mr. Chargois was going to get 4 million dollars of that?
MR. KELLY: I don't think he was interested in how these attorneys cut up their money.
THE SPECIAL MASTER: And that's a little different answer than the one I had asked you -- an answer to a different question.
MR. KELLY: I think -- you know, like

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Professor Gillers, I'm not a mind reader, but I have had substantial experience in front of Judge Wolf, and he's not shy about asking questions. And he always wants more information. And he probably would have preferred to have this information.

But I don't think given the fact there is no rule, there is no requirement, no other federal judge in this district apparently in the X number of cases Joan has cited has ever inquired.

I don't think he's going to say, well, this is a violation that I didn't ask that question because if this was the custom to ask the question, I would have asked it. But now if this comes up, going forward he'll probably have a standing order to this effect. I don't know. I can't predict, obviously, what he'll do. But all I can tell you is I don't expect him to say at the end of the day I'm going to change the 25 percent because this was a great result by these lawyers in a tough case, and the class got a lot of money, and it may be unseemly to some about how much money they get or how they whack it up amongst themselves, but that's not something I want to get involved with which what district court judge over there wants to start

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saying, you know what, I think you deserve 40 percent, I think you deserve 38 percent, I think you deserve 12 percent.

This referral fee, which is the now work referral, which is permissible in this state, I don't like it so I'm only going to say instead of four million, Chargois, you should get two million. Does he really want to get into that business of fighting with -- amongst the lawyers about who gets what fee? I doubt it.

I think he's going to be ultimately laser focused on how much the class gets because that's what matters.

THE SPECIAL MASTER: Okay.

MR. KELLY: One moment, your Honor.

(Pause.)

MR. KELLY: One second. So I guess what I would close in asking you to do --

THE SPECIAL MASTER: Well, before you say you're going to close, let me ask you if you want to tell me anything about what Garrett Bradley knew about Damon Chargois and what he didn't know?

MR. KELLY: Well, I think the record evidence is that he did not know that he was

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anything more than a typical local counsel. Now --

THE SPECIAL MASTER: Let me suggest a few things that I've got to consider. I haven't decided this yet, but I've got to consider it. Much more so than Bob Lieff or any of the Lieff lawyers, he was of counsel from January 1 of 15 to the Labaton firm.

MR. KELLY: Yep.

THE SPECIAL MASTER: He was paid specifically as of counsel. I think it was 100,000 a year to generate business or -- not paid. He was given a budget for expenses. He was much closer to Damon Chargois than any of the Lieff lawyers and indeed much closer to Damon Chargois than any of the Labaton lawyers, other than Eric Belfi and maybe Chris Keller.

He attended these networking seminars down in Florida along with Damon Chargois. He was there. And with Eric Belfi and Chris Keller.

When the time came to divvy up the fees and the negotiation was being done with Damon Chargois about how much he should get, Labaton didn't ask Eric Belfi to go negotiate the deal with Damon Chargois. He didn't ask Chris Keller of their

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own firm. He asked Garrett Bradley.

And I'm concerned about that because for me to credit his testimony that he knew nothing about the fact that he performed no work, I have to believe that in all of this relationship that he had with Damon Chargois and his relationship with Labaton that he had no knowledge -- that he acquired no knowledge of the true nature of Damon Chargois' relationship.

So if you want to address it, you can.

MR. KELLY: Sure, be glad to.

THE SPECIAL MASTER: Because I am struggling to take at face value his testimony. Bob Lieff testified to it, but they've got a raft of documents that at least support that. In Garrett Bradley's case there are all sorts of other contacts with Damon Chargois and Garrett Bradley far beyond the relationship with the Lieff lawyers.

MR. KELLY: All right. Much of that -- well, I think all of that is accurate of what you said, but what follows from all those different subparts I think the Court should consider and that is this --

THE SPECIAL MASTER: Okay.

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MR. KELLY: -- look, using him to negotiate the ultimate fee with Chargois doesn't say anything about whether or not he knew the guy did no work. Using him makes sense if you know these different lawyers' skill sets. To hammer down on another lawyer and push back and get a fee, you need a type of personality that's not afraid to be abrasive. You need a type of personality that's not afraid to cut to the chase and tell this guy, listen, you know, you're lucky we don't give you 4 percent instead of 5 percent and, you know, who are you; you know, you're just local counsel; we did all the heavy lifting. You know, I don't care if you have to sue Labaton 'cause he thought there was some sort of contractual thing. I don't know.

I don't think using him to negotiate with Chargois means anything other than he's probably a pretty good negotiator. Used to be a politician. I'm sure he has certain skills that other lawyers lack. He's not perhaps the guy you want doing all your research, but he's certainly the guy you want hammering down and negotiate --

THE SPECIAL MASTER: Well, or even reading your fee petitions.

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MR. KELLY: Perhaps. Perhaps. But I don't think a negative inference should be drawn that he therefore knows this guy did zero. I think there's half a dozen, maybe ten e-mails where he calls him local counsel. Local counsel. Did he reflect upon that and investigate that? Probably not. He assumes he's typical local counsel.

He did something as local counsel back there. But I don't think there's any evidence in the record that suggests, you know, he was part of the original deal. He doesn't know the original deal, and he doesn't take it upon himself to investigate --

THE SPECIAL MASTER: No, I don't know that there's any -- I haven't seen any evidence that he was part of the original deal that got Labaton in the door. I'm not suggesting that.

MR. KELLY: Okay. So --

THE SPECIAL MASTER: But as the --

MR. KELLY: -- what I'm saying then --

THE SPECIAL MASTER: -- relationship gestated, Garrett Bradley seems much closer to Damon Chargois -- much closer -- than almost any lawyer in this case with the exception of Eric Belfi.

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MR. KELLY: But so what follows from that? It doesn't necessarily mean he knows what local counsel --

THE SPECIAL MASTER: Well, what might follow from it is that he's getting all this money in all these cases for doing no work and not filing an appearance; that it's just a fee he's getting.

MR. KELLY: All right, but now we're into rank speculation. You have the record evidence. You have his testimony.

THE SPECIAL MASTER: I don't know that it's rank speculation. It's circumstantial evidence.

MR. KELLY: Well, what's the best circumstantial evidence you have? You have multiple real-time e-mails where he calls him local counsel, local counsel. You've heard all these different definitions, explanations, understandings of what local counsel is. There's nothing in the record saying, well, I knew he was doing nothing.

But let me pivot to that I don't disagree with their legal analysis that, apparently, in Massachusetts even if you do nothing, you can get money for a referral fee. So you do have that

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fundamental premise where you start with.

I'm not willing to start and stop there because I do think the evidence is that like Lieff, Thornton, Bradley and the rest of them thought he's just a typical local counsel. They don't know exactly what he's doing. He must have done something. That was their understanding.

Did they investigate and press on that issue? No. But that's what I think the evidence is, and that's what I think you should understand it to be.

So ultimately no matter what you may decide in terms of what the best practices are going forward and what should be done better in the future and what sort of, you know, language should be used to say, you know, sloppy efforts like this should certainly be discouraged and never happen again in these type of petitions, it doesn't affect the total aggregate fee. I think ultimately big picture, these attorneys did a great job.

The so-called "red ants" of the plaintiff bar that Professor Gillers now says is a term of endearment I think they did their jobs. They got a great result, and it's unfortunate it's

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been marred by this sloppy paperwork by double counting. It's unfortunate we've ended up here.
THE SPECIAL MASTER: On that we're going to agree.
MR. KELLY: Can I take a two-second break before I rest?
THE SPECIAL MASTER: You want to get more water?
MR. KELLY: I do.
MR. HEIMANN: Shall we take five?
THE SPECIAL MASTER: Before you start, but let's wait until he's done.
MR. HEIMANN: All right.
(Pause.)
MR. KELLY: Your Honor, I can break for good, but I want to make clear on the record that --
THE SPECIAL MASTER: Yes, please.
MR. KELLY: -- the so-called -- in terms of dates so I haven't misspoke -- the so-called "jack up the lodestar" e-mail that we've discussed is February 6, 2015.
The so-called Chiplock warning e-mail to Thornton with respect to Thornton's mistaken estimate, it turns out to be a guess, and there's a

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lot of back and forth, that's in August of 2015. So a year before --
THE SPECIAL MASTER: But after the 20/20/20 agreement.
MR. HEIMANN: Long after.
THE SPECIAL MASTER: Long after the 20/20/20 agreement.
MR. KELLY: The agreement to the entire fee is in August 2016, okay, a year later and then obviously the filings for the declarations --
THE SPECIAL MASTER: I think we've got the chronology.
MR. KELLY: Okay.
MR. SINNOTT: Just one thing on that point, Brian.
With Professor Vairo you may remember we showed her an e-mail -- I'm sorry -- we showed her the deposition of Evan Hoffman. And Evan --
PHONE LINE CONFERENCE: The following participant has entered the conference: No names are available.
MR. SINNOTT: Could whoever entered just identify yourself, please?
MS. HARLAN: Sure. This is Emily

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Harlan.
MR. SINNOTT: Okay, thanks, Emily.
Do you remember that e-mail -- that testimony of Professor Vairo where we showed her the Evan Hoffman deposition, Brian?
MR. KELLY: I believe I do, and I think I'm trying to find it. Yeah. That -- well, go ahead. I'm sorry.
MR. SINNOTT: It appeared from that -- and tell me if you differ with this characterization -- this wasn't just Garrett signing something that was put in front of him without reading it, this was a collective process that Evan, possibly Mike Lesser, and Garrett had participated in and maybe others at Thornton -- a process of review and back and forth with Nicole Zeiss it would appear.
So I mean would you agree with me that this was a collective failure and not just a Garrett Bradley failure?
MR. KELLY: No, because I think it goes back to the maxim earlier when I thought the record said something. You got to trust but verify and go back and read it.
And what Hoffman said, he's describing

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-- what you're referring to, this collective effort, yes, collective effort to do the bulk of this work, but the rest of the language was a model fee declaration. That's the boilerplate document that Garrett signed without carefully reading it. He did not carefully read it. There's no doubt about it, okay.
And the rest of the stuff that they're talking about with that testimony is, yes, collective effort. But this language in the model fee declaration, which again they got it from the lead counsel 'cause it's a boilerplate, that's not a collective effort. So you shouldn't squish all that together.
There's a lot of collective work going on, but that fee declaration is just a form that they get, and he doesn't carefully read it, and he signs it, and now here we are.
THE SPECIAL MASTER: But others at the firm also read it.
MR. KELLY: Well, all the firms read it, and none of 'em thought much except it's a boilerplate declaration.
THE SPECIAL MASTER: So if there was

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this implicit agreement, why did Labaton and Lieff include these staff attorneys on their petitions?
MR. KELLY: Well, because I think, as you've referenced, there's been some siloing of attorneys in different firms; they're big firms, and maybe one firm didn't realize that Thornton paid for some of these. Usually the person putting that together had no idea, well, they're sitting here in my office, I must include them. It's not illogical. And maybe they don't know about the deal that Thornton's paying the bill for X number, you know.
These are big firms, and perhaps Miss Zeiss was not privy to all those --
THE SPECIAL MASTER: Well, she said she wasn't privy to any of these details.
MR. KELLY: So there you go. So ultimately her mistake -- her inadvertent mistake is simply not putting together these documents and looking at them.
Like Bradley, she didn't give it a close read, and now here we sit.
THE SPECIAL MASTER: Was there another point you wanted to address?
MR. KELLY: I'm out of points, judge.

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MR. SINNOTT: No more baseball analogies or shots at the Tigers? You got to admit that felt good, didn't it?
THE SPECIAL MASTER: All right, why don't we take a break, and then, Richard, you're on.
MR. HEIMANN: Okay.
(A recess was taken.)
MR. HEIMANN: So I have prepared a binder for both of you. It's a sort of show-and-tell, and I want to walk through it during the course of my presentation. Let me begin by saying that subject to questions that you all may have about any of the topics you have identified, I only propose to address two of them, the first being the -- in the order of your presentation -- the issue of the staff attorney compensation and the marking up of hourly rates issue and including the notion of a distinction between rating agency or -- excuse me -- agency lawyers and other non-agency lawyers and then also the third bullet point that has to do with Lieff Cabraser's awareness of the Chargois Arrangement and so forth. And I propose to start with the latter of the two.
THE REPORTER: I'm sorry, but could you

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speak up?
MR. LIEFF: Yes.
MR. HEIMANN: Louder? All right. Yes, yes, yes. All right.
So Tab 1 I start with Professor Gillers' opinion or opinions as expressed at his deposition in response to a hypothetical that I posed to him that is spelled out in four parts in this first page, and I won't go through each, but the point is here that Professor Gillers testified, I believe, that if the points of the hypothetical were factually accurate, then his opinion Lieff Cabraser did not violate in any respect its ethical obligations either with respect to a disclosure or non-disclosure of what we knew about Chargois to the Court or with respect to disclosure or non-disclosure of what we knew to -- in disclosing or not disclosing to the class in the notice.
Going to Tab 2, because what I propose to do now is with some curtailing of the total record to go through what the record shows with respect to the basis -- factual basis for the four points of the hypothetical.
And I start with something that's not in

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the binder which is the 2011 draft letter that your Honor questioned someone about --
PHONE LINE CONFERENCE: The following participant has entered the conference: Mike.
THE SPECIAL MASTER: There's one other thing I do want you to address -- and maybe you're intending to address it -- and that is whether or not what you're going to tell me -- what I assume you're going to assume to tell me Lieff knew or did not know whether or not there was any obligation of further inquiry. So if you would address that.
MR. HEIMANN: I will, although I think that's implicit in Professor Gillers' opinions that if the factual bases that I'm going to demonstrate supporting the hypothetical is in fact correct, there was no obligation to make any further inquiry of lead counsel about Chargois. But I will address that separately, or maybe you'll remind me if I don't get close enough to it.
THE SPECIAL MASTER: I will.
MR. HEIMANN: Great. So, again, back to the 2011 letter. The record I think is now clear that that letter was never shared with Lieff Cabraser in draft form or otherwise. The testimony

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about it indicates as much. We have searched high and low among our archives to find it without any success. Had we received it in e-mail, we would have had it in our files, and we would have found it.

I could gild that lily by saying you all asked me about it, and I have no recollection of it. And Chiplock's and Lieff's first recollection of any note -- awareness of any other lawyer being involved came two years later in 2013. So let me go there. That's the first e-mail that I have up.

This is the e-mail from May of 2013, e-mail string I should say, that importantly reads from -- I should say this is from Bradley. And in some respects the identities of the people --

THE SPECIAL MASTER: Can we go back to the -- I was just confirming. I just looked at the draft of the 11 -- let me also -- I should have asked...

(Pause.)

THE SPECIAL MASTER: Yeah. So the draft of the letter is to Mike Thornton, Garrett Bradley, Steve Fineman, Dan Chiplock and you.

MR. HEIMANN: Yes.

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THE SPECIAL MASTER: Is there any evidence in the record one way or another as to whether Mike Thornton -- I should have asked this earlier -- or Garrett Bradley ever got this letter?

MS. LUKEY: It's produced by Thornton. Garrett should have gotten it. It's produced by Thornton.

MR. HEIMANN: There's evidence that Garrett Bradley got it because that's the e-mail that it was produced by the Thornton Law Firm.

THE SPECIAL MASTER: Okay. Okay.

MR. THORNTON: Off the record. I didn't get it. That I recall. It's a long time ago.

THE SPECIAL MASTER: So there is evidence that Garrett Bradley got it.

MR. HEIMANN: Yes.

THE SPECIAL MASTER: So my question would be -- and that's what I thought. My question would be if it was sent, quote, via electronic mail, which we can assume is e-mail, how is it that the Thornton folks would not -- that the Lieff folks would not have gotten it?

MR. HEIMANN: Because it wasn't sent. The draft letter itself was not sent. It simply

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says if it had been sent it would have been sent by e-mail. You have to look at the first page -- the one that bears the Bates 33910, that's the e-mail from Keller to Bradley --

THE SPECIAL MASTER: That's the covering e-mail.

MR. HEIMANN: That's the covering e-mail. So what is happening here is that Keller is sending a draft --

THE SPECIAL MASTER: What's the Bates on it, please.

MR. HEIMANN: TLF-SST-33910.

MS. LUKEY: It's Tab 20 in our submission.

THE SPECIAL MASTER: Oh. Tab 20.

MS. LUKEY: Of the appendix. Wait a minute. Yeah, the second -- one of them's numbered. The other one's lettered. It's in the one that's numbered.

THE SPECIAL MASTER: It's in the one that's numbered?

MS. LUKEY: Yes. And it's only sent to Garrett.

THE SPECIAL MASTER: I should have

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stayed up all night reading this. All right. The one that says what do you think of this?

MS. LUKEY: Yes.

MR. HEIMANN: Yes.

THE SPECIAL MASTER: That's from Chris Keller to Garrett Bradley?

MR. HEIMANN: Yes.

THE SPECIAL MASTER: Okay.

MR. HEIMANN: So, as I was saying, it appears that the draft was set up to be sent by e-mail if it was sent, but it wasn't. And the way you know that is, among other things, there's no e-mail address.

THE SPECIAL MASTER: Yes.

MR. HEIMANN: All right. So back to moving forward to the year 2013 and the kick-off e-mail which is the e-mail from Bradley --

THE SPECIAL MASTER: Could I -- while I'm thinking of this. I'm sorry, Richard.

MR. HEIMANN: It's all right.

THE SPECIAL MASTER: I didn't focus on this when Brian and I were having our exchange, but I want to give Brian an opportunity to address it as one more piece of evidence that Garrett Bradley knew

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about the nature of the Chargois relationship.
But we'll wait. I want to hear -- just -- I want to give you an opportunity.
MR. KELLY: Just clearing my throat.
THE SPECIAL MASTER: I want to give you an opportunity to address that. Just to put on the string of other things that I called out. Okay.
MR. HEIMANN: All right. So the leading e-mail is the one from Bradley April 24, 2013 addressed to Bob Lieff, Mike Thornton and Eric Belfi with copies to Chargois and Keller and Dan Chiplock. The subject: State Street fee regarding local counsel.
THE SPECIAL MASTER: Where?
MR. HEIMANN: Tab 1 -- Tab 2. I'm sorry. This is one we've seen --
THE SPECIAL MASTER: This is the Dublin.
MR. HEIMANN: Dublin. All the e-mails I'm going to show you have been made part of the record and most have been testified about.
THE SPECIAL MASTER: Okay, go ahead.
MR. HEIMANN: This is one way of gathering them all in one place to go over it chronologically so that the basis for the

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understanding on the part of Lieff Cabraser lawyers, primarily Bob Lieff and Dan Chiplock, can be made clear.
So Bradley writes Bob, "As you, Mike and I make discussed in Dublin last week, I am sending this e-mail regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System."
And then he goes on to describe what that obligation is and suggests that the three firms agree to share it which would amount to approximately a 4 percent fee share with the local counsel, Mr. Chargois. Of course, he's referred to at least two more times in the body of that e-mail as the local counsel.
Now Bob when he testified about this testified that he didn't recall this being discussed at the occasion of that meeting in Dublin, but it seems evident that it was discussed at that time. Also, I would suggest from the text of this e-mail again this supports the notion that this is the first time that the matter of the involvement with Mr. Chargois had been broached with any of the Lieff Cabraser lawyers.

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So the next e-mail in that string is Bob responding it looks like that same day some three hours or so later that he's in agreement with the proposal, and then Eric Belfi in this string follows up a few days later, looks like on the 6th of May, saying that he's in agreement, and again those e-mails, both Lieff's e-mails and Mr. Belfi's e-mails, are all copied to the same people who were on the first e-mail including Chargois.
Then if you go -- oh, and let me back up for one second about this idea of what local counsel is. I know there was testimony to this effect, but you will recall that both Chiplock and Bob Lieff testified that they knew full well in this arena what local counsel meant.
Now there are two types of local counsel in practice. One is the one we're more generally familiar in the general practice of law where you have a lawyer who's local to the forum. So you're litigating in a place where you don't have your offices; you get a local lawyer -- ideally you get one who's very well-known to the courts and respected to front for you, in effect, in a local forum, but there is also local --

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THE SPECIAL MASTER: That's sort of the Keller Rohrback model of the locals -- the model -- the Keller Rohrback model of their local --
MR. HEIMANN: -- in this case.
THE SPECIAL MASTER: -- in this case.
MR. HEIMANN: Yes. But there's another use of that term in the securities practice, particularly in the practice where it involves public pension funds as plaintiffs, and I know Dan Chiplock testified about this -- and you'll see more of this in a few minutes -- but it is not at all uncommon in our experience -- and when I say "our experience," I'm talking about Lieff Cabraser's experience -- in the securities field in particular but also in the antitrust field but certainly in the securities field where there is incredibly heated competition for plaintiffs firms to link up with public pension funds who have the ability to serve as lead -- apply for and be appointed as lead plaintiffs in securities class actions, and it is not at all unusual in those circumstances for public pensions funds to want to have a firm that they're comfortable with and familiar with that is local to them to serve as local counsel in the litigation.

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Sometimes those firms are listed of record in cases. Sometimes they're not. It depends upon things I'll come to in a little bit about that. We do list them in those instances when we have them. But not all firms do. And we knew that, too, as a firm in terms of corporate knowledge --

THE SPECIAL MASTER: And in that arrangement isn't there some obligation upon the local to act as, effectively, liaison counsel back to the client?

MR. HEIMANN: Typically that's how it works. That's the reason, at least in large part, for their existence is they have an ongoing relationship with the fund -- with the public pension fund, either with general counsel to the fund or other corporate representatives of the fund, and they serve typically in that role so that, for example, when we have such a situation, while we like to communicate directly to the fund itself, if we have a local counsel, we'll try to communicate directly, but, more often than not, we end up communicating, at least in part, through the local counsel.

THE SPECIAL MASTER: And you may -- a

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lawyer from your firm might call the local counsel and say, hey, we have an issue here, we want to bounce it around with you as to how client A is going to react to this?

MR. HEIMANN: Certainly.

THE SPECIAL MASTER: And how do we handle this with client A?

MR. HEIMANN: Absolutely. And that's one of the reasons from our perspective to work well with the local counsel in the sense of what we're talking about.

So the point here is that when we were told -- when Bob and Dan were told in this communication about the existence of Mr. Chargois and his function or role as local counsel, it would have not come as a surprise that Arkansas had such a person and that Labaton worked through that person in dealing with the Arkansas Fund.

Now the next e-mail in order is same e-mail from Bradley to Bob, but this time in the string we have Damon Chargois responding once again to the same folks who were on the original e-mail saying thank you, Garrett. Agreed.

Now why is that significant? Because

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that's Damon Chargois communicating directly to us confirming the accuracy of his description as contained in the Bradley e-mail.

So it means that not only now have we been told by Bradley that Chargois is the local counsel who assists Labaton in matters involving the Arkansas Fund, we have Chargois himself confirming that in the e-mail that he sends to all of the folks including both Lieff and Chiplock. That's April of 2013.

Now we move forward to 2015 two years later, and now we're in a situation where there has been a settlement reached in principle. And I think that was in June or so of 2015. And what is now going to be going on for the next several e-mails is a discussion among participants, the lawyers, about how to allocate among themselves the fee, interest that they hope to obtain. Of course, we haven't got a fee yet. The fee application hasn't been submitted, but they're already talking about how can they divide it up.

And in this e-mail you have Bradley writing to Lieff with a copy to Mike Thornton discussing a proposal or engaged in a discussion

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about the fee, and you'll see again about -- oh, I think I've highlighted it about a third of the way down the page Bradley provides for a three-million-dollar allocation to Arkansas local.

The next e-mail, and it's continuing actually in the same vein, although we've moved forward a few months in 2015 -- no, actually not. Couple weeks later. We have another e-mail exchange. And this one it kicks off with Bob Lieff writing to Garrett. That's the middle of the first page is Lieff's e-mail in which he says, "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." So this is a continuing discussion.

And Bob writes in the course of that e-mail -- looking down to the second full paragraph at the end, he says, "Of course, we also have to factor in the 9 percent that ERISA counsel get pursuant to written agreement and a provision for Arkansas local counsel." So this is Bob Lieff expressing his understanding of the Arkansas counsel's involvement.

THE SPECIAL MASTER: So my question to

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you in all of this -- there's a continuing discussion about paying Damon Chargois. Bob Lieff seems to be the principal person carrying the ball on these negotiations.

Should he not have inquired -- does it not seem that at the very least he was incurious about what Damon Chargois was doing for this money?

MR. HEIMANN: Bob Lieff has been practicing in this arena --

MR. LIEFF: -- 54 years.

MR. HEIMANN: -- 54 years. And the notion of local counsel in the sense that we're talking about here was well-known to Bob.

He certainly would have had an expectation of the kinds of things that local counsel would do typically. He would have had an understanding that it is not at all unusual in this situation where we're not lead -- somebody else is lead -- and as lead counsel who has the relationship with the local counsel and has the relationship with the fund, that what local counsel is doing would not be transparent to other lawyers on the plaintiffs' side in a case because typically local counsel doesn't come in, for example, and make court

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appearances in the forum court. Typically local counsel doesn't participate in a significant way in the plaintiffs' discovery, depositions and so forth, although albeit there weren't depositions in this case, but typically the local counsel is behind the scenes at the local location where the fund is located.

And in addition to that -- and I'll come to this in a few minutes -- 5 percent, which is what they're talking about here, is on the low end of what one would expect a local counsel in a case of this sort to be allocated.

THE SPECIAL MASTER: If he was really local.

MR. HEIMANN: If he was really local counsel.

THE SPECIAL MASTER: So but my question to you is at some point would it not be prudent or just common sense for Bob Lieff to say, wait a minute, we're talking about paying this guy five million dollars, four million dollars, what the heck's he doing?

MR. HEIMANN: I don't -- I think the answer is there were much more important things for

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Bob Lieff to be worried about in connection with these negotiations than whether or not -- why local counsel would be sharing in the fee at this level given that that is -- and I don't know if I have it in the show-and-tell, but I know I put it in the submission that we gave you last week about our own experience in terms of when we have engaged local counsel and what the fee ranges in those situations, and this -- and I've said in that; and it's true -- our experience with local counsel is that the fees -- put it differently, our experience over the past several years at least has been when we have been asked to serve as local counsel typically -- and when we ask others to serve as local counsel for us, so both ways -- it is not at all unusual for us or them, depending on which way you're going, to give the person an option, to either base their fee ultimately on a lodestar how much work they do in a case -- that would be an important function or factor -- or just on a straight percentage. And when it's a straight percentage, the low is -- I mean that I have seen is 5 percent and with an upper bound of roughly 10 percent. Now it could actually go beyond that, particularly in local counsel not in

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the sense we're talking about here, but in forum local counsel. And if the local counsel happens to be particularly strong, we might -- we may even go to 20 percent.

But the real point here is that 5 percent is no big deal. Would not have raised an eyebrow on our part when we were being told that's what the local counsel percentage range is.

So the answer is, no, judge, I don't think that there would have been a -- it would demonstrate a lack of curiosity for Lieff not to have gone to Larry Sucharow and say, Larry, what the hell is going on here, what did the guy actually do. No, that's not something that a lawyer in a class case like this would likely do in terms of going to lead counsel and challenging them, in effect, for what they're proposing with respect to their local counsel.

THE SPECIAL MASTER: Which raises the question that I asked I think you in your deposition -- I asked a number of the witnesses -- was this arrangement with Mr. Chargois as we now know it a common arrangement in plaintiffs' class action world?

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MR. HEIMANN: Well, if you mean the full panoply of the Chargois Arrangement --
THE SPECIAL MASTER: I do. I mean the full panoply where a lawyer opens the door, makes an introduction, facilitates a relationship at the beginning years before cases -- not just this case but other cases gets an interest in every case thereafter? Is that common?
MR. HEIMANN: Not in our experience. I mean I'm not saying it doesn't happen. And, obviously, it did in this instance. But if you're talking about Lieff Cabraser's experience, the answer's no, we have not experienced this sort of thing before.
Now that's not to say that we are unaware of the fact that there is an intense competition among the plaintiffs' securities law to secure funds like the Arkansas Fund as clients and ongoing clients.
There is a high priority paid to getting on the panels -- portfolio moderating panel in this case. Not all of the funds actually have portfolio monitoring funds or panels, but they do have panels of law firms that are the law firms they go to if

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and when they are interested in getting involved in class litigation. That we're familiar with. And we're certainly familiar with the fact that there are all sorts of favors that can be handed out to local counsel if local counsel facilitates your entree into that arrangement.
But this -- the sort of thing you're talking about with a set percentage on an ongoing basis in every case is not something we've experienced.
THE SPECIAL MASTER: I ask the question because I'm wondering if it were common, wouldn't that have informed Bob and created some kind of an obligation to inquire further to the effect, you know, is this guy really doing local counsel work or liaison counsel work, or is he just one of these pilot fish that are out there who's taking a finder's fee?
MR. HEIMANN: Well, I can say with a high degree of confidence that the idea that this was a pilot fish would not have crossed Bob Lieff's mind given what was said from the outset.
THE SPECIAL MASTER: You know, the term a "pilot fish" --

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MR. HEIMANN: Yes, I do.
MS. LUKEY: I don't.
THE SPECIAL MASTER: I first saw it in a Hemingway novel. It's a person or a group of people that go in and sort of test the water and create a relationship and then brings in all kinds of people afterward to bring in the business. It's not a perfect analogy here but...
I think it was -- I don't know; I read all the books at once.
MR. LIEFF: The Old Man and the Sea.
THE SPECIAL MASTER: No, it wasn't The Old Man and the Sea. It was one of the --
MR. HEIMANN: If I could go to the next e-mail string. This is also the 28th of August of 2015. And the purposes of -- the significance here, I start on the first page with the Chiplock e-mail where he's writing to Larry Sucharow with a copy to Garrett Bradley and to Mike Thornton and to Bob Lieff, and he raises a question -- he says, "Actually, one wrinkle I'm not sure about is how ERISA and local counsel fits in." And, again, we're in the context now of talking about fee allocation among the plaintiffs' firms.

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And what's happened here is that Dan is really raising the question of how do you -- how do you compute, if you will, the percentage for ERISA and for Arkansas counsel meaning do you take it off the top, or is there some other way of computing their share by application of the percentages.
And then Lieff writes back to this -- to Chiplock alone you'll notice, and he says, "Dan, if you take ERISA and Arkansas local off the top, you end up with the following." And he again refers to the Arkansas counsel as Arkansas local. So basically what Bob was explaining to Dan is this is how you do the math; you have to take it off the top.
And if you'll go to the next e-mail in the string or the next one I've got is an August 30 e-mail. Now, again, this is an e-mail again addressing this question of how you compute it, and that is to say, the Arkansas and the ERISA part of it, and you'll see that again about halfway down Garrett Bradley writes to Chiplock with copies to Sucharow, to Mike Thornton and to Bob Lieff --
THE SPECIAL MASTER: And what date are we on? August 30?

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MR. HEIMANN: This is August 30.
THE SPECIAL MASTER: Is this a separate chain? Oh, yeah. Yeah, yeah. Okay.
MR. HEIMANN: So about halfway down the first page you'll see Bradley -- Garrett Bradley writing to those that I just mentioned saying, "Dan, there is a written agreement between all of the parties that the Arkansas component would come off the top." And then he goes on to refer to Arkansas counsel which you'll notice in the e-mail from Chiplock, which is just below that, Dan refers to the Arkansas local -- the Arkansas lawyer as the local Arkansas counsel indicating again his understanding --
THE SPECIAL MASTER: Hm hm.
MR. HEIMANN: -- of the role being played by Chargois.
And then if you go through the rest of the e-mail string, but basically it's again with all the same people. So it includes Sucharow and Garrett Bradley and Lieff and Thornton in which they're asking about getting a copy of this --
THE SPECIAL MASTER: -- written agreement.

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MR. HEIMANN: -- written agreement that goes back to the 2013 agreement where Bob wrote I'm in full agreement.
And the last e-mail here in this string is Garrett Bradley writing to Lieff with a copy to Chiplock, Sucharow, Mike Thornton in which he says, "I re-sent it to you a while ago. It is the agreement that whatever the obligation is to the Arkansas firm, it is off the top."
And just below that you can see Bob saying I don't have the agreement; I have not seen it. He had apparently forgotten it at this point in time. He says he doesn't necessarily agree, but he wants to see the agreement.
If we then move forward to the next e-mail in order, now jumping a year ahead 'cause that's the end of that August 2015 discussion, we're now in June of 2016, and we have -- the e-mail string begins with a July 28, 2015 e-mail from Bradley to Lieff. Subject: State Street fee regarding local counsel.
And what he's doing is he's forwarding to Bob a copy of the --
THE SPECIAL MASTER: -- Dublin e-mail?

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MR. HEIMANN: -- Dublin e-mail.
THE SPECIAL MASTER: I remember this.
MR. HEIMANN: -- in July --
THE SPECIAL MASTER: Yeah.
MR. HEIMANN: -- and, you know, I don't want to complicate the case too much, but a moment ago I read you an e-mail in which Bradley says --
THE SPECIAL MASTER: -- he sent the agreement --
MR. HEIMANN: -- that he had sent it earlier, and that's this July 28, 2015 one I was talking about. And so now -- and again, the -- well, I don't want to characterize it.
You'll see then that Bradley then writes on August 30, 2015 saying I found it in my e-mail, and the last e-mail in the string is Chiplock on June 14, 2016, subject: State Street fee regarding local counsel. And this is now from Dan to Bob in which he says, "Bob, see below. I don't know how you get around this."
So acknowledging that they've agreed to this long ago. They now understand it is going to come off the top. And, okay, it's local counsel.
The next one I've got here in order is a

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July 2016 e-mail exchange, and this is the one that begins with Garrett Bradley writing gentlemen -- and all the recipients on this e-mail you can see on the very top one. So he's writing to Sucharow, to Mike Thornton, to Bob Lieff, to Keller, to Belfi and Chiplock --
THE SPECIAL MASTER: Where are you on this? I've got the right string. But where are the addressees?
MR. HEIMANN: Halfway down you'll see --
THE SPECIAL MASTER: Oh, is that the July 8, 2016 --
MR. HEIMANN: Yep. You'll see Garrett Bradley.
THE SPECIAL MASTER: 2:59?
MR. HEIMANN: Yep -- well, 3:06 actually.
THE SPECIAL MASTER: 3:06.
MR. HEIMANN: It begins with Bradley saying: "Gentlemen: As we discuss how to distribute the fee between ourselves..." --
THE SPECIAL MASTER: Yeah.
MR. HEIMANN: 'Cause they haven't quite reached an agreement.

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THE SPECIAL MASTER: Yeah, I remember this e-mail well but --

MR. HEIMANN: He writes: "As we discuss how to distribute the fee between ourselves and of course the ERISA attorneys, I have had discussion with Damon Chargois, the local attorney in this matter who has played an important role."

And then he goes on to talk about what Damon and his firm are willing to accept, 5-and-a-half percent and so forth.

But, obviously, the key terms of this discussion here is that's how Chargois was described to us, as a local attorney who had played an important role in the case.

Now both Bob and Dan have submitted both in response to the questions at their depositions -- and I'll come to those in a moment -- and their declarations what they took that to mean, and in the context of what all they had been told; that this was something actually doing work as a local counsel would be expected to do and who had made a valuable contribution to the class and to the outcome of the case.

And just walking through this string,

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you'll see that Larry Sucharow responds saying sounds right. And then Damon Chargois writes -- this is about just a little less than halfway down the page -- agree. Larry, does your reply mean that you agree to the terms in Garrett's e-mail? And Sucharow writes back -- Larry Sucharow, "I almost always agree with Garrett, but, yes, Damon, that's what I meant."

And then Damon Chargois writes in an e-mail that goes to Sucharow but is copied to Bradley -- Garrett Bradley, to Mike Thornton, to Bob Lieff and to Dan Chiplock and to Chris Keller and to Eric Belfi in which Damon says, "Me, too, Larry. Garrett has that ability. Same to you."

Now what's the significance there? It's Damon Chargois confirming the representation that had been made at the outset of this e-mail string about the important role that he had played in the litigation. At least from the perspective of Bob Lieff and Dan Chiplock. That's what they were being told.

And then just to sort of finish this off, the next e-mail is from July 8, 2016 in which Bob Lieff in response to the e-mail that we just

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looked at -- the kick-off e-mail in this string is the same one as before --

THE SPECIAL MASTER: Hm hm.

MR. HEIMANN: -- we had a discussion. The important lawyer. And Bob then writes we, LCHB, are in agreement with the 5.5 to Chargois. Now let's continue to resolve the split among us. So they were still talking about how to divide or allocate the fee amongst the various firms -- the three firms primarily.

And for what it's worth, then the last e-mail in this string is Bradley congratulating -- having received the e-mail from Keller. "Great work getting this done." And Bradley thanks Keller for the compliment about how Bradley had effectively got it done. I presume that means the 5-and-a-half percent deal with Chargois.

THE SPECIAL MASTER: What is your view if I might ask, if you have one, on what weight I should attribute to Garrett Bradley playing this significant intermediary role?

MR. HEIMANN: Well, my take on it is that he had -- my take it on is that I accept the testimony from the Labaton people who have talked

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about this that there was tension, and I see that in some of the e-mails, between the Labaton firm and Chargois because they were repeatedly renegotiating the deal with Chargois case by case, and Chargois didn't like that. And I don't have the e-mail that most signifies that here, but you know what I'm talking about.

THE SPECIAL MASTER: No, I remember.

MR. HEIMANN: All right. And my take on it is --

THE SPECIAL MASTER: That's the one where Chargois sends the e-mail and says you're constantly cutting me back; I contributed all this work, time, political effort, contributions --

MR. HEIMANN: Yes.

MS. LUKEY: I think it's two separate e-mails. I think.

MR. HEIMANN: Well, it may be, but the point is -- the point is that -- I don't need to list -- I don't need to credit the after-the-fact deposition testimony to see that there was tension between Labaton and Chargois based on their contemporaneous exchanges, and it seems likely, if not evident, from the contemporaneous e-mails that

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Bradley had a decent relationship with Chargois. And keep in mind though Bradley had the same deal with Labaton that Chargois did.

THE SPECIAL MASTER: Yeah. This is also complicated, and I raised this to Brian and with Joan, by the fact that Garrett Bradley was not wearing one hat here; he was wearing two hats at this time.

MR. HEIMANN: I don't really think much about that in response to your question.

To me you're asking why Bradley and not, you know, Eric Belfi or Keller was doing the negotiating, and I think the reason is as I've described here. At least based on my interpretation of the e-mails.

THE SPECIAL MASTER: Well, as I discussed with Brian, it just seems passing strange to me that a lawyer would go outside of his own firm to get somebody to cut a sensitive deal when you've got a guy in your own firm that has the relationship, but be that as it may.

MR. HEIMANN: I think I only have two more e-mails to walk through.

The next one is an e-mail that begins

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with Bob. It's on the second page. Lieff writing to Thornton and to Bradley with a copy to Chiplock confirming the agreement that he believes has been reached respecting the allocation of the fee that they're hoping to get.

And you can see initially he says Labaton, Thornton and LCHB has various percentages adding up to a hundred percent -- it's on the second page you'll see.

THE SPECIAL MASTER: Yes.

MR. HEIMANN: And then Bob shortly thereafter -- maybe not so shortly; it looks like he wrote the first in the morning, and the second one was at noon. So maybe he had woken up by that time. And he says -- he writes an e-mail in which he says, I should have said we agree that the 84.5 percent of the fee not going to ERISA and local counsel highlighting and underlining local counsel. So, once again, he's expressing in contemporaneous time his understanding of who Chargois is and what role he played.

And, finally, the last e-mail that I've put in this is one from Nicole Zeiss dated a couple months later in November of 2016, and this is after

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the fee has been awarded by the Court I believe in which she is confirming the actual dollar figure of the allocation among counsel, and she writes Labaton's local counsel is the description of Chargois here at the 5-and-a-half percent of the gross fee.

So I think I've put in the submission that I sent to you last week all of the e-mails --

THE SPECIAL MASTER: You did.

MR. HEIMANN: This is a subset of the e-mails to show what contemporaneously in terms of written exchanges we were led to believe about Chargois and the role that he played and the significance of the role that he played in terms of the services both to the local -- excuse me -- to the fund and to the class.

And the next tab I have is Tab 3. I just have a subset again of the testimony that you all elicited from both Lieff and Dan Chiplock at their depositions --

THE SPECIAL MASTER: I'm curious about something here. Bob testified that had he known the true nature of the Chargois Arrangement -- I want to be careful because I don't have the e-mail in front

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of me or the deposition testimony in front of me -- but to the effect that had he known the true nature of it, he would not have agreed to share the fee.

MR. HEIMANN: I think that's correct. I think that's what he said.

MR. LIEFF: I think I said I would have gone to see Larry Sucharow.

THE SPECIAL MASTER: No, I thought you said --

MR. LIEFF: Go ahead.

THE SPECIAL MASTER: But whatever it is, what would the firms -- you're the counsel to the firm. What would the firm's institutional response have been back at this time?

MR. HEIMANN: Okay. So you've asked a number of folks what they would have done had they known things that they didn't know, and I can answer that question, but it's speculation. I mean really.

We probably would have been unhappy about the -- well, strike that. We would have been unhappy that we had not been told about the -- given the full state of affairs with respect to the relationship when we were asked to share in Labaton's contractual obligation to Chargois. And I

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imagine we would have questioned why we should be agreeing to pay a share of that Labaton obligation.
THE SPECIAL MASTER: That's my question. What would the firm's reaction have been?
MR. HEIMANN: Well, I think -- I think -- but, again, this is hindsight -- that that would have been our reaction.
I don't know that I can go any further to how things would have worked out 'cause I don't know now what -- if Bob had gone to Larry and said, look, this wasn't what we bargained for; we thought you had a true local counsel who was actually doing work and contributing, and it turns out that all this is is the guy that got you gig, and we don't think we should be sharing any part of that, I don't know, maybe Larry would have said you got me; you're right, you shouldn't so don't worry about it.
MR. LIEFF: Yes, I would have said we're paying $800,000 towards this guy, our share.
MR. HEIMANN: Bob is sensitive about those sorts of things. But, you know, we weren't told --
THE SPECIAL MASTER: I think it was actually more but I don't want to --

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MR. HEIMANN: It was a lot of money.
THE SPECIAL MASTER: Yeah, it was.
MR. LIEFF: It was about 20 percent of 4 million approximately but...
Maybe 25 percent, whatever it was, yeah.
THE SPECIAL MASTER: Anyway...
MR. HEIMANN: So I don't need to walk through all his testimony. I mean Lieff was asked, and he said -- you said how was Chargois described, and he said it was represented, yes, by Bradley that he was local counsel, and it sounded like he was taking care of the situation in Arkansas as typically a local counsel would, or that was my understanding.
Then he was asked -- I don't recall whether it was you, judge, or Bill that asked him did you have any concerns beyond the financial aspect about the situation, and he said it's hard to answer this without reference to the timeframe. Back in the early days when I first heard about it, as I now know it was April 2013 and then 2015, I didn't think too much about it because we had a very similar situation in the companion -- I call it the companion but in the Bank of New York we had local

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counsel in Ohio dealing with the fund. I thought this was local counsel in Arkansas dealing with the fund.
So not only did we have the general knowledge in the field of how local counsel serves pension funds in this kind of capacity, but we actually had an immediate experience with the companion cases Bob calls it where we had local counsel for the Ohio fund that we represented as lead counsel in that case who the Ohio attorney general had selected to serve as local counsel for the Ohio fund.
And then again Bob was asked what was your firm's agreement to share the payment. He answered lead counsel said to the other two class firms that we have a local counsel in Arkansas helping us in Arkansas, later saying I think they were doing a good job or something, and that we have to compensate them for what they have done.
So, again, that's the mindset that Lieff had, and Chiplock -- as we'll come to in a moment -- was that this was a lawyer who was doing important and valuable work.
And then I have the declaration -- this

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is just to back up because Bob at his deposition couldn't recall what the magnitude, although he thought it was comparable, of the fee that went to the Ohio local counsel was, but, as it turns out, it was in line with this. The fee awarded by Judge Kaplan to the Ohio local counsel was just a shade under 4 percent of the total fee there in that case.
The last point, paragraphs 5 and 6 of the declaration, is just to drive home the point that in our experience when we serve as lead counsel in class litigation, we take on the responsibility to review the allocation of fees among the plaintiffs' counsel that worked on the case. Sometimes that's a handful. Sometimes it's a great many --
THE SPECIAL MASTER: Could I ask this question: You were lead counsel in the BNY Mellon case, correct?
MR. HEIMANN: The firm was, yes.
MR. CHIPLOCK: Co-lead.
MR. HEIMANN: Co-lead, right.
THE SPECIAL MASTER: And in that case you had a local counsel in Ohio?
MR. HEIMANN: Yes.

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THE SPECIAL MASTER: Was there a fee-sharing agreement in which other firms agreed to share the local counsel's fee?
MR. HEIMANN: No. Not in that sense. You remember Judge Kaplan handles fee allocations a little bit -- a lot differently than other judges do. So in that case when it comes to fee allocation time, the lawyers -- and there were several of them. I actually have the fee award here somewhere.
There were more -- there were at least half a dozen firms including Mr. McTigue, by the way, as it turns out.
THE SPECIAL MASTER: Yes.
MR. HEIMANN: And the fee submission before Judge Kaplan while it requested a percentage fee award, which Judge Kaplan actually awarded, it also included the lodestar submissions and a proposal to the judge about what kind of multiplier should be applied to each of the firms based on their lodestar submission.
THE SPECIAL MASTER: Was your local counsel on that fee petition?
MR. HEIMANN: Yes, he was. And I have -- that's the fee award from that case. And the

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blank -- I scribbled on my copy. So if you go to the last page of it, you'll see --
MR. CHIPLOCK: Those are redactions.
MR. HEIMANN: Those are redactions 'cause I scribbled on it. I didn't have a clean copy with me. But you can see what Judge Kaplan did. He said plaintiffs' counsel are hereby awarded attorneys' fees in the amount of 83.75 million which is a percentage award from the 320- or 30-million-dollar settlement.
MR. CHIPLOCK: 335.
MR. HEIMANN: But then he goes on to say that attorneys' fees awarded hereby are allocated among the relevant counsel as follows based on the multipliers applied to each firm's lodestar as proposed by lead counsel. So the multipliers were proposed by co-lead counsel.
THE SPECIAL MASTER: Was Murray Murphy the lead counsel there?
MR. HEIMANN: Yes.
THE SPECIAL MASTER: So Lou -- Judge Kaplan was fully apprised that your local counsel was going to get $3,154,000?
MR. HEIMANN: Yes.

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MS. LUKEY: But there's a rule.
MR. LIEFF: What?
MS. LUKEY: There's a local rule.
MR. HEIMANN: Well, look, Joan's referring to local rule. The local rule doesn't have anything to do with how Judge Kaplan handles his fee award situations.
I mean the local rule does require that the fee allocation be disclosed in that district.
MR. CHIPLOCK: Actually, at that time that local rule I don't think was in effect.
MR. HEIMANN: Really?
MR. CHIPLOCK: Yeah, I think what Judge Kaplan --
MR. HEIMANN: Judge Kaplan would require it in any event and does require it.
MR. LIEFF: But in that case we were lead counsel and were supposed to do this --
MR. HEIMANN: We got that, Bob. We got that.
I wanted to come back and finish off the point --
THE SPECIAL MASTER: Please, go ahead.
MR. HEIMANN: -- when you interjected

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with the question.
And this is in paragraphs 5 and 6 of Lieff's declaration. When Lieff Cabraser serves as lead counsel or co-lead counsel we take on, as we understand is typically the case, responsibility for seeing about the allocation among plaintiffs' counsel, and that's expected. That's one of lead counsel's typical functions, and one of the things that we're sensitive to is lawyers who are going to share in the fee don't get too much and don't get too little.
And so we have to assess not just the lodestar -- that's a relevant factor most of the time in fee allocations -- but all of the more subjective factors that go into what the value brought to a case. And we as lead counsel then expect to be able to justify any of the allocations that are made, and typically particularly if we have an institutional investor as the class representative, we share that information with the class representative.
Now I know Professor Rubenstein basically said that that's not universally the case, and I'm sure he's right when you have class counsel

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-- class representatives as you often do in all sorts of class actions that are individuals not sophisticated and so forth.

THE SPECIAL MASTER: Do you believe that's best practices, Richard?

MR. HEIMANN: No question. Certainly recall with an institutional investor and particularly when you're talking about a local counsel whose primary value to a case was the work that the local counsel did with respect to the class representative.

THE SPECIAL MASTER: And that therefore the client would be very aware of the local counsel because that local counsel was interacting with the client?

MR. HEIMANN: Exactly, but the important point is -- or a part of the important point is that the fund would be very familiar with what value that local counsel brought to the fund service as the class representative.

So it's not just a matter of hours or even the particular work that they did in terms of work, but it's also what -- of what value was that lawyer to the fund in performing and discharging its

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responsibilities as the class representative.

The rest of the section is really Dan Chiplock's both testimony and declaration, and I think perhaps the second of these clips from the deposition is particularly important because he's asked did you interpret that description of he assisted as meaning he took an actual --

THE SPECIAL MASTER: Where are you, Richard?

MR. HEIMANN: I'm on the second page of the Chiplock excerpts from deposition 115 to --

THE SPECIAL MASTER: Where are we? Which section?

MR. HEIMANN: We're in the same tab but just a couple pages forward.

THE SPECIAL MASTER: Still in 3?

MR. HEIMANN: Yes.

THE SPECIAL MASTER: Oh, I see.

MR. HEIMANN: In the first excerpt from 101 to 103 he testified -- Dan testified as to the Ohio situation and the fact that he assumed that this situation is similar.

And then you asked him or Bill asked him did you interpret the description that was given to

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you about Chargois as meaning he took an actual active role in those cases.

And he said I actually assumed that, yes; that it was some kind of a role -- some kind of an assistance offered by a local counsel, and for that assumption I based it on my own experience, my own recent experience in the BNY Mellon case.

And then the next section is just excerpts from the declaration we recently submitted in which Dan elaborated, if you will, on what happened with respect to the BNY Mellon case, and I think the significant thing here is that what Dan is testifying to here is that we as lead counsel or co-lead counsel in the BNY Mellon case, and as the attorney for the Ohio fund -- 'cause that was directly Lieff Cabraser to Ohio -- we knew what the Ohio local counsel was doing because we were directing the Ohio local counsel as to what tasks to take on and what work to do.

And even our co-lead counsel, Kessler Topaz in that case, didn't really have transparency into what our local counsel was doing in Ohio, and the several other firms that were involved in the case had virtually no understanding, including

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Thornton, of what the Ohio local counsel was doing.

So the point is it wasn't any surprise to Dan that we didn't have any greater transparency in the State Street case as to what Labaton's local counsel was doing than Thornton had in the BNY Mellon case as to what our local counsel was doing in Ohio.

So that's all of the testimony that I have for this presentation, but I want to go to one other aspect of this.

The question has been raised by you all, and some others actually, wasn't there something weird about the fact that Chargois was an attorney of record in the case and that there wasn't any lodestar submission by Labaton on behalf of Chargois when it came time for the fee petition. And the answer to that is really --

THE SPECIAL MASTER: Or --

MR. HEIMANN: Pardon?

THE SPECIAL MASTER: -- just a disclosure of any kind, a lodestar of any kind of disclosure.

MR. HEIMANN: Right, but the key -- the point I'm keying on is the identity of Chargois by

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name, why that wasn't -- why it wasn't surprising to us that he wasn't attorney of record and that he didn't submit a lodestar under his own name.

And that comes back to this notion that I got into a few minutes ago about how competitive the field is in the plaintiffs' securities bar for clients like Arkansas and how important the local counsel for funds like Arkansas can be in the plaintiffs securities firm getting the business of the pension funds.

Local -- the identity of your local counsel in the minds of some plaintiffs' firm is proprietary. They don't want their competitors learning who they have who has influence with Pensions Fund ABCD.

THE SPECIAL MASTER: But my question to you is a little sharper. Should the fact that he was not disclosed anywhere in the fee petition, neither in the lodestar, in narrative, in break-out of any kind, should that not have disclosed or put you, the Lieff firm, on notice?

MR. HEIMANN: Of what?

THE SPECIAL MASTER: That maybe he didn't do anything.

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MR. HEIMANN: No, no. I'm sorry. No.

THE SPECIAL MASTER: Well, you guys when you have a local counsel, as you did in BNY Mellon, you put him on the fee petition.

MR. HEIMANN: That's our general practice, that's correct. Well, I don't know about that. It depends on how much work they did. Some local counsel don't do anything, okay.

THE SPECIAL MASTER: This guy was getting 4.1 million dollars.

MR. HEIMANN: Five percent. I'm telling you, judge, you know, when we served as local counsel -- I'm going back to this. I know it's a little different 'cause I'm talking about forum local counsel; but when we agree to serve as local counsel, and we do it on a percentage basis instead of a lodestar basis, I don't expect to do much of anything, and I don't do much of anything.

I may go to court --

THE SPECIAL MASTER: So when you saw the fee petition and he wasn't -- he, Chargois, was nowhere to be seen on the fee petition, that should not have raised a red flag, a suspicion?

MR. HEIMANN: I mean in retrospect sure,

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but, you know, not based on what we knew at the time. We first learned of the lodestar petition after the fee petition is filed, right. We don't see it going in. We don't have any control over it. That's lead counsel's responsibility.

And they make the decisions of who goes in that petition. I mean I heard Lynn Sarko say that his local counsel didn't get on the fee petition because Labaton made a judgment that it wasn't worth putting him on.

Now again, no, I'm just -- I'm not willing to accede that that is a red flag in what we thought what we were told and our experience in the field --

THE SPECIAL MASTER: Well, let me pursue that because I believe the reason they were told not to put him on the petition was that their local counsel was under $10,000, and Labaton made the determination that that was de minimis and shouldn't be on.

MR. HEIMANN: I assume that's the reason.

THE SPECIAL MASTER: Chargois was not de minimis. He may have been -- it may have been well

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within what local counsel are paid, but he was not de minimis.

MR. HEIMANN: I agree.

THE SPECIAL MASTER: So he got 4.1 million dollars. Should that not have been a red flag somewhere in your firm to say, hey, you know, why is this guy not on the fee petition?

MR. HEIMANN: Well, the reason I just told you -- I mean Rubenstein gave you a number of reasons why that might be the case. I'm giving you another one that I know of from our firm's experience.

That is that Labaton did not want to disclose to the world who their local contact was for their Arkansas Fund client. And that was testimony -- I don't need to speculate about that. Chris Keller testified to that effect. And I've got -- if you look at Tab 4 --

THE SPECIAL MASTER: They were afraid of someone poaching 'em.

MR. HEIMANN: Exactly. And so it wouldn't have been of any surprise. I can't say that Dan or Bob actually thought this at the time, but I damn sure would have. I would have understood

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that they didn't want to disclose to us or their other competitors in the field -- well, narrow it down to us because we knew at the time because they had to tell us when they got us to pay a share of it, but I can understand why they wouldn't have wanted to have that name in the public domain where the Bernstein Litowitz and the Kessler Topaz's and the Laraque firm and the old Milberg firm would have gone rushing down to buy dinner for Mr. Chargois.

You know, that -- it's a vicious, cut-throat industry. And it's just not a surprise. It is not -- it was not a surprise to me.

THE SPECIAL MASTER: Judges are blissfully unaware of this.

MR. HEIMANN: No, some of them are. Some of them know it full well.

THE SPECIAL MASTER: I suppose that's true. Okay.

MR. HEIMANN: Anyway, that is my -- what I have to say on the subject of what we knew, and I think it can -- I'm confident that the evidence supports factually each one of the hypothetical points that led Professor Gillers to say if those were true, then in his opinion Lieff Cabraser did

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not violate its ethical responsibilities in any respect with regard to the disclosure or non-disclosure of Chargois in this case.

And that I submit is the correct conclusion from the facts as they appear in this litigation.

I can go on if you'd like to address this other issue having to do with --

THE SPECIAL MASTER: I only have one more question on this.

MR. HEIMANN: Okay.

THE SPECIAL MASTER: What, if anything, do you want me to do about it in my report and recommendation?

MR. HEIMANN: You mean not just as to us but as to the other two firms?

THE SPECIAL MASTER: Well, I think you can only answer as to you.

MR. HEIMANN: I think you should tell Judge Wolf that you've reviewed all of the record, and you understand that Lieff Cabraser was of a good faith understanding as to Mr. Chargois' role as being legitimate, and that the fee that he received, at least insofar as Lieff Cabraser had insight into

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it, was reasonable, and that Lieff Cabraser did not violate any ethical obligations in respect to our conduct.

THE SPECIAL MASTER: That's a partial answer.

MR. LIEFF: A what?

THE SPECIAL MASTER: That's a partial answer.

MR. HEIMANN: What more are you looking for?

THE SPECIAL MASTER: Do you want me to recommend any remedial action? Going to put you on the spot here because I have to be on the spot.

MR. HEIMANN: Yeah, yeah. You mean financial? Is that what you're talking about?

THE SPECIAL MASTER: Yes.

MR. HEIMANN: You know --

THE SPECIAL MASTER: Look, if I don't ask the indelicate questions here, folks, and I do something, you're going to say, well, we didn't get a chance to address it.

MR. HEIMANN: I -- we're not happy with what's happened here. We're not happy that we weren't fully informed in real-time about the

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Chargois and that we ended up paying a very large sum of money to him that we probably would have had some serious questions about had we been fully informed.

We're not happy about the fact that -- I'm going to come to it in a moment -- how much this whole process has cost us. But we do business with these other folks. We've got a good relationship with Thornton. We've had a good relationship with the Labaton firm. They're a fine firm with really an excellent reputation and excellent body of work.

So I just -- I can't -- I cannot tell you that we think -- that we advocate -- I cannot tell you that we advocate for compensation to be paid to us by either of those firms. I think that's what you're asking.

THE SPECIAL MASTER: It's among -- it's within the question that I asked. One of the things I have to decide is how to make this come out right as it should have come out. And within that question is should there be a reallocation. That's a question I've got to decide what to recommend.

And very late in the game we hear that Lieff didn't know anything about the true nature of

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the Chargois Arrangement. What do I do about it, if anything? That's a question I have to decide whether to make a recommendation.

MR. HEIMANN: I guess --

THE SPECIAL MASTER: If you want to think about it --

MR. HEIMANN: No. I've thought about it already, and I think the answer is that as I've given it to you.

I don't think -- there may be disagreement on this -- on this side of the table. I don't think that we, Lieff Cabraser, and me as a named partner in the firm -- active named partner in the firm want to be in the business of seeking recompense from either of the other two firms in this matter.

Now I know we have -- even you and I have a disagreement over the propriety of what happened here. I don't necessarily share your view that there was a requirement that the Chargois deal be disclosed to the Court. Our expert witness testified that there wasn't any legal requirement in the absence of a request from the Court.

So I'm just -- I just can't go there. I

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just can't go there.

MR. LIEFF: Could I say something?

THE SPECIAL MASTER: Should there have been a requirement -- should it have been disclosed to you?

MR. HEIMANN: I think that the Labaton should have told the firms that they were asking to share in that obligation what the true nature of the obligation was.

THE SPECIAL MASTER: Should it have been disclosed to the ERISA lawyers?

MR. HEIMANN: No. The ERISA lawyers have no business -- they have no business in that. Lynn Sarko said it right when he was talking about the Department of Labor. It was none of their business.

THE SPECIAL MASTER: You were straining at the bit.

MR. HEIMANN: He's not speaking for the firm.

MR. LIEFF: I was straining at the bit. Richard was going like this. Is he able to instruct me not to speak or what --

MR. HEIMANN: You can speak, but you're

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doing so on your own behalf.

MR. LIEFF: Oh, of course.

THE SPECIAL MASTER: Anybody here can say anything they want to me. This is the time for you folks to tell me.

MR. LIEFF: WELL, I would say this on my own behalf.

THE SPECIAL MASTER: By the way, I don't see anybody restraining themselves.

MR. LIEFF: No, no, but I'm speaking as of counsel to this firm. Richard can speak as an active -- as he put it, an active partner in the firm.

As of counsel in this firm and as someone who participated in this case, I'm not very happy that I've had to come out of pocket for this investigation because I don't share in the firm payments. And, yes, I think that we should get back our money that we contributed to pay Mr. Chargois who didn't do what we thought he was doing. I think it was wrong.

I think that's what you're getting at.

THE SPECIAL MASTER: That's what I'm getting at.

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MR. LIEFF: Thank you.

THE SPECIAL MASTER: Do you want to change your answer, Richard?

MS. LUKEY: No.

MR. HEIMANN: No.

THE SPECIAL MASTER: Okay. Well, this is very interesting. What else, Richard, if anything? Don't feel obligated.

MR. HEIMANN: No, no. Unless you have further questions, I'm done with that subject.

THE SPECIAL MASTER: Look, in all seriousness, these are hard questions, and I'm fully sensitive to the sensitivities as between the firms, and you guys have to work in the same space, and sometimes you're competitors, and sometimes you're allies. I'm fully sensitive to all of that.

Unfortunately, I have to make a recommendation. And if I don't give you an opportunity to weigh in, you would rightly I think say we didn't have a chance to address it.

MS. LUKEY: Well, we haven't addressed that. We have not addressed that issue.

THE SPECIAL MASTER: I'll give you a chance, Joan.

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MS. LUKEY: We didn't in the written submission either, judge. I didn't know it was on the table --

THE SPECIAL MASTER: Well, remedies are always on the table.

MS. LUKEY: No, I understand that, but I just wasn't aware it was going to be raised, and the firm hadn't raised it --

THE SPECIAL MASTER: I'm certainly considering it in the context of the ERISA lawyers; and, frankly, I'm considering it in the context of the Lieff firm, at least to the extent that they have been involved in this investigation based on an incomplete knowledge of all of the circumstances, at least -- at least as to this part of it now.

MS. LUKEY: At an appropriate moment I'd like to respond, but I don't want to interrupt Richard if he's moving onto his second issue.

MR. HEIMANN: Let me turn to the other issue --

THE SPECIAL MASTER: I think everybody knows I am in my report and recommendation and best practices, I am going to be looking for ways to make this come out right. Putting Humpty Dumpty back

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together again.

I think everybody in this room would agree that if we could all back go and redo this, lots of things would have been done differently.

MS. LUKEY: Yes. I just had never heard anyone from the Lieff side suggest that they thought that --

THE SPECIAL MASTER: Well, to be honest, Joan, I hadn't thought about until Richard originally made the point and gave me this stack of documents (indicating).

But I think I would not be thorough in coming to some conclusions on recommendations on how to make this come out right in not considering it. That's why I was interested.

MS. LUKEY: I'm not suggesting it's improper for you to consider it. I'm just saying it's something we hadn't considered because it had never been suggested to us within the class counsel thing.

And when he's done I do have to tell you something that I think bears on the local counsel issue.

THE SPECIAL MASTER: Okay.

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MR. HEIMANN: The other issue that I wanted to address has to do with the contract lawyers. And specifically you asked -- addressed the justification or rationale for how firms billed off-track associates including the differences, if any, between the firms billing of off-track attorneys and contract attorneys employed by a third-party agency and any legal decisions specifically addressing the propriety of marking up the hourly rates charged staff attorneys or contract attorneys in a fee petition submitted to the Court.

THE SPECIAL MASTER: Let me just say feel free to address any part of that that you want.

But as I think I indicated to Joan, I'm much less concerned about the marking up of the staff attorneys than I am of the agency attorneys, but I will say Judge Wolf may have a different view.

MR. HEIMANN: So my first position is that the notion of marking up is fundamentally wrong to begin with. There's no marking up. If by that you mean that one looks to the hourly in this case cost to the firm of the contract lawyers and what the firm bills those lawyers for purposes of lodestar, there's just no support for that as a

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notion -- I shouldn't say no support -- there is little if any support as that for a notion.

And the same thing true is, even more so, of the idea of distinguishing between contract attorneys that are employed and paid directly by the law firm and those who are employed by an agency and paid by an agency. There is no case that I'm aware of or any other authority that supports there being a distinction between those two --

THE SPECIAL MASTER: So let's talk about one case -- and I haven't read it in a while, but in one case Judge Stein, the Citigroup case, what he seemed to do was to look at all of them as a group and reduce all of them as a group.

MR. HEIMANN: What Judge Stein did --

THE SPECIAL MASTER: And I'm not sure I agree with him on that because, as I've already indicated, I see in this case a much -- a much more impactful relationship between a firm and its staff attorneys and agency attorneys. Much more --

MR. HEIMANN: Say that again.

THE SPECIAL MASTER: A much more impactful relationship between its own staff attorneys and agency attorneys.

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MR. HEIMANN: I don't know what that means.
THE SPECIAL MASTER: Significant. A much more significant --
MR. HEIMANN: Relationship?
THE SPECIAL MASTER: Yes. In the following sense: I think we learned in this case that your firm pays benefits to your staff attorneys. We learned that your firm has ongoing relationships with these staff attorneys, and that in many of the instances the fact that they are -- the fact that they are staff attorneys as opposed to associates is simply a lifestyle choice for these staff attorneys.
That's not the case with the lawyers that you retain for a given project on a one-shot basis from an agency.
MR. HEIMANN: I disagree.
THE SPECIAL MASTER: Okay. How?
MR. HEIMANN: There are some aspects of that that are true. We don't pay benefits of the sort that we pay to employees as with contract lawyers.
THE SPECIAL MASTER: Hm hm.

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MR. HEIMANN: First of all, they perform exactly the same functions. And, secondly, they come and go. They are -- if a staff attorney is there over more than one case, it's just gratuitous because if there hadn't been a second case, they would have been gone.
Secondly, it is not at all infrequently the case that an agency lawyer becomes a staff attorney.
THE SPECIAL MASTER: Could I ask this question? Malpractice insurance. Your firm makes a mistake or a staff attorney makes a significant mistake, your malpractice coverage covers that --
MR. HEIMANN: I hope so.
THE SPECIAL MASTER: -- for staff attorneys.
MR. HEIMANN: I hope so.
THE SPECIAL MASTER: You hope so. But not for the agency --
MR. HEIMANN: I'm not sure that's true. You'd have to ask Steve Fineman about that. I would have assumed that our malpractice coverage would cover any lawyer that we hold out as a lawyer doing work for the firm and representing the firm. Agency

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lawyers --
THE SPECIAL MASTER: My understanding -- and if somebody wants to correct that understanding, I'd be happy to have it -- is that the agencies themselves get malpractice insurance for their agency lawyers.
MR. HEIMANN: Could be. I will ask my managing partner and see what his answer is to that question.
The real key question is not whether the agency has their own malpractice insurance, it's whether our insurance covers it would seem to me.
THE SPECIAL MASTER: Yes. Yes.
MR. HEIMANN: Yeah. So let me -- can I come back to -- you asked for cases, and I've given you -- I've got three cases in my binder that I'd like to walk through.
THE SPECIAL MASTER: Is that Tab 7?
MR. HEIMANN: That's Tab 5.
THE SPECIAL MASTER: Ah, all right.
MR. HEIMANN: And these are all relatively recent cases, and it includes the CitiGroup case which I'll come to last.
Starting with the AOL/Time-Warner case,

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this is from Judge McMahon in the Southern District of New York, and I've highlighted on page 18 of this printout starting at the bottom the point that he makes -- she makes -- excuse me -- that I want to emphasize, and that is the Court should no more attempt --
THE SPECIAL MASTER: Where are you, please?
MR. HEIMANN: I'm at Tab 5. The AOL/Time-Warner.
THE SPECIAL MASTER: Oh, the AOL/Time-Warner case.
MR. HEIMANN: Second page. It should be highlighted for you.
MR. CHIPLOCK: These are excerpts. These are not the entire case file.
THE SPECIAL MASTER: Ah, okay. There it is. Got it.
MR. HEIMANN: This has to do with the question of whether or not from a conceptual standpoint it's appropriate to try and mark up the cost number to a billing number.
And what Judge McMahon said is the Court should no more attempt to determine a correct spread

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between the contract attorneys' cost and his or her hourly rate than it should pass judgment on the differently between a regular associate's hourly rate and his or her salary. And she cites a ABA opinion supporting that proposition.

THE SPECIAL MASTER: Could I ask is it clear in this -- I haven't read the opinion.

Is it clear in this opinion that when she refers to, quote, contract attorneys she's referring to agency attorneys and not staff attorneys?

MR. HEIMANN: No. She makes no distinction between the two. I'm going to come to Judge Stein's opinion where he's talking about agency lawyers exclusively, but I'll come to that later. But I'm going to go on.

She then writes: "The ultimate test in Goldberger's and Arbor Hill's marketplace is what a reasonable client would pay for the individual's time. Contracted personnel are now a feature in the legal community. Reimbursement for these personnel is consistent with the second circuit's endorsement of market-driven compensation."

And that, as I will come to in a moment,

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is how we do it and have done it.

Next I go to the Whirlpool case. This comes out of the central district of California from October of 2016. And if you'll go to the second page, we start there. I've got it highlighted again.

"The determination of reasonable hourly rate is not made by reference to the rates actually charged the prevailing party but, rather, by reference to the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity." So the same concept.

But now if you go over to the next page -- this is page 12 of the opinion -- you'll see that this is actually a case that we were involved in, Lieff Cabraser was involved in. And you'll see that the blended rate for contract attorneys who did document review in this case was a little over $400 an hour.

And now to the next section of the opinion --

THE SPECIAL MASTER: Hang on. Where is

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that, Richard?

MR. HEIMANN: It's on the left side -- it should be highlighted.

MR. CHIPLOCK: Their copies aren't highlighted.

MR. HEIMANN: Why aren't they highlighted?

MR. CHIPLOCK: They're case printouts. Sorry.

MR. HEIMANN: Ughh, sorry. I thought they were highlighted.

THE SPECIAL MASTER: Oh, I see. Here it is. I got it.

MR. HEIMANN: You see in particular defendants challenge the fees sought, blah, blah, blah. The blended hourly rate of $421.60 for lawyers who were involved in -- contract lawyers who were involved in document review.

We now want to go over to the next column starting at the top where it says contrary to defendants position. It goes arguably -- and this is the distinction that we tried to draw early on, but I didn't have a case to give you the support. The difference between what a document review lawyer

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does when he's working for a defense firm producing documents and what a document review and analysis consists of when it's a plaintiffs' firm reviewing documents produced by a defendant in complex litigation. And this is what the judge is talking about here.

"Arguably when a party needs to conduct basic document review to respond to voluminous discovery requests, a task that is typically limited to 'checking the box' quote, for relevance and privilege, it might make sense to engage in agency offering a pool of temporary contract attorneys. The same is not true, however, when a small plaintiffs' firm engaged in high-stakes litigation needs to review voluminous disclosures by well-healed corporate defendants, a task that to ensure critical evidence is not missed requires attention to detail and a sophisticated understanding of the facts and the law at issue in the case. Given class counsel's experience prosecuting similar complex civil cases, class counsel..." -- and he's talking about us I believe -- "...class counsel are among the most capable and experienced lawyers in the country in these kinds of

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cases, and the ninth circuit's admonition that the Court may not attempt to impose its own judgment regarding the best way to operate a law firm, the Court will not second guess class counsel's staffing decisions in this case."

And that's the point I made some time ago, and then I think that we solidified when we had an opportunity to meet and talk with our staff attorneys --

THE SPECIAL MASTER: So the question is not second guessing class counsel's staffing decisions; the question is how the firm gets compensated -- when there's a successful result whether by settlement or by verdict, how that firm gets compensated for agency attorneys.

MR. HEIMANN: Next paragraph.

In any event, regardless of whether a task is performed by a law firm partner, a contract attorney or a paralegal, the reasonableness of the fees depends on the difficulty and skill level of the work performed and result achieved, not upon -- I'm paraphrasing now -- not upon whether they're an agency lawyer or non-agency lawyer. The legal community now commonly uses contract attorneys.

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There is not the slightest justification to downgrade their billing rates or not apply a multiplier to them.

THE SPECIAL MASTER: Well, I may just disagree with this judge, whoever it is. Who is this?

MR. HEIMANN: One other thing because it's --

THE SPECIAL MASTER: It might be my friend Chuck Pryor.

MR. SINNOTT: Fernando Olguin.

THE SPECIAL MASTER: I don't know Fernando Olguin.

MR. HEIMANN: He's actually quoting from a Judge Tiger from the northern district there. Let me go on with the last point 'cause I think it's important to us in the plaintiffs' world.

With respect to difficulty, the Court does not agree that document review is menial -- excuse me -- menial or mindless work in complex civil litigation such as the incident case. It is a critically important and challenging task.

With respect to skill while defendants argue that the Court should consider class counsel's

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first-level reviewers as contract attorneys -- well, that doesn't -- that's not important. But the last point was.

Now let me come to this case that's the next one in my thing that's from the CitiGroup litigation. And this is Judge Stein's -- actually, Judge Stein had two opinions that come out of CitiGroup. This was the equity case, and the next opinion, which I haven't given you, is the Bond case, but there's an important point with respect to the Bond case I'll come back to in a moment.

But if you go over to page 21, the subheading reasonable hourly rates, and you go down to the second full paragraph -- now this has to do with this idea of agency lawyers.

THE SPECIAL MASTER: Hm hm.

MR. HEIMANN: Judge Stein wrote: The Court's focus is on the proffered hourly rates for the services of contract attorneys. Attorneys who are not permanent employees of the law firm are hired largely from outside staffing agencies are not listed on counsel's law firm website, etcetera.

So he's talking about primarily the very lawyers you're talking about, agency lawyers. And

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there is nowhere in this opinion that you will find he draws any distinction between how the rates should appropriately be set for those lawyers as opposed to non-agency lawyers.

THE SPECIAL MASTER: So are you urging me to adopt Judge Stein's positions on this case?

MR. HEIMANN: Yeah, in principle but not his conclusions. And why do I say --

THE SPECIAL MASTER: But don't you think -- I mean it's been a long time since I've read this. I read this at the beginning of this case.

MR. HEIMANN: Yeah.

THE SPECIAL MASTER: Don't you think what he was doing here is sort of homogenizing their rates, and he doesn't -- I don't recall him saying it, but he does at some point talk about blended hourly rates and that sort of thing and decides that he's going to give a much lower rate for these staff attorneys/contract attorneys.

MR. HEIMANN: Than what was requested.

THE SPECIAL MASTER: Than what was requested.

MR. HEIMANN: Yeah, yeah. And I'll come to it in a moment. He picked a number out of his --

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he picked a number out of midair. He had no basis for the $200 figure that he came up with, and he basically acknowledges that in his opinion, and then -- and this is why I say the next opinion is important.

In the next opinion, which is a few months later, he picked a number that was like a third bigger. It was $300 or $350.

THE SPECIAL MASTER: Is that for the same lawyers?

MR. HEIMANN: No. I think -- I'd have to go back and look at the case -- well, they were the same lawyers in the sense they were contract lawyers. That's what he was talking about in both cases, the lawyers who did the document review and analysis in the case.

But I don't want to prolong this, judge, but if you look at page 22 --

THE SPECIAL MASTER: It's okay. I'm not going to make my 4:45 plane anyways.

MR. SINNOTT: Don't count on that.

MR. HEIMANN: There are two points he made --

THE SPECIAL MASTER: There are no seats

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on that anyway.

MR. HEIMANN: There are two points he made in the opinion that are important in terms of at least Lieff Cabraser in this case. The first at the top of page 22 he's talking about the difference between rates between for contract attorneys and associate attorneys.

THE SPECIAL MASTER: Where are you reading now, Richard?

MR. HEIMANN: Top of page 22. The pagination is in the bottom right corner of the pages.

THE SPECIAL MASTER: Got it. All right.

MR. HEIMANN: What he says here is he says -- first there are a couple of small points but important ones.

In the first paragraph he says, First, courts routinely reject claims that contract attorney labor should be treated as a reimbursable litigation expense. We don't have that issue here I don't think anymore, although one of your consultants was an advocate of that and is an advocate of that. But that's been universally rejected.

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I think there's one judge in the country who actually thinks that's a good idea.

Then he goes on to say -- now he's quoting the AOL/Time-Warner thing that I just mentioned a moment ago. The Court should no more attempt to determine a correct spread between the contract attorneys' cost and his or her hourly rate that it should pass judgment on the differential between a regular associate's hourly rate and his or her salary.

So that's again the notion of saying, well, if you're only paying him $60, it's obscene to bill; em out at 400. That's a nonsensical approach to try and figure out what a reasonable hourly rate for charging purposes is.

But now I want to get to the next point.

THE SPECIAL MASTER: Didn't Judge Stein also find that contract attorneys and the work that they do are not equivalent -- are not factually equivalent to associates? Something like that?

MR. HEIMANN: No, what he said was -- and I'll come to that. What he actually said was in the marketplace the market would not be willing to pay contract attorneys' rates that are the

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equivalent of associates rates.

It's not a matter of whether or not the work was equivalent. It was simply a matter of the marketplace, and that's the point of the opinion. So, for example, if you go down just about halfway down this page, you'll pick up with a sentence that reads: "But courts seem to agree that a contract attorney's status as a contract attorney rather than being a firm associate..." --

THE SPECIAL MASTER: Where are you reading? Are you still on 22?

MR. HEIMANN: I'm on page 22. There's a footnote 6 in the middle of the page. And then there's a paragraph that begins with the words "lead counsel's own position."

THE SPECIAL MASTER: Yes.

MR. HEIMANN: Then if you just keep following there's a footnote 7, and immediately after footnote 7 the following sentence appears: "But courts seem to agree that a contract attorney's status as a contract attorney rather than being a firm associate affects his market rate."

And he cites one case for that proposition. I disagree. That's not true in my

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book --
THE SPECIAL MASTER: So if I were to adopt Judge Stein's approach, I should not fully credit the staff attorney rates at associate rates?
MR. HEIMANN: If you followed -- if you followed his approach, yes, you would conclude that a fair market rate for a contract attorney is not the same as the rate for an equivalent associate attorney. That's what -- that's the conclusion that he reaches.
The second point that he makes -- and that's at the next page, page 23, and I won't read it; I'll just tell you what it is is that it's the burden on the plaintiff or the plaintiff's counsel to support the contract rates -- the rates that they're seeking through empirical data.
And he says in this case he concluded that the empirical data provided was not -- well, let me read the sentence 'cause actually it's important.
THE SPECIAL MASTER: Are you on page 23 now?
MR. HEIMANN: I'm at page 23 under the subheading paying clients negotiate a wide range of

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rates for contract attorney services.
He says to answer that question -- I'm on second sentence now -- the Court may conduct an empirical inquiry based on the parties' evidence or may rely on the Court's own familiarity with the rates if no such evidence is submitted.
Well, here there was evidence submitted in this case to you. So in this case the judge concluded that empirical evidence that was submitted was unreliable for one reason or another, and so he then went on and picked $200 an hour out of thin air as near as I can tell because he certainly doesn't support it with any empirical data of his own or any experience of his own.
And that is why I've given you at the end of this section the explanation from Steve Fineman actually. This goes -- now this addresses the first question. How did Lieff Cabraser set the rates for the, quote, contract attorneys who did the document review and analysis in this case. And what -- you probably don't remember this, it's such a fine point, but what Steve told you was -- in his deposition and in his answer to interrogatory that prior to 2016 we had been billing our contract

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attorneys out at comparable rates but for associates based on years of experience primarily.
So if we had a contract attorney with ten years of experience, we billed them at the rate that we billed our ten-year associates if we have any ten-year associates. We probably -- we don't but anyway...
But beginning in 2016 we concluded, just as Judge Stein concluded, that the market doesn't support that approach, and therefore we came up with a uniform rate for our contract attorneys that our investigation suggested was supported by the market that's $415 which is what we billed in this case for contract attorneys.
And so all of our contract attorneys were billed in this case, with one exception which was a mistake, at $415 an hour regardless of how much more experience than -- I should back up. The 415 rate was our rate for fourth-year associates.
We picked that based not because it was the rate for our four-year associates but, rather, because that's what our investigation showed the market rate for contract attorneys doing the kind of work --

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THE SPECIAL MASTER: Unrelated to the experience of the contract attorneys?
MR. HEIMANN: If they have less experience than a fourth-year associate, they get billed out at a lower rate. Almost all, if not all, of our contract attorneys at the time had considerably more experience than a fourth-year associate and in fact --
THE SPECIAL MASTER: When I say contract attorneys, are we still talking about agency attorneys?
MR. CHIPLOCK: Staff attorneys.
MR. HEIMANN: Both.
THE SPECIAL MASTER: I don't want to blur that distinction here. How do you decide what to bill out agency attorneys at? Same way?
MR. HEIMANN: Same way. No difference. They do the same work. They provide the same value. They -- to us it's about the same cost. Although I don't think that matters at all. And they have comparable experience.
And so we're billing out -- and we did in this case, and we do continuing today -- those attorneys at $415 an hour despite the fact that they

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have seven, eight, nine, ten years experience, graduated from Harvard, Stanford, Yale. That's the rate they get billed out at.

So that in my mind fully satisfies the Judge Stein concern about market rates for contract lawyers being systemically lower than market rate for full-time associate attorneys.

The other thing that I think is important in this case -- and this is at Tab 6 -- and I won't go through it in detail, but this is an excerpt from Professor Rubenstein's initial report in which he did do a serious investigation into the market for contract attorneys of the sort that we used in this case and the billing rates that we associated with them in this case and concluded based on his market analysis that our rates were fully justified by the market.

So bottom line, judge --

THE SPECIAL MASTER: I'll read this. I think I read this sometime ago.

MR. HEIMANN: I'm sure you did.

THE SPECIAL MASTER: Yeah.

MR. HEIMANN: But the bottom line is we were sensitive to -- I don't know if it was because

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of Judge Stein that we did this, but we were certainly sensitive to the notion that, A, you need to be able to support the rates that you're providing to the Court with market data, not just pulling it out of the sky, but with market data, and you need to be able to meet, at least in the second circuit if you're in front of Judge Stein, this distinction between contract attorney rates and associate rates.

But there is nothing in any of these decisions or in any other decision that I'm aware of that makes any distinction between how you set the rates for a agency contract lawyer and how you set the rates for a non-agency contract lawyer.

THE SPECIAL MASTER: Except common sense.

MR. HEIMANN: Except -- except Judge Rosen.

THE SPECIAL MASTER: Well, I would say this to you, Richard: I haven't done the math on this. You guys may well come out better under my approach than under Judge Stein's approach.

MR. HEIMANN: Well, I can tell you we've done the math.

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THE SPECIAL MASTER: Good. Tell me.

MR. CHIPLOCK: It's the one before.

MR. HEIMANN: Is it even in here?

MR. CHIPLOCK: Yeah, there it is. (Indicating).

THE SPECIAL MASTER: Where is it?

MR. CHIPLOCK: The last page of Tab 6.

THE SPECIAL MASTER: Tab 6?

MR. HEIMANN: Yeah, the very last page. Basically less than 20 percent --

MR. KELLY: Seven. Tab 7.

MR. CHIPLOCK: Last page of Tab 6.

THE SPECIAL MASTER: I got it. Okay.

MR. HEIMANN: For us anyway, less than 20 percent of the lodestar for our, quote, contract attorneys were for agency attorneys. So 80/20 split.

THE SPECIAL MASTER: So putting it another way, 80 percent of your staff attorney/contract attorney were staff attorneys?

MR. HEIMANN: Right.

MR. CHIPLOCK: Correct.

THE SPECIAL MASTER: As I said, then I'm right. You might well come out better with my

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approach than Judge Stein's approach because I'm assuming as a tentative conclusion going in as I said to Joan, that the work that was done by your staff attorneys was the same level of work that was done by lower or mid-level associates; and in addition to that you accepted all of the burden and risk and relationship issues including employment relationship issues, HR issues, the applicability of a panoply of state and federal law to the employment relationships for your state -- for your staff attorneys, but you don't have any of those responsibilities, risks or obligations on agency attorneys. And to me that is significant.

MR. CHIPLOCK: May I say something, Richard?

MR. HEIMANN: Speak up.

THE SPECIAL MASTER: Please.

MR. CHIPLOCK: So --

THE SPECIAL MASTER: Ask your lawyer.

MR. CHIPLOCK: Yeah, I just asked him. He gave me the okay.

So if you look on that page, it shows -- in terms of the relationship, it shows that at least four of those attorneys started out on an agency

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basis but transitioned to a staff attorney basis.
THE SPECIAL MASTER: Well, then we'll have to go through that and see because I do think, unlike apparently any other judge -- I don't know how extensively this has been written on -- I do think there is a significant difference where a law firm accepts all of the responsibilities that I've just called out and, look, we all know -- we're grown-ups here -- we all know that hiring somebody as an employee subjects a firm to much greater obligation, burden and risk than simply renting somebody to do a spot job as an independent contractor. And that's not insignificant in our world today. Not insignificant at all.
So while I applaud you and Labaton for having this stable of extremely well-qualified people and taking on all the burdens and risks and obligations both internally as to those relationships and under the laws and maybe malpractice risks, it just makes sense to me that there has to be a distinction.
I don't care what other judges say. I shouldn't say I don't care. I'll read what they say. But from a common sense perspective, there's a

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huge difference. Just a huge difference.
MR. HEIMANN: So let me close with Tab 7.
THE SPECIAL MASTER: That's my story, and I think I'm sticking to it.
MR. HEIMANN: I knew you were going to stick to it, but I had to take my shot.
THE SPECIAL MASTER: I appreciate it.
MR. HEIMANN: So I've given you Tab 7, and Tab 7, by the way, was not presented, at least in my mind, for purposes of answering the questions which you tried to put me on the spot on earlier, but rather to show you in case you were considering some sort of sanction against us -- monetary sanction, I wanted you to appreciate how much this exercise has cost us.
And the bottom line is that we got a fee in this case of just a little over 15 million dollars, and our total expenses, both out of pocket and my time, for example, have reduced that now to just over 12.8 million dollars.
In other words, we've --
THE SPECIAL MASTER: So you've paid about 2.2 million dollars --

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MR. HEIMANN: Either out of pocket or in terms of our lawyers, my time and Dan's time and Steve's time primarily.
MR. CHIPLOCK: Yeah. That doesn't include April time.
MR. HEIMANN: It doesn't include April time. All right.
THE SPECIAL MASTER: Well, I've been a bargain in this case. You're just one firm.
MR. HEIMANN: Right.
MS. LUKEY: I can tell you we are under $450,000. We are under $450,000.
THE SPECIAL MASTER: Well, you're a bargain.
MS. LUKEY: So I'm not sure what they're referring to but --
THE SPECIAL MASTER: Okay.
MS. LUKEY: -- I'm sure that will go up this month as you've just alluded to. If he's done, I just wanted to make one quick point whenever --
THE SPECIAL MASTER: And I want to give Brian an opportunity, too --
MS. LUKEY: Sure.
THE SPECIAL MASTER: -- with this

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additional exhibit that I've now seen in which Garrett Bradley -- I hadn't focused on the fact that Garrett Bradley was on this 2011 letter, and Lieff apparently never saw it, never got it.
So I want to give Brian --
MS. LUKEY: Whatever order you want.
THE SPECIAL MASTER: Brian, this would be an added indicia that Garrett Bradley knew the nature of the relationship to the list that I called out earlier.
MR. KELLY: Well, respectfully, I disagree once again. Here's what you've got. You've got a 2011 reference to him as referring counsel.
I think we've had a lot of back and forth in the record about these labels, whether it's local counsel or it's referring counsel. And I think -- and I don't have the cites off the top of my head, but there's testimony that some people viewed him as referring counsel, as local counsel.
I think the best evidence of these real-time e-mails that you see Garrett Bradley on going back and forth with everyone calling him local counsel, and that suggests to me he assumed they

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were traditional local counsel.
But -- but -- but, okay, if there is a difference between referring counsel or local counsel, it doesn't I would think to a Massachusetts-based lawyer matter much because here, again as Joan went on for some length, the rules permit a non-work referral fee, and maybe that's the backdrop of not really caring what's he called. He's referring counsel; he's local counsel or what, but the testimony in the record at least is that both Mr. Thornton, Mr. Bradley viewed him as traditional local counsel, and certainly they didn't make any great investigation as to what he was doing, but I don't think that letter really changes the calculus as to whether he investigated further, nor does it change the analysis of would they have thought it through because of the -- you know, the nature of the Massachusetts rules have permitted.
THE SPECIAL MASTER: It does add one thing to it. Garrett was in at the inception.
MR. KELLY: Well, I don't think that means he was in at the inception of the deal with Chargois in terms of who did what with the --
THE SPECIAL MASTER: By the inception, I

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mean the inception of this case. Not the inception of the Chargois --
MR. KELLY: There's no doubt he knows Chargois and knows him better than these guys. I think Richard's probably right if there's tension between Labaton and Chargois in addition to his own personality and being able to hammer down fees, he probably used him as a neutral party to get a better deal.
But I think one thing -- and maybe Richard mentioned this, but this Chargois fee comes off -- it comes out of their pockets, the three consumer counsel. It's not coming out of ERISA. I've never understood how ERISA counsel can make a claim for any of this.
They did less than 10 percent of the work, and they got a 10 percent fee. So really if Chargois did not exist, that would have been more money for these three consumer class firms. That's who would have whacked it up. So it would not have affected the total aggregate fee Judge Wolf was approving. It would have been more money for these three firms to fight over on who gets what. So...
THE SPECIAL MASTER: Joan.

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MS. LUKEY: First I want to make a correction. My assistant gave me 450. He tells me with last month's time it's over a million.
THE SPECIAL MASTER: Boy, that was a big month.
MR. GLASS: It's the last several months, Joan.
MS. LUKEY: He says it's several months.
THE SPECIAL MASTER: Well, I can say to all of you who are representing the firms I hope that your work and contributions in this case are recognized at the end of the year.
MS. LUKEY: We'll see. So I wanted to correct my error. We are probably more akin to where they are, but that's not the point I wanted to make here.
We're in a situation at least to the extent that we're talking about either disciplines or sanctions where the conduct has to be intentional. I wanted to point out a very important fact that actually bears on what Brian was just trying to address for Garrett as well as on my people.
Arkansas Teacher Retirement System

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doesn't have one case or did not have one case going or still have State Street at exactly the same time starting with the work-up in 2013 -- so the time period covered by these e-mails -- to the filing date, first complaint in February of 2014 and the second in April of 2014, Labaton represented Arkansas in two cases filed in Texas against BP. You were aware of them during the discovery.
THE SPECIAL MASTER: Yes.
MS. LUKEY: I alluded to them earlier when I said that I thought it was probably not fair to expect an individual to necessarily focus on and remember the distinction in the case, but it goes beyond that. Damon Chargois is the attorney of record and traditional local counsel in the case in the southern district of Texas.
THE SPECIAL MASTER: This was the HC case?
MS. LUKEY: No, that's another case where he's local counsel.
THE SPECIAL MASTER: But that was a very early case.
MS. LUKEY: Yes. I'm talking about BP, against BP in February -- I think the April case had

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to be related 'cause it's the same against BP.
In the case pending in Texas where Mr. Chargois is the attorney -- local attorney and has appeared and is actively representing Arkansas and has been since the filing of the case in February of 2014, there is no question that he falls within the rubric of local counsel.
I mention that -- that's not this case where because Mr. Hopkins is actively involved as the class rep, that case although huge, is not a class action. Mr. Chargois -- Mr. Hopkins did not want to have the involvement, but there is no question that Mr. Chargois has served as local counsel and that Arkansas is -- is actually his client -- it is an active client.
THE SPECIAL MASTER: Why didn't Hopkins say, okay, I do know that name?
MS. LUKEY: Because he only involves himself when he is a class rep in a class action. That action is huge because of the BP losses. But in that action Labaton is the sole plaintiffs' attorney but not a class representing the retirement systems of in addition to the Arkansas Teacher system, Hawaii and Illinois, representing all three.

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It's not a class. But they are suing BP. It's ongoing. And Mr. Chargois is local counsel as he had been in earlier cases actively acting in that role.
So when you have a circumstance where somebody refers to him as the local or local counsel, it is the truth, although I might have my thoughts and recommendations as to whether it continues to be the case, that Damon Chargois is Arkansas' local counsel.
THE SPECIAL MASTER: Was Garrett Bradley aware of these cases?
MS. LUKEY: I have no idea, your Honor.
THE SPECIAL MASTER: When he refers to them as the local -- as to him as the local or local counsel?
MS. LUKEY: I don't know, but I wouldn't be surprised if there's an awareness because Damon Chargois has been affirmatively acting in that role during the exactly the same time period. The exception to the rule is what happened when Mr. Hopkins came in and was going to be the class rep if they were successful in their efforts. He does not want to know about or be involved with

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local counsel.
Somebody down there, obviously, has some dealings -- somebody at Arkansas -- with Damon Chargois. I can't tell you who. But he is their lawyer. He does cover court hearings in those instances when the New York lawyers don't go down from Labaton. I mention this --
THE SPECIAL MASTER: How does that cut though, Joan?
I mean if that's the case, wouldn't it be likely then that Arkansas would think that in the retention agreement the person would be somebody like Damon Chargois in the BP case and doing the work --
MS. LUKEY: No, 'cause there's two different categories.
In the retention agreement that was Mr. Hopkins who was executing it, and they specifically referred to permission being granted for local or liaison counsel, for the payment of referral fees which would not be for local or liaison counsel. That's not a referral fee. And for payment for other services.
The distinction -- what set us apart,

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the State Street case, is because it was a class action, and Mr. Hopkins was going to be as we know extremely actively involved as class rep, there was a difference structure. He didn't want to deal with a local counsel or even be aware of it.
Again, I mention this because these proceedings deal at least in significant part -- although I hope we are moving into the area now of talking about best practices rather than suggesting that these law firms have committed ethical violations or sanctionable conduct -- intent is key; the conduct had to be intentionally wrongful in violation of the rules, and to the extent there was a looseness of language -- well, I shouldn't even call it a looseness of language but perhaps a concept of Damon Chargois as Labaton Sucharow's local attorney in Arkansas and Texas, that is correct. He is their local attorney. As far as I know, their only local attorney.
And during exactly the same time period and while all of these e-mails are going on, there are three Arkansas cases handled by Labaton -- two related because of BP -- and the other State Street.
So is it surprising or can it be seen to

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be some kind of intentional misrepresentation for someone like Larry Sucharow to use a phrase like "our local Arkansas counsel"? It shouldn't be a surprise. That's the role that Chargois has typically played. In this case he did not because it was a class action.

THE SPECIAL MASTER: Or in the other eight cases apparently.

MS. LUKEY: I wouldn't jump to that conclusion, your Honor. I'm not sure -- I don't know what the -- I don't remember evidence coming in on that.

THE SPECIAL MASTER: With the exception of the HC case and now the BP case, have you given us any evidence that he did any work on any of these other cases?

MS. LUKEY: I'm not trying to make a representation. I just don't know the answer to your question --

THE SPECIAL MASTER: Okay. All right.

MS. LUKEY: -- but he is -- now it is again -- it is local counsel in the traditional sense. He is the local counsel for Arkansas Texas cases.

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What I can't recall is whether the balance of the other six I guess it is cases, whether they were in Arkansas or Texas which are the two states in which he's a member of the bar. So it's not a misnomer. It's not a made-up phrase. It simply is a shorthand by which he had come to be known. We do not dispute he was not doing work in this case. George Hopkins did not want a local attorney to be doing work in this case. And that's permissible under Massachusetts law.

But I do -- because you have to be thinking about whether somebody engaged in intentional misleading, for example, intentionally misleading Lieff, when they refer to the attorney who is indeed their local -- the traditional sense local counsel in Arkansas and Texas. With that phraseology, I respectfully suggest that it would be unfair and inappropriate to assume that they did so with an intent to deceive. There's no evidence that they were intentionally deceiving anyone and I --

THE SPECIAL MASTER: But they certainly didn't tell Dan Chiplock or Bob Lieff that he was getting this money for doing some work or that he was getting this money for not doing any work.

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MS. LUKEY: I don't think there was a discussion about it either way as I understand it. And I, again, suggest to the Court there's no requirement that there be such a discussion.

I understand that Lieff as a firm is not requesting that action be taken. It's not a subject we researched. I do know the ERISA counsel have no claim to it 'cause theirs is a completely separate pool of funds which was tied to trading allocation. They don't get to bump it up. When they've agreed to trading allocation, they don't get to change it because they think that something may have been done that put more of a burden on Lieff let's say than should have been placed. That's not for the ERISA counsel to claim back.

That should have been a private dispute among the three firms, if there was to be a dispute at all, and in this field where these three firms have worked together as well as against each other for many years, there's a benefit to maintaining a relationship which I assume is the reason that the firm through its general counsel took a position different from that than Mr. Lieff just asserted. That's all I wish to point out.

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THE SPECIAL MASTER: Anybody on the phone? Laura? Are you still on the phone?

MR. SARKO: No, Laura is off. It's Lynn Sarko. I'm still on.

THE SPECIAL MASTER: Okay, Lynn, do you want to address anything that you've heard or tell me anything?

MR. SARKO: I think the only thing I want to address -- and we put it in our interrogatory answers -- but to clear up the issue of our local counsel which I think is clear that he is -- he is counsel of record in the Andover case. He filed documents with the Court. The Court was aware of him. In my fee declaration I identified him as local counsel.

All of the three customer class firms were aware of him and aware that he was our local counsel, and they consented to us paying him. Defense counsel was aware of him. The DOL was aware of him. So I really think it's a different issue. But if anyone has questions, I'm happy to clear those up.

THE SPECIAL MASTER: No, I don't think so. Bill, do you have any questions?

MR. SINNOTT: No. Thank you, Lynn.
THE SPECIAL MASTER: All right. Anything anyone?
MR. LIEFF: Thank you.
THE SPECIAL MASTER: It's only 4:35.
MS. McEVOY: Four hours, right?
MR. SINNOTT: Can I just make a comment?
THE SPECIAL MASTER: Yeah, right.
MR. SINNOTT: Judge, just a comment. You know we're coming to the close of the investigative case which has taken up the better part of a year.
I think all of your clients should be extremely satisfied and gratified at the lawyering that's gone on in this case. I mean I think it's been phenomenally fine advocacy --
THE SPECIAL MASTER: Yes.
MR. SINNOTT: -- consistently by each of you, and it's been -- I'm not going to say it's been fun, but it's certainly been very pleasing as a member of the bar to watch the level of lawyering in the room. So thank you all for that.
THE SPECIAL MASTER: Yeah, I would second that. Very excellent lawyering. We've all

been in sort of the vortex of a storm not of our creation, and we have to all operate within it. And the lawyering has been -- the lawyering has been very, very, very good. Okay.
MR. SINNOTT: Have a good weekend.
MS. LUKEY: Thank you all.
MR. SHARP: Thank you.
(Whereupon the proceedings adjourned at 4:35 p.m.)

C E R T I F I C A T E

I, Paulette M. Cook, Registered Merit Reporter, do hereby certify that the foregoing transcript, Volume 1, is a true and accurate transcription of my stenographic notes taken to the best of my ability on Friday, April 13, 2018.

Paulette M. Cook
Registered Merit Reporter

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EX. 163

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

MEMORANDUM AND ORDER

WOLF, D.J. March 8, 2017

In a February 6, 2017 Order the court gave notice that it was considering appointing, pursuant to Federal Rule of Civil Procedure 53, Retired United States District Judge Gerald Rosen as

a Master to investigate and submit a Report and Recommendation concerning issues that have emerged concerning the court's award of more than $75,000,000 in attorneys' fees, expenses, and service awards in this class action. The parties[1] responded to that Order. A hearing concerning this matter was held on March 7, 2017.

For the reasons described in detail at the March 7, 2017 hearing, it is hereby ORDERED that pursuant to Federal Rule of Civil Procedure 53:

1. Judge Rosen is appointed as Master (the "Master").[2] The Master may retain any firm, organization, or individual he deems necessary to assist him in the performance of his duties.

2. The Master shall investigate and prepare a Report and Recommendation concerning all issues relating to the attorneys' fees, expenses, and service awards previously made in this case. The Report and Recommendation shall address, at least: (a) the

[1] In this Order, the nine law firms that served as class counsel and the named plaintiffs are collectively referred to as the "parties."

[2] After the disclosure required by Federal Rule of Civil Procedure 53(a)(2)&(b)(3) and discussion at the hearing, each of the law firms representing members of the class agreed that Judge Rosen's disqualification is not required by 28 U.S.C. §455(a) or (b). The McTigue Law firm withdrew its earlier objection under §455(a). Each firm also waived any possible objection under §455(a) as permitted by §455(e). The court also found that Judge Rosen's disqualification is not required by §455.

accuracy and reliability of the representations made by the parties in their requests for awards of attorneys' fees and expenses, including but not limited to whether counsel employed the correct legal standards and had a proper factual basis for what was represented to be the lodestar for each firm; (b) the accuracy and reliability of the representations made in the November 10, 2016 letter from David Goldsmith, Esq. of Labaton Sucharow, LLP to the court (Docket No. 116); (c) the accuracy and reliability of the representations made by the parties requesting service awards; (d) the reasonableness of the amounts of attorneys' fees, expenses, and service awards previously ordered, and whether any or all of them should be reduced; (e) whether any misconduct occurred in connection with such awards; and, if so, (f) whether it should be sanctioned, see e.g. Fed. R. Civ. P. 11(b)(3)&(c); Massachusetts Supreme Judicial Court Rule of Professional Conduct 3.3(a)(1)&(3).

3. The Master shall proceed with all reasonable diligence, and either submit his Report and Recommendation by October 10, 2017 or request an extension of time to do so. See Fed. R. Civ. P. 53(b)(2).

4. The Master shall have the authority described in Federal Rule of Civil Procedure 53(c)(1) and (2). Therefore, among other things, the Master shall have the authority to compel, take, and record evidence. This includes the authority to: require the

production of documents and other records from the parties and third-parties; require responses to interrogatories, and other requests for information and admissions; conduct depositions; and conduct hearings.

5. The Master may communicate ex parte with any party. See Fed. R. Civ. P. 53(b)(2)(B).

6. The Master may communicate ex parte with the court on administrative matters. The Master may also, ex parte, request permission to communicate with the court ex parte on particular substantive matters. Requests for ex parte communications with the court on substantive matters should be minimized.[3] See Fed. R. Civ. P. 53(b)(2)(B).

[3] In the February 6, 2017 Memorandum and Order the court proposed to permit the Master to communicate ex parte with the court only concerning administrative matters. At the March 7, 2017 hearing the court stated it might allow the Master to request an opportunity for an ex parte communication on a substantive matter. The court subsequently reviewed several orders appointing masters which all authorize ex parte communications with the court on any matter. The court now finds that substantive communications should not be completely prohibited in this case because there may be some unforeseen need for them.

As the February 6, 2017 Order did not provide notice that the court may allow the Master to communicate with it ex parte regarding substantive matters, and the court did not state at the March 7, 2017 hearing that it would do so, the parties may, by March 16, 2017, object to the granting of this authority and explain the basis for their objection. If any objection is made, the court will consider this issue further.

7. The Master may also request that a submission to the court which is being served on one or more parties be made under seal.

8. Any order issued by the Master shall be filed for entry on the docket of this case and served on each party. See Fed. R. Civ. P. 53(d). However, the Master may request that an order be filed under seal and/or not be served on any party or all parties.

9. Any objection to an order issued by the Master shall be filed within 10 days of service. Any responses shall be filed within 10 days of the service of such objection. Any such objection will be decided in the manner described in Federal Rule of Civil Procedure 53(f).

10. The Master's Report and Recommendation shall be served promptly on each party. See Fed. R. Civ. P. 53(e).

11. The Master shall make and preserve a complete record of the evidence concerning his recommended findings of fact and any conclusions of law. Such record shall be filed with the Master's Report and Recommendation. The Master may move to have the record filed under seal. If any such motion is made and granted, the court may require that a redacted version be filed for the public record. See Fed. R. Civ. P. 53(b)(2)(C)&(D).

12. Action on the Master's Report and Recommendation will be taken in the manner described in Federal Rule of Civil Procedure 53(f).

13. Labaton Sucharow, LLP, shall, by March 14, 2017, pay to the Clerk of the United States District Court for the District of Massachusetts $2,000,000.[4] This payment shall be made only from the award of attorneys' fees and expenses distributed to Labaton Sucharow, LLP, the Thornton Law Firm LLP, and Lieff, Cabrasser, Heimann & Bernstein LLP. See Fed R. Civ. P. 53(g)(3). This payment is without prejudice to any right such firms may have to seek contribution from other firms which received some of the attorneys' fees awarded on November 2, 2016 if that award is reduced in the future. It is the court's intention, however, that this $2,000,000 come solely from the funds distributed to the foregoing three firms that generated the issue that prompted the appointment of the Master.

14. From the fund established pursuant to paragraph 13 hereinabove, the court will pay the reasonable fees and the expenses of the Master and any firm, organization, or individual he may retain to assist him. The court understands that the Master

[4] If the expense of the Master's work exceeds $2,000,000, the court will order additional payments.

will charge $800 per hour for his services and finds that rate to be reasonable.

The Master shall submit monthly, ex parte and under seal, a request for payment with a description of the hours worked and the services rendered, as well as supporting documentation for any expenses to be reimbursed.

The court intends to disclose the cost of the Master at the conclusion of these proceedings.

15. As the Master will be exercising judicial authority and performing judicial functions, the Master and those assisting him shall have the immunities of judicial officers of the United States. See Nystedt v. Nigro, 700 F.3d 25, 30 (1st Cir. 2012).

16. This Order may be modified upon request of the Master or a party, or by the court sua sponte, after providing notice and an opportunity to be heard. See Fed. R. Civ. P. 53(b)(4).

UNITED STATES DISTRICT JUDGE

EX. 164

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all other 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

LABATON SUCHAROW LLP'S RESPONSE TO SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS

Labaton Sucharow LLP ("Labaton Sucharow" or the "Firm") responds as follows to the Special Master Honorable Gerald E. Rosen's (Ret.) First Request for the Production of Documents ("First RFP").

GENERAL OBJECTIONS

The following General Objections are incorporated by reference into each response to the requests in the First RFP ("Requests"), below, whether or not they are referenced in a specific response below.

1. Labaton Sucharow objects to Instruction No. 1 as overbroad, irrelevant, and lacking in proportionality. Per agreement of counsel to the Special Master, 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 Instruction A as overbroad, irrelevant, lacking in proportionality, and potentially calling for the production of documents protected by the attorney-client privilege and/or work product protection. Based on discussions with counsel to the Special Master, the Firm understands that Requests seeking documents and information "during the SST Litigation" (or words to that effect) means from the beginning of Labaton Sucharow's work on the SST Litigation through the Court's entry of the Fee Award on November 2, 2016.

3. Labaton Sucharow objects to the extent that Instructions C and J purport to require the Firm to determine whether there are documents no longer in its possession, custody or control and state the disposition of such documents, as such requirements would be beyond the scope of the applicable rules of civil procedure.

4. Labaton Sucharow objects to the extent that Instruction E would prohibit redaction of documents. As agreed during undersigned counsel's discussions with counsel to the Special Master, there may be instances where redactions are appropriate.

5. Labaton Sucharow objects to the requirement in Instruction F that all produced documents must be organized into categories indicating the specific Request to which they are responsive. The Firm will endeavor to comply with this instruction, but there may be instances (particularly with respect to email) where it will not be feasible to organize all responsive documents by category, in which case they will be produced as they are kept in the ordinary course of business as permitted by Fed. R. Civ. P. 34(b)(2)(E)(i).

6. Labaton Sucharow objects to the Requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, or otherwise is privileged, protected or exempt from discovery.

7. Labaton Sucharow objects to the Requests to the extent they purport to impose obligations that differ from or exceed those imposed by the Federal Rules of Civil Procedure, particularly Rule 34, and by any court decisions interpreting those Rules.

8. Labaton Sucharow objects to the Requests 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.

9. In responding to the Requests, Labaton Sucharow has made reasonable efforts to respond based on its understanding and interpretation of each Request. If the Special Master subsequently asserts a reasonable interpretation of a Request which differs from that of Labaton Sucharow, Labaton Sucharow reserves the right to supplement its responses.

10. Labaton Sucharow will make all reasonable efforts to produce documents responsive to the Requests on or before the dates specified in discussions with counsel to the Special Master on May 22, 2017. Labaton Sucharow reserves the right to supplement its productions should it require additional time to complete the production, and/or should responsive documents be discovered following the designated dates for production.

DOCUMENTS REQUESTED

1. The Catalyst and Relativity document databases created or used in the SST Litigation, as annotated, compiled and used in the course of the litigation and/or document review, including instructions, software, and anything else necessary to access and analyze the data therein. [July 10]

RESPONSE: Labaton Sucharow objects to this Request on the grounds that the words "annotated" and "compiled" in the context of the Request are vague and over broad. Labaton Sucharow further objects to this Request to the extent compliance would be prohibited by the November 19, 2012 Order for the Production and Exchange of Confidential Information (the "Protective Order") entered in the SST Litigation. In the event that that such prohibition is resolved, the Firm will coordinate with Lieff Cabraser to produce the requested documents.

2. All so-called "hot docs," as understood or identified by the Law Firm, and any other documents or information identified during the SST Litigation bearing on the material issues in the Litigation, including but not limited to liability and damages. [June 9]

MODIFICATION/RESPONSE: Per the agreement of counsel to the Special Master, the Firm will respond to this Request by coordinating with Lieff Cabraser to provide the "hot docs" that are identified as such in the database produced in response to Request No. 1, should the referenced prohibition in the Protective Order be removed.

3. All engagement letters, fee agreements, retention letters, and/or other documents referring to, relating to, or evidencing terms of the Law Firm's representation of class representatives, including but not limited to ARTRS, George Hopkins, Esq. in the SST Litigation. [June 9]

MODIFICATION: Per the agreement of counsel to the Special Master, the Firm is only required to produce the agreement itself and any subsequent correspondence if it modified the terms of the agreement.

RESPONSE: Labaton Sucharow objects to the extent this Request calls for documents that may be privileged, does not waive any applicable privilege, and will produce any responsive documents only pursuant to the protective order entered by the Special Master

in this case. Subject to the foregoing modification and objection, the Firm will produce responsive documents it locates following a reasonable search.[1]

4. All agreements, other than those listed in Request No. 3, relating to Mr. Hopkins' role as a class representative in the SST Litigation, including his duties, obligations, and responsibilities as a class representative on the SST Litigation. [June 9]

RESPONSE: The Firm is aware of no such agreements.

5. All engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm's representation of hourly clients, from 2008 to the present. [July 10]

MODIFICATION: Per the agreement of counsel to the Special Master, the Request is narrowed to require production of documents only for the years 2010 and 2011, and identifying information can be redacted.

RESPONSE: Labaton Sucharow objects to the extent this Request calls for documents that may be privileged, does not waive any applicable privilege, and will produce any responsive documents only pursuant to the protective order entered by the Special Master in this case. Labaton Sucharow further objects to this Request on the grounds that the phrase "evidencing terms" is vague, over broad and seeks information that is not relevant in this proceeding. Subject to the foregoing modification and objections, the Firm will produce responsive documents for the period 2010 to the present that it locates following a reasonable search.

6. All engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm's representation of non-hourly clients, from 2008 to the present. [July 10]

MODIFICATION: Per the agreement of counsel to the Special Master, the Request is narrowed to require production of documents only for the years 2010 and 2011, and identifying information can be redacted.

RESPONSE: Labaton Sucharow objects to the extent this Request calls for documents that may be privileged, does not waive any applicable privilege, and will produce any responsive documents only pursuant to the protective order entered by the Special Master in this case. Labaton Sucharow further objects to this Request on the grounds that the phrase "evidencing terms" is vague, over broad and seeks information that is not relevant in this proceeding. Subject to the foregoing modification and objections, the Firm will produce responsive documents it locates following a reasonable search.

7. All documents and/or communications relating to how the Law Firm records, accounts for and/or seeks reimbursement for hours billed by Staff Attorneys in other class action

[1] Where this response indicates that Labaton Sucharow "will produce" documents, the Firm either will produce documents or identify relevant Bates numbers for documents previously produced.

or contingency cases, including the hourly rates the Law Firm would charge if successful, from 2010 to the present.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

8. Copies of all billing rate tables, spreadsheets, fee binders, or other collection of the Law Firm's annual billing rates, from 2010 to the present. [June 9]

MODIFICATION: Per the agreement of counsel to the Special Master, the Request is narrowed to require production of documents only for the years 2010-2011 and 2015-2016.

RESPONSE: Labaton Sucharow objects to this Request on the grounds that the phrase "other collection of the Law Firm's annual billing rates" is vague and unintelligible. Subject to the foregoing modification and objections, the Firm will produce responsive documents for the period 2010 to the present that it locates following a reasonable search.

9. All minutes, notes, recordings, memoranda or other documents relating to or created by the Law Firm's Executive Committee during meetings to determine annual billing rates, from 2008 to the present. [June 9]

MODIFICATION: Per the agreement of counsel to the Special Master, the Request is narrowed to require production of documents only for the years 2010-2011 and 2015-2016.

RESPONSE: Labaton Sucharow objects to this Request on the grounds that it is vague. Subject to the foregoing modification and objections, the Firm will produce responsive documents it locates following a reasonable search.

10. All minutes, notes, recordings, memoranda or other documents relating to or created by the Law Firm's Rate Sub-Committee during meetings to determine annual billing rates, from 2008 to the present. [June 9]

MODIFICATION: Per the agreement of counsel to the Special Master, the Request is narrowed to require production of documents only for the years 2010-2011 and 2015-2016.

RESPONSE: Labaton Sucharow objects to this Request on the grounds that it is vague. Subject to the foregoing modification and objections, the Firm will produce responsive documents it locates following a reasonable search.

11. All documents and/or communications between and among members of the Rate Sub-Committee and Executive Committee relating to review and adjustment of annual billing rates, from 2008 to the present.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

12. All documents and/or communications relating to the Law Firm's internal classification of costs and expenses, including but not limited to any ethical, legal, or factual opinions solicited by the Firm of third parties regarding the classification of Staff Attorneys as fees vs. expenses. [June 1]

MODIFICATION: Per the agreement of counsel to the Special Master, the underlined portion of the Request is deleted.

RESPONSE: Labaton Sucharow objects to this Request to the extent it seeks attorney client privileged material or work product from cases unrelated to the SST Litigation. Subject to the foregoing modification and objections, the Firm will produce responsive documents it locates following a reasonable search.

13. A complete set of time records for all attorneys, including Staff Attorneys, and other Law Firm staff who worked on or contributed to the SST Litigation, including but not limited to hand-written time sheets/ledgers, emails, electronic entries, pre-bills, and/or client bills, including the hourly rate billed and/or corresponding to the hours recorded.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

14. All documents referring to, relating to, evidencing or constituting the basis for and amounts of any costs and expenses billed, incurred or charged by the Law Firm for legal or other services rendered in connection with the SST Litigation including but not limited to documents pertaining to the terms under which Staff Attorneys and/or third parties provided services to the Law Firm in the Lawsuit.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

15. All documents and/or communications relating to or evidencing the Law Firm's use of Catalyst in connection with the SST Document Review, including all records of time spent in the Catalyst database, costs incurred, and coding of electronic documents.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

16. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm attorneys and non-legal staff assigned to or who contributed to the SST Litigation, for work performed on the Litigation.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

17. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm's Staff Attorneys assigned to or who contributed to the SST Litigation, for work performed on the Litigation. [June 1]

MODIFICATION: Per the agreement of counsel to the Special Master, W-2s and 1099s are sufficient if they provide the requested information.

RESPONSE: Labaton Sucharow objects to this Request to the extent it seeks personal and confidential identification and financial information, including social security numbers. Subject to the foregoing modification and objections, the Firm will produce responsive W-2s and 1099s, and will produce and/or has produced the Staff Attorneys' hourly rates and time records reflecting hours billed to the SST Litigation.

18. All documents referring to, relating to, evidencing or constituting discussions between the Law Firm and the Plaintiffs' Law Firms relating to sharing costs and/or expenses of the SST Document Review/SST Litigation, including but not limited to sharing the cost of Staff Attorneys, hosting costs for Catalyst database, and other expenses associated with conducting voluminous document review. [July 10]

RESPONSE: Labaton Sucharow objects to this Request on the grounds that the phrase "other expenses associated with conducting voluminous document review" is vague and unintelligible. Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

19. All agreements, contracts, or memorialization of an arrangement to allocate and/or share the cost of certain of the Law Firm's Staff Attorneys to Thornton, including the compensation, reimbursement, and/or invoicing of costs associated with the same. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

20. All documents referring to, relating to, evidencing or constituting discussions with Thornton regarding Thornton's plan or intention to include Staff Attorney time as part of Thornton's Fee Petition and/or Lodestar calculation. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

21. All expert reports, factual or legal opinions, or other work product solicited from a third-party by the Law Firm in connection with factual and/or legal issues arising in the SST Litigation, including but not limited to the foreign-exchange market, foreign-exchange trading practices, and custodial management of retirement funds. [July 10]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

22. All documents and/or communications relating to or evidencing discussions between and among the Law Firm, the Plaintiffs' Law Firms, and/or ERISA counsel regarding the allocation of a certain percentage of the Fee Award among counsel, including but not limited to agreements to pay ERISA counsel a fixed percentage of the total Fee Award.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

23. All documents and/or communications relating to discussions between and among the Plaintiffs' Law Firms and ARTRS/George Hopkins regarding the substantive allegations and progress of the SST litigation, including but not limited to the filing of the complaint/amended complaint, court orders, mediation, and/or the agreement to settlement in principle. [July 10]

RESPONSE: Labaton Sucharow objects to this Request to the extent it seeks privileged attorney-client communications and/or protected attorney work product. Labaton Sucharow further objects to this Request on the grounds that it seeks documents not relevant to the subject matter of this proceeding. Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

24. All documents and/or communications with ARTRS/George Hopkins regarding the Final Settlement, including but not limited to the fairness of the total award for the class, payment of service award, and the Fee Award, including any allocation of those fees among counsel.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

25. Current CVs or resumes for all Staff Attorneys who worked on or contributed to the SST Litigation/Document Review. [June 1]

RESPONSE: Subject to the foregoing objections, the Firm has produced responsive documents it located following a reasonable search.

26. All written guidance, training manuals, policies/procedures, search criteria, other documents provided to the Firm's Staff Attorneys relating to the SST Document Review, including but not limited to materials related to use of Catalyst database. [June 1]

RESPONSE: Subject to the foregoing objections, the Firm has produced and/or will produce responsive documents it has located or locates following a reasonable search.

27. All other documents relating to the SST Litigation, other than those responsive to Request No. 26 above, that the Law Firm provided to its Staff Attorneys, including but not limited to case pleadings, mediation reports, legal memoranda. [June 1]

RESPONSE: Subject to the foregoing objections, the Firm has produced and/or will produce responsive documents it has located or locates following a reasonable search.

28. All written work product produced by Staff Attorneys assigned to the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. [June 1]

RESPONSE: Labaton Sucharow objects to the extent this Request could be construed to require the production of (for example) any email, notes, or other document that might be

classified broadly to fall within the category of "work product." Subject to the foregoing objections, the Firm has produced and/or will produce memoranda or similar formal work product produced by Staff Attorneys that is responsive to this Request and that it has located or locates following a reasonable search.

29. A complete copy of the binder(s) containing discursive memoranda pertaining to the SST Litigation/SST Document Review, including all attachments. [June 1]

RESPONSE: Subject to the foregoing objections, the Firm has produced responsive documents it located following a reasonable search.

30. All presentations, memoranda, or other submissions, including potential exhibits, any plaintiffs' counsel prepared for or submitted to the mediator, including all exhibits thereto.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

31. All communications between the Law Firm and counsel for State Street relating to the SST Litigation, including but not limited to document productions, mediations, and settlement.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

32. All communications with the U.S. Department of Labor, including all local field offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission relating to the SST Litigation. [July 10]

RESPONSE: Labaton Sucharow objects to this Request on the grounds that it is over broad and seeks communications that are not relevant to the subject matter of this proceeding. Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

33. All documents and/or communications between and among Danette MacKenzie, Todd Kussin, and other members of the Law Firm relating to selecting and staffing Staff Attorneys on the SST Litigation/SST Document Review. [June 1]

RESPONSE: Labaton Sucharow objects to the June 1 deadline for this response, as the Request is too voluminous to complete in that time, particularly to the extent it requires an email, keyword search on multiple email accounts over multiple years. Subject to the foregoing objections, the Firm will endeavor to produce easily-identifiable, responsive documents by June 1, and all other responsive documents it locates following a reasonable search by July 10.

34. All documents and/or communications relating to the allocation of Staff Attorneys to Thornton under the cost-sharing agreement entered in or about 2014 or 2015. [June 9/July 10]

MODIFICATION: Per the agreement of counsel to the Special Master, responsive documents from the files of partners being deposed in this matter are due to be produced by June 9; responsive documents in other locations are due to be produced by July 10.

RESPONSE: Subject to the foregoing modifications and objections, the Firm will produce responsive documents it locates following a reasonable search.

35. All documents relating to, referring to or evidencing a secondary review or quality control process of the SST Document Review performed by the Law Firm, including but not limited to any emails between and among Mike Rogers, Todd Kussin, and the Staff Attorneys.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

36. All documents and/or communications between and among the Law Firm and its accounting and/or billing personnel relating to the accounting for, recording, and/or invoicing of Staff Attorneys for whom Thornton had agreed to share the costs. [June 1]

RESPONSE: Labaton Sucharow objects to the June 1 deadline for this response, as the Request is too voluminous to complete in that time, particularly to the extent it requires an email, keyword search on multiple email accounts over multiple years. Subject to the foregoing objections, the Firm will endeavor to produce easily-identifiable, responsive documents by June 1, and all other responsive documents it locates following a reasonable search by July 10.

37. All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from the Fee Petition of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs, including but not limited to all emails between and among David Goldsmith, Nicole Zeiss, Ray Politano, and/or Howard Goldberg discussing such nullification or removal. [June 1]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents (if any) it locates following a reasonable search.

38. All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from a fee petition or report of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs in other class actions or litigation matters.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

39. All invoices, requests for payment, and/or similar documents sent to or requested by Thornton pursuant to the cost-sharing agreement between the Firm and Thornton to share the costs of certain Staff Attorneys, including all emails or other communications related to the same.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

40. All documents relied upon by the Law Firm in preparing and filing the Firm's Fee Petition, including but not limited to expense reports, billing records, emails, invoices, and/or other records. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

41. All documents, other than those requested in Request No. 40 above, reviewed or considered by the Law Firm in calculating the Firm's Lodestar calculation, including all materials reviewed by Nicole Zeiss. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

42. All documents relating to, referring to, or constituting the Law Firm's Fee Petition, including all drafts, spreadsheets, outlines, notes, emails. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

43. All documents relating to, referring to, or constituting the Motion for Attorneys' Fees, including all drafts, spreadsheets, outlines, notes, emails.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

44. All documents relied upon by the Law Firm in preparing and filing the Motion for Attorneys' Fees.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

45. All documents and/or communications relating to the Law Firm's preparation of a draft or sample small fee declaration, copies of which were circulated to other law firms for completion and submitted to the Court as part of the firms' respective Fee Petitions. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

46. All communications between and among the Law Firm, the Plaintiffs' Law Firms, and the ER1SA firms, relating to preparation of the Motion for Attorneys' Fees and/or the Fee Petitions filed in the SST Litigation.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

47. All documents and/or communications relating to the discovery of billing errors disclosed in the November 10, 2016 Letter filed with the Court, including but not limited to communications between and among you, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

48. All documents, including notes, outline, drafts and exhibits, explaining or attempting to correct any part of the Fee Petition(s).

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

49. All documents illustrating, demonstrating, or establishing any errors you or anyone identified in any part of the Fee Petition(s).

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

50. All documents relating to, referring to, evidencing, or constituting the November 10, 2016 Letter, including all drafts, outlines, notes, and communications relating to the filing of that correspondence. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

51. All documents and/or communications relating to, referring to or evidencing corrective actions or subsequent review taken by the Law Firm after discovery of the billing errors disclosed in the November 10, 2016 Letter.

MODIFICATION: Per the agreement of counsel to the Special Master, this Request is stricken.

52. All documents and/or communications relating to the December 17, 2016 Article, including but not limited to communications between and among the Law Firm, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. [June 9]

RESPONSE: Labaton Sucharow objects to the extent this Request would require the Firm to search outside of the key custodians who were involved in the SST Litigation. Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search regarding the key custodians involved in the SST Litigation.

53. All documents relating to Michael Bradley's involvement in the SST Litigation/SST Document Review, including but not limited to communications with Mr. Bradley and all documents relating to or referring to an agreement between Mr. Bradley and Thornton to participate in the SST Document Review. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

54. All documents relating to, referring to or evidencing payments made to Michael Bradley in connection with his work on the SST Litigation/SST Document Review. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

55. All written work product produced by Michael Bradley as part of his involvement in the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

56. All documents you may contend support your Fee Petition for reimbursement of fees and/or expenses, which you have not produced thus far. [June 9]

RESPONSE: Subject to the foregoing objections, the Firm will produce responsive documents it locates following a reasonable search.

Dated: May 26, 2017

/s/ Joan A. Lukey

Joan A. Lukey (BBO No. 307340)
Justin J. Wolosz (BBO No. 643543)
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Attorneys for Labaton Sucharow LLP

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CERTIFICATE OF SERVICE

I, Justin J. Wolosz, hereby certify that I have caused a copy of the foregoing Labaton Sucharow LLP's Response To Special Master Honorable Gerald E. Rosen's (Ret.) First Request for the Production of Documents 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.

/s/ Justin J. Wolosz
Justin J. Wolosz

EX. 165

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

SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS TO LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Pursuant to Rule 53(c) of the Federal Rules and the Court's March 8, 2017 Order (pp. 3-4), Special Master Honorable Gerald E. Rosen (Retired), by his undersigned counsel, hereby requests that Lieff Cabraser Heimann & Bernstein, LLP produce the documents described below for inspection and copying at the offices of Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, Massachusetts 02108, within fourteen (14) days from the date of service hereof.

DEFINITIONS

1. The terms "you", "your", "the Firm", and "the Law Firm" refer to Lieff Cabraser Heimann & Bernstein, LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

2. The term "Thornton" refers to Thornton Law Firm, LLP, formerly known as Thornton & Naumes, LLP, and all employees, agents, counsels, attorneys, and representatives.

3. The term "Labaton" or "Labaton Sucharow" refers to Labaton Sucharow LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

4. The term "Plaintiffs' Law Firms" refers to Labaton Lieff, and/or Thornton, and their respective employees, contractors, affiliates, agents, counsels, and representatives, collectively and/or individually.

5. The term "ERISA firms" or "ERISA counsel" refers to Brian McTigue and/or the McTigue Law Firm, the Law Offices of Keller Rohrback, LLP, Zuckerman Spaeder, LLP, Beins Alexrod, P.C., and any firms retained by one or more of the above, and all employees, agents, counsels, attorneys, and representatives.

6. The term "ARTRS" refers to the Arkansas Teacher Retirement System and/or its Executive Director, George Hopkins, Esq.

7. The term "State Street Litigation", "SST Litigation" or "Litigation" refers to *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

8. The term "State Street Document Review", "SST Document Review" or "Document Review" refers to the Law Firm's review of hard copy and electronic documents produced as part of discovery in *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

9. The term "State Street" refers to State Street Bank and Trust Company and/or State Street Global Markets, defendants in the SST Litigation.

10. The term "settlement in principle" refers to the settlement agreement reached in substance between counsel by and through mediation.

11. The term "Court" refers to the United States District Court for the District of Massachusetts.

12. The term "Fee Petition" or "Fee Application" refers to the *Declaration of Lawrence A. Sucharow in Support of Plaintiffs' Assented-To Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and Lead Counsel's Motion for An Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs* (Docket #104), and Exhibits 1-32 attached thereto, filed with the Court in the State Street Litigation. In particular, "Fee Petition" in conjunction with one or more of the individual firms, refers to the respective Exhibit (and exhibits attached thereto) in which an individual law firm sought approval for payment of its respective fee and expenses

incurred in the SST Litigation, including all declarations, affidavits, and/or the Lodestar reports filed therewith.

13. The term "Motion for Attorneys' Fees" refers to Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Litigation Expenses, including the Memorandum in Support and exhibits, filed with the Court on or about September 15, 2016 and October 21, 2016, respectively (Docket #102, 108).

14. The term "Final Settlement" refers to the Stipulation and Agreement of Settlement dated July 26, 2016 (Docket #89).

15. The term "Fee Award" refers to a certain award of attorneys' fees of $74,541,250.00 and expenses and costs of $1,257,697.94, as approved by the Court in the Lawsuit by Order dated November 2, 2016.

16. The term "November 10, 2016 Letter" refers to the letter from David Goldsmith to Judge Wolf dated November 10, 2016 (Exhibit A to Docket #117), advising the Court of inadvertent errors in the Fee Petitions and Fee Order.

17. The term "December 17, 2016 Article" refers to the Boston Globe article entitled *Critics hit law firms' bills after class-action lawsuits*, published on or about December 17, 2016.

18. The term "hourly rates charged" refers to the hourly billing rates corresponding to work of an individual attorney or staff member of the firm, appearing on a fee petition submitted to the Court or otherwise charged to a client for work performed on a legal matter, including the rates listed on the Fee Petitions submitted in the SST Litigation.

19. The term "Staff Attorneys" refers to licensed attorneys working on a part-time or full-time basis for the Law Firm, but who are not deemed "associates" or otherwise on a traditional partnership track.

20. The term "hourly clients" refers to all past, present, and prospective clients who agree to pay and/or are charged for legal services rendered on an hourly basis, notwithstanding the actual amount paid or collected.

21. The term "non-hourly clients" refers to all past, present, and prospective clients who do not pay for legal services on an hourly rate, such as clients paying a flat fee, retained through a contingency arrangement and/or class action litigation, or other non-hourly fee structure, notwithstanding the actual amount paid or collected.

22. Any word written in the singular also includes the plural and vice-versa.

23. In case of doubt as to the scope of a clause including "and," "or," "any," "all," "each," or "every," the intended meaning is inclusive rather than exclusive.

24. The term "any" and the term "all" are intended to mean "any and all."

25. As used herein, the term "or" and the term "and" shall mean "and/or" and vice-versa.

26. As used herein, the terms "relating to" or "referring to" or "concerning" or "constituting" or the like mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter or that in any manner state the background of, or were the basis or bases for, or that record, evaluate comment upon, or were referred to, relied upon, utilized, generated, transmitted, or received in arriving at, your conclusions, opinions, estimates, calculations, positions, decisions, beliefs, assertions or allegations, that undermine, contradict, or conflict with your conclusions, opinions, calculations, estimates, positions, beliefs, assertions, or allegations, concerning the subject matter in question.

27. The term "date" means the exact day, month, and year, if ascertainable, or the best approximation thereof if not.

28. The term "communication" as used herein includes, without limitation, the following: conversations, telephone conversations, e-mails, text messages, social media communications, and other electronic transmissions of any kind, statements, discussions, debates, arguments, disclosures, interviews, consultation and every other manner of oral utterance, correspondence, or electronic or written transmittals of information or messages of any kind.

29. The term "document" shall mean those things described in Rule 34(a) of the Federal Rules of Civil Procedure. The terms "document" and "documents" are used herein in the broadest possible sense and mean written, typed, printed, recorded or graphic matter, however produced or reproduced of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to, e-mails, papers, notes, accounts, books, advertisements, letters, memoranda, notes of conversations, contracts, agreements, drawings, telegrams, tape recordings, communications (as defined in paragraph 28 hereof), including inter-office and intra-office memoranda reports, studies, working papers, corporate records, minutes of meetings, notebooks, bank deposit slips, bank checks, canceled checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type of personal or telephone conversations or negotiations, meetings or conferences, or things similar to any of the foregoing, and to include any data, information or statistics contained within any data storage modules, tapes, discs or other memory device, or other information retrievable from storage systems, including but not limited to, computer-generated reports and printouts. If any document has been prepared in multiple copies which are not identical, each modified copy or

non-identical copy is a separate "document." The word "document" also includes data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices in a reasonably usable form.

30. The term "draft" shall mean any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the final document.

INSTRUCTIONS

A. Unless otherwise specified, these requests seek documents for the period from January 1, 2010 until the present.

B. This document request ("Request") requires you to produce all documents called for herein that were created or originated by you, or that came into your possession, custody or control, from all files or other sources that contain responsive documents, wherever located and whether active, in storage, or otherwise.

C. This Request shall be deemed to include any document now or at any time in your possession, custody, or control. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (i) own such document in whole or in part; (ii) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (iii) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (iv) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

D. The obligation to produce the documents specified below is of a continuing nature; your production is to be supplemented if at any time you acquire possession, custody, or control of any additional responsive documents, or otherwise discover additional responsive documents, between the time of initial production and conclusion of the investigation, to the fullest extent required by the Federal Rules of Civil Procedure, the March 8, 2017 Court order, and the Local Rules of this Court.

E. Where only a portion of a document relates or refers to the subject indicated, the entire document is to be produced nevertheless, along with all attachments, appendices and exhibits.

F. Each document produced in response to the Requests below should be clearly categorized to indicate which Request(s) it is responsive to.

G. If any document or portion thereof is withheld under a claim of privilege, you shall produce so much of the document as is not subject to the possible claim of privilege, and shall furnish a statement, signed by an attorney representing you, which identifies each document or portion thereof for which a privilege is claimed, including the following information:

(i) The date of the document;

(ii) The name and title of the person who sent, authored, prepared, signed, or originated the document, or of the person who knows about the information contained therein;

(iii) The name and title of the recipient of the document;

(iv) All persons to whom copies of the document were furnished, along with such persons' job titles or positions;

(v) A brief description of the subject matter or nature of the document sufficient to assess whether the assertion of privilege is valid;

(vi) The specific basis upon which the privilege is claimed;

(vii) With respect to any claim of privilege relating to an attorney, or action or advice or work product of an attorney, the identity of the attorney involved; and

(viii) The paragraphs of this request to which such document responds.

H. All documents shall be produced as they are kept in the ordinary course of business and in their original file folders with any identifying labels, file markings, or similar identifying features. If there are no documents responsive to a category specified below, you shall so state in a writing produced at the time and place that documents are demanded to be produced by this request.

I. Documents created or stored electronically must be produced in their original electronic format, and not printed to paper or PDF. All electronically stored information ("ESI") shall be produced in electronic form (the "production set"). Each document will have its own unique identifier ("Bates number"), which must be consistently formatted across the production, comprising of an alpha prefix and a fixed length number of digits (e.g., "PREFIX0000001"). The production set shall consist of, and meet, the following specifications:

1. Image Files. All ESI will be rendered to single-page, black and white, Group IV *tagged image file* (".tif" or ".tiff") images with a resolution of 300 dpi, the file name for each page is named after its corresponding Bates number. Records in which a color copy is necessary to interpret the document (e.g., photographs, presentations, AUTOCAD, etc.) will be rendered to higher resolution, single-page *joint photographic experts group* (".jpg" or ".jpeg") format. Endorsements must follow these guidelines:

    a. Bates numbers must be stamped on the lower right hand corner of all images.

    b. Confidentiality must be stamped on the lower left hand corner of all images.

    c. Other pertinent language may be stamped on the bottom center, or top of the images, as deemed necessary.

2. Load Files. All ESI must be produced with appropriate data load files, denoting logical document boundaries. The following files should be included within each production set.

    a. A Concordance delimited ASCII text file (".dat").

i. The .dat file will contain metadata from the original native documents, wherein the header row (*i.e.*, the first line) of the .dat file must identify the metadata fields.

ii. The .dat file must be delimited with the standard Concordance delimiters (the use of commas and quotes as delimiters is not acceptable):

ASCII 020 [¶] for the comma character;
ASCII 254 [þ] for the quote character; and
ASCII 174 [®] for new line.

iii. All attachments, or *child* records, should sequentially follow the *parent* record.

iv. The following fields and metadata will be produced:

Beginning Bates; Ending Bates; Beginning Bates Attachment; Ending Bates Attachment; Custodian; File Name; From; Recipient; CC; BCC; Subject; Date Sent; Time Sent; Last Modified Date; Last Modified Time; Author; Title; Date Created; Time Created; Document Extension; Page Count; MD5Hash; Text Path; and Native File Path.

b. Image cross-reference files, *Opticon* image file (".opt") and *IPRO View Load* file (".lfp"), which link images to the database and identifies appropriate document breaks.

J. If any document requested herein has been lost, discarded, or destroyed, that document so lost, discarded, or destroyed shall be identified in writing (produced at the time and place that documents are demanded to be produced by this request) as completely as possible, together with the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

DOCUMENTS REQUESTED

1. The Catalyst and Relativity document databases created or used in the SST Litigation, as annotated, compiled and used in the course of the litigation and/or document review, including instructions, software, and anything else necessary to access and analyze the data therein. **[JULY 10]**

2. All so-called "hot docs," as understood or identified by the Law Firm~~, and any other documents or information identified during the SST Litigation bearing on the material issues in the Litigation, including but not limited to liability and damages~~. **[JUNE 9]**

3. All engagement letters, fee agreements, retention letters, and/or other documents referring to, relating to, or evidencing terms of the Law Firm's participation in the SST Litigation and/or representation of class representatives. **[JUNE 9]**

4. All engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm's representation of hourly clients, from ~~2008 to the present~~ ***2009-2011***. **[JULY 10]**

5. All engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm's representation of non-hourly clients, from ~~2008 to the present~~ ***2009-2011***. **[JULY 10]**

~~6. All documents and/or communications relating to how the Law Firm records, accounts for and/or seeks reimbursement for hours billed by Staff Attorneys in other class action or contingency cases, including the hourly rates the Law Firm would charge if successful, from 2010 to the present.~~

7. Copies of all billing rate tables, spreadsheets, fee binders, or other collection of the Law Firm's annual billing rates, from 2010 to the present.

8. All minutes, notes, recordings, memoranda or other documents relating to or created by the Law Firm's Managing Partner or Executive Committee during meetings to determine annual billing rates, from ~~2008 to the present~~ ***2010-2011 and 2015-2016***. **[JUNE 9]**

9. All documents and/or communications between and among the Firm's Managing Partner and the Firm's Executive Committee relating to review and adjustment of annual billing rates, from ~~2008 to the present~~ ***2010-2011 and 2015-2016***. **[JUNE 9]**

10. All documents and/or communications relating to the Law Firm's internal classification of costs and expenses, including but not limited to any ethical, legal, or factual opinions solicited by the firm by third parties regarding the classification of Staff Attorneys as fees vs. expenses. **[JUNE 1]**

~~11. A complete set of time records for all attorneys, including Staff Attorneys, and other Law Firm staff who worked on or contributed to the SST Litigation, including but not limited to hand-written time sheets/ledgers, emails, electronic entries, pre-bills, and/or client bills, including the hourly rate billed and/or corresponding to the hours recorded.~~

~~12. All documents referring to, relating to, evidencing or constituting the basis for and amounts of any costs and expenses billed, incurred or charged by the Law Firm for legal or other services rendered in connection with the SST Litigation including but not limited to documents pertaining to the terms under which Staff Attorneys and/or third parties provided services to the Law Firm in the Lawsuit.~~

~~13. All documents and/or communications relating to or evidencing the Law Firm's use of Catalyst in connection with the SST Document Review, including all records of time spent in the Catalyst database, costs incurred, and coding of electronic documents.~~

~~14. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm attorneys and non-legal staff assigned to or who contributed to the SST Litigation, for work performed on the Litigation.~~

15. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm's Staff Attorneys assigned to or who contributed to the SST Litigation, for work performed on the Litigation. **[JUNE 1]**

16. All documents referring to, relating to, evidencing or constituting discussions between the Law Firm and the Plaintiffs' Law Firms relating to sharing costs and/or expenses of the SST Document Review/SST Litigation, including but not limited to sharing the cost of Staff Attorneys, hosting costs for Catalyst database, and other expenses associated with conducting voluminous document review. **[JUNE 9]**

17. All agreements, contracts, and/or memorialization of an arrangement to allocate and/or share the cost of certain of the Law Firm's Staff Attorneys to Thornton, including the compensation, reimbursement, and/or invoicing of costs associated with the same. **[JUNE 9]**

18. All documents referring to, relating to, evidencing or constituting discussions with Thornton regarding Thornton's plan or intention to include Staff Attorney time as part of Thornton's Fee Petition and/or Lodestar calculation. **[JUNE 9]**

19. All expert reports, factual or legal opinions, or other work product solicited from a third-party by the Law Firm in connection with factual and/or legal issues arising in the SST Litigation, including but not limited to the foreign-exchange market, foreign-exchange trading practices, and custodial management of retirement funds. **[JULY 10]**

~~20. All documents and/or communications relating to or evidencing discussions between and among the Law Firm, the Plaintiffs' Law Firms, and/or ERISA counsel regarding the allocation of a certain percentage of the Fee Award among counsel, including but not limited to agreements to pay ERISA counsel a fixed percentage of the total Fee Award.~~

21. All documents and/or communications relating to discussions between and among the Plaintiffs' Law Firms and ARTRS/George Hopkins regarding the substantive allegations and progress of the SST litigation, including but not limited to the filing of the complaint/amended complaint, court orders, mediation, and/or the agreement to settlement in principle. **[JULY 10]**

~~22. All documents and/or communications with ARTRS/George Hopkins regarding the Final Settlement, including but not limited to the fairness of the total award for the class, payment of service award, and the Fee Award, including any allocation of those fees among counsel.~~

23. Current CVs or resumes for all Staff Attorneys who worked on or contributed to the SST Litigation/Document Review. **[JUNE 1]**

24. All written guidance, training manuals, policies/procedures, search criteria, other documents provided to the Firm's Staff Attorneys relating to the SST Document Review, including but not limited to materials related to use of Catalyst database. **[JUNE 1]**

25. All other documents relating to the SST Litigation, other than those responsive to Request No. 24 above, that the Law Firm provided to its Staff Attorneys, including but not limited to case pleadings, mediation reports, legal memoranda. **[JUNE 1]**

26. All written work product produced by Staff Attorneys assigned to the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. **[JUNE 1]**

27. A complete copy of the binder(s) containing discursive memoranda pertaining to the SST Litigation/SST Document Review, including all attachments. **[JUNE 1]**

~~28. All presentations, memoranda, or other submissions, including potential exhibits, any plaintiffs' counsel prepared for or submitted to the mediator, including all exhibits thereto.~~

~~29. All communications between the Law Firm and counsel for State Street relating to the SST Litigation, including but not limited to document productions, mediations, and settlement.~~

30. All communications with the U.S. Department of Labor, including all local field offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission relating to the SST Litigation. **[JULY 10]**

31. All documents and/or communications relating to the selection and staffing of Staff Attorneys on the SST Litigation/SST Document Review. **[JUNE 1]**

32. All documents and/or communications relating to the allocation of certain Staff Attorneys to Thornton under the cost-sharing agreement entered into by the Firm in or about 2014 or 2015. **[JUNE 9/JULY 10]**

~~33. All documents relating to, referring to or evidencing a secondary review or quality control process of the SST Document Review performed by the Law Firm.~~

34. All documents and/or communications between and among the Law Firm and its accounting and/or billing personnel relating to the accounting for, recording, and/or invoicing of Staff Attorneys for whom Thornton had agreed to share the costs. **[JUNE 1]**

35. All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from the Fee Petition of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs. **[JUNE 1]**

~~36. All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from the Fee Petition of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs in other class action or litigation matters.~~

~~37. All invoices, requests for payment, and/or similar documents sent to or requested by Thornton pursuant to the cost-sharing agreement between the Firm and Thornton to share the costs of certain Staff Attorneys, including all emails or other communications related to the same.~~

38. All documents relied upon by the Law Firm in preparing and filing the Firm's Fee Petition, including but not limited to expense reports, billing records, emails, invoices, and/or other records. **[JUNE 9]**

39. All documents, other than those requested in Request No. 38 above, reviewed or considered by the Law Firm in calculating the Firm's Lodestar calculation. **[JUNE 9]**

40. All documents relating to, referring to, or constituting the Law Firm's Fee Petition, including all drafts, spreadsheets, outlines, notes, emails. **[JUNE 9]**

~~41. All documents relating to, referring to, or constituting the Motion for Attorneys' Fees, including all drafts, spreadsheets, outlines, notes, emails.~~

~~42. All documents relied upon by the Law Firm in preparing and filing the Motion for Attorneys' Fees.~~

~~43. All communications between and among the Law Firm, the Plaintiffs' Law Firms, and the ERISA firms, relating to preparation of the Motion for Attorneys' Fees and/or the Fee Petitions filed in the SST Litigation.~~

44. All documents and/or communications relating to the discovery of billing errors disclosed in the November 10, 2016 Letter filed with the Court, including but not limited to communications between and among you, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. **[JUNE 9]**

~~45. All documents, including notes, outline, drafts and exhibits, explaining or attempting to correct any part of the Fee Petition(s).~~

~~46. All documents illustrating, demonstrating, or establishing any errors you or anyone identified in any part of the Fee Petition(s).~~

47. All documents relating to, referring to, evidencing, or constituting the November 10, 2016 Letter, including all drafts, outlines, notes, and communications relating to the filing of that correspondence. **[JUNE 9]**

~~48. All documents and/or communications relating to, referring to or evidencing corrective actions or subsequent review taken by the Law Firm after discovery of the billing errors disclosed in the November 10, 2016 Letter.~~

49. All documents and/or communications relating to the December 17, 2016 Article, including but not limited to communications between and among the Law Firm, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. **[JUNE 9]**

50. All documents relating to Michael Bradley's involvement in the SST Litigation/SST Document Review, including but not limited to communications with Mr. Bradley and all documents relating to or referring to an agreement between Mr. Bradley and Thornton to participate in the SST Document Review. **[JUNE 9]**

51. All documents relating to, referring to or evidencing payments made to Michael Bradley in connection with his work on the SST Litigation/SST Document Review. **[JUNE 9]**

52. All written work product produced by Michael Bradley as part of his involvement in the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. **[JUNE 9]**

53. All documents you may contend support your Fee Petition for reimbursement of fees and/or expenses, which you have not produced thus far. **[JUNE 9]**

Date: May 18, 2017

SPECIAL MASTER HONORABLE GERALD E. ROSEN (RETIRED),

By his Attorneys,

William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy 9BBO #683191)
DONOGHUE BARRETT & SINGAL, P.C.
One Beacon Street, Suite 1320
Boston, MA 02108
Telephone: (617) 720-5090
Facsimile: (617) 720-5092
wsinnott@dbslawfirm.com
emcevoy@dbslawfirm.com

CERTIFICATE OF SERVICE

I, William F. Sinnott, hereby certify that I have caused a copy of the foregoing document to be served upon Richard M. Heimann, Esquire, Lieff Cabraser Heimann & Bernstein, LLP, 275 Battery Street, 29th Floor, San Francisco, CA 94111, by electronic mail and first class mail, postage prepaid, this 18th day of May, 2017.

_____

William F. Sinnott

EX. 166

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

SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS TO THORNTON LAW FIRM, LLP

Pursuant to Rule 53(c) of the Federal Rules and the Court's March 8, 2017 Order (pp. 3-4), Special Master Honorable Gerald E. Rosen (Retired), by his undersigned counsel, hereby requests that Thornton Law Firm, LLP produce the documents described below for inspection and copying at the offices of Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, Massachusetts 02108, within fourteen (14) days from the date of service hereof.

DEFINITIONS

1. The terms "you", "your", "the Firm", "the Law Firm", or "Thornton" refer to Thornton Law Firm, LLP, formerly known as Thornton & Naumes, LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

2. The term "Lieff" refers to Lieff Cabraser Heimann & Bernstein, LLP, and all employees, agents, counsels, attorneys, and representatives.

3. The term "Labaton" or "Labaton Sucharow" refers to Labaton Sucharow LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

4. The term "Plaintiffs' Law Firms" refers to Labaton, Lieff, and/or Thornton, and their respective employees, contractors, affiliates, agents, counsels, and representatives, collectively and/or individually.

5. The term "ERISA firms" or "ERISA counsel" refers to Brian McTigue and/or the McTigue Law Firm, the Law Offices of Keller Rohrback, LLP, Zuckerman Spaeder, LLP, Beins Alexrod, P.C., and any firms retained by one or more of the above, and all employees, agents, counsels, attorneys, and representatives.

6. The term "ARTRS" refers to the Arkansas Teacher Retirement System and/or its Executive Director, George Hopkins, Esq.

7. The term "State Street Litigation", "SST Litigation" or "Litigation" refers to *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

8. The term "State Street Document Review", "SST Document Review" or "Document Review" refers to the review of hard copy and electronic documents produced as part of discovery in *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

9. The term "State Street" refers to State Street Bank and Trust Company and/or State Street Global Markets, defendants in the SST Litigation.

10. The term "settlement in principle" refers to the settlement agreement reached in substance between counsel by and through mediation.

11. The term "Court" refers to the United States District Court for the District of Massachusetts.

12. The term "Fee Petition" or "Fee Application" refers to the *Declaration of Lawrence A. Sucharow in Support of Plaintiffs' Assented-To Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and Lead Counsel's Motion for An Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs* (Docket #104), and Exhibits 1-32 attached thereto, filed with the Court in the State Street Litigation. In particular, "Fee Petition" in conjunction with one or more of the individual firms, refers to the respective Exhibit (and exhibits attached thereto) in which an individual law firm sought approval for payment of its respective fee and expenses

incurred in the SST Litigation, including all declarations, affidavits, and/or the Lodestar reports filed therewith.

13. The term "Motion for Attorneys' Fees" refers to Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Litigation Expenses, including the Memorandum in Support and exhibits, filed with the Court on or about September 15, 2016 and October 21, 2016, respectively (Docket #102, 108).

14. The term "Final Settlement" refers to the Stipulation and Agreement of Settlement dated July 26, 2016 (Docket #89).

15. The term "Fee Award" refers to a certain award of attorneys' fees of $74,541,250.00 and expenses and costs of $1,257,697.94, as approved by the Court in the Lawsuit by Order dated November 2, 2016.

16. The term "November 10, 2016 Letter" refers to the letter from David Goldsmith to Judge Wolf dated November 10, 2016 (Exhibit A to Docket #117), advising the Court of inadvertent errors in the Fee Petitions and Fee Order.

17. The term "December 17, 2016 Article" refers to the Boston Globe article entitled *Critics hit law firms' bills after class-action lawsuits*, published on or about December 17, 2016.

18. The term "hourly rates charged" refers to the hourly billing rates corresponding to work of an individual attorney or staff member of the firm, appearing on a fee petition submitted to the Court or otherwise charged to a client for work performed on a legal matter, including the rates listed on the Fee Petitions submitted in the SST Litigation.

19. The term "Staff Attorneys" refers to licensed attorneys working on a part-time or full-time basis for Lieff/Labaton or other firm, but who are not deemed "associates" or otherwise on a traditional partnership track.

20. The term "hourly clients" refers to all past, present, and prospective clients who agree to pay and/or are charged for legal services rendered on an hourly basis, notwithstanding the actual amount paid or collected.

21. The term "non-hourly clients" refers to all past, present, and prospective clients who do not pay for legal services on an hourly rate, such as clients paying a flat fee, retained through a contingency arrangement and/or class action litigation, or other non-hourly fee structure, notwithstanding the actual amount paid or collected.

22. Any word written in the singular also includes the plural and vice-versa.

23. In case of doubt as to the scope of a clause including "and," "or," "any," "all," "each," or "every," the intended meaning is inclusive rather than exclusive.

24. The term "any" and the term "all" are intended to mean "any and all."

25. As used herein, the term "or" and the term "and" shall mean "and/or" and vice-versa.

26. As used herein, the terms "relating to" or "referring to" or "concerning" or "constituting" or the like mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter or that in any manner state the background of, or were the basis or bases for, or that record, evaluate comment upon, or were referred to, relied upon, utilized, generated, transmitted, or received in arriving at, your conclusions, opinions, estimates, calculations, positions, decisions, beliefs, assertions or allegations, that undermine, contradict, or conflict with your conclusions, opinions, calculations, estimates, positions, beliefs, assertions, or allegations, concerning the subject matter in question.

27. The term "date" means the exact day, month, and year, if ascertainable, or the best approximation thereof if not.

28. The term "communication" as used herein includes, without limitation, the following: conversations, telephone conversations, e-mails, text messages, social media communications, and other electronic transmissions of any kind, statements, discussions, debates, arguments, disclosures, interviews, consultation and every other manner of oral utterance, correspondence, or electronic or written transmittals of information or messages of any kind.

29. The term "document" shall mean those things described in Rule 34(a) of the Federal Rules of Civil Procedure. The terms "document" and "documents" are used herein in the broadest possible sense and mean written, typed, printed, recorded or graphic matter, however produced or reproduced of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to, e-mails, papers, notes, accounts, books, advertisements, letters, memoranda, notes of conversations, contracts, agreements, drawings, telegrams, tape recordings, communications (as defined in paragraph 28 hereof), including inter-office and intra-office memoranda reports, studies, working papers, corporate records, minutes of meetings, notebooks, bank deposit slips, bank checks, canceled checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type of personal or telephone conversations or negotiations, meetings or conferences, or things similar to any of the foregoing, and to include any data, information or statistics contained within any data storage modules, tapes, discs or other memory device, or other information retrievable from storage systems, including but not limited to, computer-generated reports and printouts. If any document has been prepared in multiple copies which are not identical, each modified copy or

non-identical copy is a separate "document." The word "document" also includes data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices in a reasonably usable form.

30. The term "draft" shall mean any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the final document.

INSTRUCTIONS

A. Unless otherwise specified, these requests seek documents for the period from January 1, 2010 until the present.

B. This document request ("Request") requires you to produce all documents called for herein that were created or originated by you, or that came into your possession, custody or control, from all files or other sources that contain responsive documents, wherever located and whether active, in storage, or otherwise.

C. This Request shall be deemed to include any document now or at any time in your possession, custody, or control. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (i) own such document in whole or in part; (ii) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (iii) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (iv) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

D. The obligation to produce the documents specified below is of a continuing nature; your production is to be supplemented if at any time you acquire possession, custody, or control of any additional responsive documents, or otherwise discover additional responsive documents, between the time of initial production and conclusion of the investigation, to the fullest extent required by the Federal Rules of Civil Procedure, the March 8, 2017 Court order, and the Local Rules of this Court.

E. Where only a portion of a document relates or refers to the subject indicated, the entire document is to be produced nevertheless, along with all attachments, appendices and exhibits.

F. Each document produced in response to the Requests below should be clearly categorized to indicate which Request(s) it is responsive to.

G. If any document or portion thereof is withheld under a claim of privilege, you shall produce so much of the document as is not subject to the possible claim of privilege, and shall furnish a statement, signed by an attorney representing you, which identifies each document or portion thereof for which a privilege is claimed, including the following information:

(i) The date of the document;

(ii) The name and title of the person who sent, authored, prepared, signed, or originated the document, or of the person who knows about the information contained therein;

(iii) The name and title of the recipient of the document;

(iv) All persons to whom copies of the document were furnished, along with such persons' job titles or positions;

(v) A brief description of the subject matter or nature of the document sufficient to assess whether the assertion of privilege is valid;

(vi) The specific basis upon which the privilege is claimed;

(vii) With respect to any claim of privilege relating to an attorney, or action or advice or work product of an attorney, the identity of the attorney involved; and

(viii) The paragraphs of this request to which such document responds.

H. All documents shall be produced as they are kept in the ordinary course of business and in their original file folders with any identifying labels, file markings, or similar identifying features. If there are no documents responsive to a category specified below, you shall so state in a writing produced at the time and place that documents are demanded to be produced by this request.

I. Documents created or stored electronically must be produced in their original electronic format, and not printed to paper or PDF. All electronically stored information ("ESI") shall be produced in electronic form (the "production set"). Each document will have its own unique identifier ("Bates number"), which must be consistently formatted across the production, comprising of an alpha prefix and a fixed length number of digits (e.g., "PREFIX0000001"). The production set shall consist of, and meet, the following specifications:

1. Image Files. All ESI will be rendered to single-page, black and white, Group IV *tagged image file* (".tif" or ".tiff") images with a resolution of 300 dpi, the file name for each page is named after its corresponding Bates number. Records in which a color copy is necessary to interpret the document (e.g., photographs, presentations, AUTOCAD, etc.) will be rendered to higher resolution, single-page *joint photographic experts group* (".jpg" or ".jpeg") format. Endorsements must follow these guidelines:

    a. Bates numbers must be stamped on the lower right hand corner of all images.

    b. Confidentiality must be stamped on the lower left hand corner of all images.

    c. Other pertinent language may be stamped on the bottom center, or top of the images, as deemed necessary.

2. Load Files. All ESI must be produced with appropriate data load files, denoting logical document boundaries. The following files should be included within each production set.

    a. A Concordance delimited ASCII text file (".dat").

i. The .dat file will contain metadata from the original native documents, wherein the header row (*i.e.*, the first line) of the .dat file must identify the metadata fields.

ii. The .dat file must be delimited with the standard Concordance delimiters (the use of commas and quotes as delimiters is <u>not acceptable</u>):

ASCII 020 [¶] for the comma character;
ASCII 254 [þ] for the quote character; and
ASCII 174 [®] for new line.

iii. All attachments, or *child* records, should sequentially follow the *parent* record.

iv. The following fields and metadata will be produced:

Beginning Bates; Ending Bates; Beginning Bates Attachment; Ending Bates Attachment; Custodian; File Name; From; Recipient; CC; BCC; Subject; Date Sent; Time Sent; Last Modified Date; Last Modified Time; Author; Title; Date Created; Time Created; Document Extension; Page Count; MD5Hash; Text Path; and Native File Path.

b. Image cross-reference files, *Opticon* image file (".opt") and *IPRO View Load* file (".lfp"), which link images to the database and identifies appropriate document breaks.

J. If any document requested herein has been lost, discarded, or destroyed, that document so lost, discarded, or destroyed shall be identified in writing (produced at the time and place that documents are demanded to be produced by this request) as completely as possible, together with the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

<u>DOCUMENTS REQUESTED</u>

1. The Catalyst and Relativity document databases created or used in the SST Litigation, as annotated, compiled and used in the course of the litigation and/or document review, including instructions, software, and anything else necessary to access and analyze the data therein. **[JULY 10]**

2. All so-called "hot docs," as understood or identified by the Law Firm, ~~and any other documents or information identified during the SST Litigation bearing on the material issues in the Litigation, including but not limited to liability and damages~~. **[JUNE 9]**

3. All engagement letters, fee agreements, retention letters, and/or other documents referring to, relating to, or evidencing terms of the Law Firm's participation in the SST Litigation and/or representation of class representatives. **[JUNE 9]**

4. All engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm's representation of hourly clients, from ~~2008 to the present~~ ***2009-2011***. **[JULY 10]**

5. All engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm's representation of non-hourly clients, from ~~2008 to the present~~ ***2009-2011***. **[JULY 10]**

~~6. All documents and/or communications relating to how the Law Firm records, accounts for and/or seeks reimbursement for hours billed by Staff Attorneys for whom is shared the costs in other class action or contingency cases, including the hourly rates the Law Firm would charge if successful, from 2010 to the present.~~

7. Copies of all billing rate tables, spreadsheets, fee binders, or other collection of the Law Firm's annual billing rates, from 2010 to the present.

8. All minutes, notes, recordings, memoranda or other documents relating to or created by the Law Firm during meetings to determine annual billing rates, from ~~2008 to the present~~ ***2010-2011 and 2015-2016***. **[JUNE 9]**

9. All documents and/or communications relating to Firm's review and adjustment of annual billing rates, from ~~2008 to the present~~ ***2010-2011 and 2015-2016***. **[JUNE 9]**

10. All documents and/or communications relating to the Law Firm's internal classification of costs and expenses, including but not limited to any ethical, legal, or factual opinions solicited by the firm by third parties regarding the classification of Staff Attorneys as fees vs. expenses. **[JUNE 1]**

~~11. A complete set of time records for all attorneys, including Staff Attorneys allocated to the Firm, and other Law Firm staff who worked on or contributed to the SST Litigation, including but not limited to hand-written time sheets/ledgers, emails, electronic entries, pre-bills, and/or client bills, including the hourly rate billed and/or corresponding to the hours recorded.~~

12. A complete set of time records for Michael Bradley's work performed on the SST Litigation, including hand-written notes, emails, ledgers or other notations reflecting hours worked.

~~13. All documents referring to, relating to, evidencing or constituting the basis for and amounts of any costs and expenses billed, incurred or charged by the Law Firm for legal or other services rendered as part of the SST Litigation including but not limited to documents pertaining to the terms under which Staff Attorneys and/or third parties provided services to the Law Firm in the Lawsuit.~~

~~14. All documents and/or communications relating to or evidencing the Law Firm's use of Catalyst in connection with the SST Document Review, including all records of time spent in the Catalyst database, costs incurred, and coding of electronic documents.~~

15. All documents and/or communications relating to or evidencing Michael Bradley's use of Catalyst in connection with the SST Document Review, including all records of time spent in the Catalyst database, costs incurred, and coding of electronic documents.

~~16. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm attorneys and non-legal staff assigned to or who contributed to the SST Litigation, for work performed on the Litigation.~~

17. All W-2s, 1099s, paystubs, or other documentation of payments made directly to Staff Attorneys assigned to Thornton under the cost-sharing agreement with Lieff and/or Labaton, for work performed on the Litigation. **[JUNE 1]**

18. All documents referring to, relating to, evidencing or constituting discussions between the Law Firm and the Plaintiffs' Law Firms relating to sharing costs and/or expenses of the SST Document Review/SST Litigation, including but not limited to sharing the cost of Staff Attorneys, hosting costs for Catalyst database, and other expenses consistent with conducting voluminous document review. **[JUNE 9]**

19. All agreements, contracts, and/or memorialization of an arrangement to share the costs of certain Staff Attorneys allocated to the Firm by Labaton and/or Lieff, including the compensation, reimbursement, and/or invoicing of costs associated with the same. **[JUNE 9]**

20. All documents referring to, relating to, evidencing or constituting discussions with Labaton regarding the Firm's plan or intention to include Staff Attorney time as part of the Firm's Fee Petition and/or Lodestar calculation. **[JUNE 9]**

21. All documents referring to, relating to, evidencing or constituting discussions with Lieff regarding the Firm's plan or intention to include Staff Attorney time as part of the Firm's Fee Petition and/or Lodestar calculation. **[JUNE 9]**

22. All expert reports, factual or legal opinions, or other work product solicited from a third-party by the Law Firm in connection with factual and/or legal issues arising in the SST

Litigation, including but not limited to the foreign-exchange market, foreign-exchange trading practices, and custodial management of retirement funds. **[JULY 10]**

~~23. All documents and/or communications relating to or evidencing discussions between and among the Law Firm, the Plaintiffs' Law Firms, and/or ERISA counsel regarding the allocation of a certain percentage of the Fee Award among counsel, including but not limited to agreements to pay ERISA counsel a fixed percentage of the total Fee Award.~~

24. All written guidance, training manuals, policies/procedures, search criteria, other documents provided by the Firm to any Staff Attorneys for whom it shared the costs, relating to the SST Document Review, including but not limited to materials related to use of Catalyst database. **[JUNE 1]**

25. All other documents relating to the SST Litigation, other than those responsive to Request No. 24 above, that the Law Firm provided to any Staff Attorneys for whom it shared the costs, including but not limited to case pleadings, mediation reports, legal memoranda. **[JUNE 1]**

26. All written work product produced by Staff Attorneys allocated to the Firm for the SST Litigation/Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. **[JUNE 1]**

27. A complete copy of all binder(s) containing discursive memoranda pertaining to the SST Litigation/SST Document Review, including all attachments. **[JUNE 1]**

~~28. All presentations, memoranda, or other submissions, including potential exhibits, any plaintiffs' counsel prepared for or submitted to the mediator, including all exhibits thereto.~~

~~29. All communications between the Law Firm and counsel for State Street relating to the SST Litigation, including but not limited to document productions, mediations, and settlement.~~

30. All communications with the U.S. Department of Labor, including all local field offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission relating to the SST Litigation. **[JULY 10]**

~~31. All documents relating to, referring to or evidencing a secondary review or quality control process of the SST Document Review performed by Staff Attorneys allocated to the Firm.~~

32. All documents and/or communications between and among the Law Firm and its accounting and/or billing personnel relating to the accounting for, recording, and/or invoicing of Staff Attorneys for whom the Firm shared the costs. **[JUNE 1]**

~~33. All invoices, requests for payment, paystubs, proof of payment, and/or similar documents sent to or received from Labaton pursuant to the cost-sharing agreement between Labaton and Thornton to share the costs of certain Staff Attorneys, including all emails or other communications related to the same.~~

~~34. All invoices, requests for payment, paystubs, proof of payment, and/or similar documents sent to or received from Lieff pursuant to the cost-sharing agreement between Lieff and Thornton to share the costs of certain Staff Attorneys, including all emails or other communications related to the same.~~

35. All documents relied upon by the Law Firm in preparing and filing the Firm's Fee Petition, including but not limited to expense reports, billing records, emails, invoices, and/or other records. **[JUNE 9]**

36. All documents, other than those requested in Request No. 35 above, reviewed or considered by the Law Firm in calculating the Firm's Lodestar calculation. **[JUNE 9]**

37. All documents relating to, referring to, or constituting the Law Firm's Fee Petition, including all drafts, spreadsheets, outlines, notes, emails. **[JUNE 9]**

~~38. All documents relating to, referring to, or constituting the Motion for Attorneys' Fees, including all drafts, spreadsheets, outlines, notes, emails.~~

~~39. All communications between and among the Law Firm, the Plaintiffs' Law Firms, and the ERISA firms, relating to preparation of the Motion for Attorneys' Fees and/or the Fee Petitions filed in the SST Litigation.~~

40. All documents and/or communications relating to the discovery of billing errors disclosed in the November 10, 2016 Letter filed with the Court, including but not limited to communications between and among you, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. **[JUNE 9]**

~~41. All documents, including notes, outline, drafts and exhibits, explaining or attempting to correct any part of the Fee Petition(s).~~

~~42. All documents illustrating, demonstrating, or establishing any errors you or anyone identified in any part of the Fee Petition(s).~~

43. All documents relating to, referring to, evidencing, or constituting the November 10, 2016 Letter, including all drafts, outlines, notes, and communications relating to the filing of that correspondence. **[JUNE 9]**

~~44. All documents and/or communications relating to, referring to or evidencing corrective actions or subsequent review taken by the Law Firm after discovery of the billing errors disclosed in the November 10, 2016 Letter.~~

45. All documents and/or communications relating to the December 17, 2016 Article, including but not limited to communications between and among the Law Firm, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. **[JUNE 9]**

46. All documents relating to, reflecting, or evidencing an agreement between the Firm and Michael Bradley to participate in the SST Litigation/Document Review. **[JUNE 9]**

47. All documents relating to, reflecting, or evidencing an agreement to pay Michael Bradley $500/hour for all work performed by Michael Bradley in the SST Litigation/Document Review. **[JUNE 9]**

48. All documents and/or communications relating to Michael Bradley's work on the SST Document Review between January 2009 and November 2016. **[JUNE 9]**

~~49. All documents and/or communications relating to the Firm's agreement to compensation Michael Bradley at an hourly rate of $500/hour for his work in the SST Litigation/Document Review.~~

50. All 1099s, W-2s, paystubs, or similar documents evidencing payments made to Michael Bradley for his work on the SST Litigation/SST Document Review. **[JUNE 9]**

51. All documents and/or communications relating to, reflecting, or evidencing all other instances in which Michael Bradley performed work for or on behalf of the Firm, other than in the SST Litigation, including the hourly rates charged, the total hours billed, and the total compensation paid to Michael Bradley, if any. **[JUNE 9]**

52. All written work product produced by Michael Bradley as part of his involvement in the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. **[JUNE 9]**

53. All documents you may contend support your Fee Petition for reimbursement of fees and/or expenses, which you have not produced thus far. **[JUNE 9]**

Date: May ____, 2017

SPECIAL MASTER HONORABLE GERALD E. ROSEN (RETIRED),

By his Attorneys,

William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy 9BBO #683191)
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One Beacon Street, Suite 1320
Boston, MA 02108
(617) 720-5090
(617) 720-5092 Facsimile
wsinnott@dbslawfirm.com
emcevoy@dbslawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of May, 2017 a copy of the foregoing document was sent by first class mail to the following counsel of record.

_____

William F. Sinnott

EX. 167

From: Damon Chargois <damon@cmhllp.com>
Sent: Tuesday, June 21, 2016 5:00 PM
To: Garrett Bradley
Subject: Re: State street fee regarding local counsel

Good talking with you as well, Garrett. & It's been too long since we've gotten together. Also, iIt's good that you and I work through this first. & So that I'm clear, the proposal is that my firm agree to a flat fee of 5% of the gross attorney fee awarded by the court in this case. & For example, if the Judge approves the current/anticipated attorney fee request of 70,900,000, then- should we agree to the proposal-my firm would receive 5% of the 70,900,000 dollars (total of 3,545,000 dollars), correct?

Additionally for my edification, did the 10% portion that was agreed to with the Erisa firms precede our original agreement or was it after? & I'm going to be asked that question and don't know the answer. &

Sent from my iPhone

On Jun 21, 2016, at 3:26 PM, Garrett Bradley &<GBradley@tenlaw.com&>wrote:

> Damon,
>
> As always it was a pleasure to speak with you today. & As requested, I am laying out to you where we are on the State Street matter and below is the email that we referenced on the call. & That email established that Lieff, Thornton and Labaton would "share" your obligation whatever it turned out to be. & The status of the case has gotten better but yet more confusing when it comes to fees.
>
> We have reached a settlement in principle for $300,000,000 with the defendant but it involves not just our consumer class case, but also obligations to SEC and DOL as well as the Erisa class case which was merged with ours by the Judge for settlement discussions. & DOJ also has a separate settlement that is timed to be announced with ours. & As we spoke this morning, a few matters got screwed up today but we are hoping to have a status conference with the court on Thursday (he is on vacation all July) with a preliminary approval hearing sometime in August. & Given that we have to do a CAFA notice, we are still hoping for a final date this late this year. & We also have to post bonds or wait the 30 day appeal period to take fees [redacted] & It is going to be tight.
>
> Since our last conversation some things have changed. & The fee we will apply for is $70,900,000. This will be for Lief, Thornton, Labaton, you and now three Erisa firms. & We are attempting to hold the Erisa firms to 10% because that is what they agreed to several years ago, but the Erisa part of the settlement is now 20%. & I think we can hold them to 10%. & Also at one point in the litigation, it became clear that State Street was going to try and pick of Arkansas as the class rep so we got [redacted] to agree to come in. & We never formally had to bring them but we let the defendants know it would be a waste to settle out with Arkansas.

We have not finalized the balance of the fee between us, Lief and Thornton but I think it is the right time for me to propose what I think would be a fair and reasonable fee for you. & It was my firm that originated the idea and put the firms together. & Also, as we discussed this is not a securities case and is complicated by all the above factors. & We have always been direct with each other and I am not trying to negotiate but rather just give you a set percentage. & I would propose that you be paid 5% of the fee that the court awards (as you know he may award what we ask but could also trim our request). & My firm, Lief and Labaton have put extensive man hours into the case and looked at millions of pages of documents, so I think we have a good chance of getting our request.

I have not put anyone else on this email but if you agree I will flip this around and get everyone's written assent. & Please let me know your thoughts.

Garrett

> 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 spilt 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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(800) 431-4600. You will be reimbursed for reasonable costs incurred in
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EX. 168

From: Keller, Christopher J. <ckeller@labaton.com>
Sent: Friday, October 9, 2015 9:34 AM
To: Belfi, Eric J.; Garrett J. Bradley
Subject: Fwd: State street fee regarding local counsel

Christopher Keller

Partner || Labaton Sucharow LLP
140 Broadway&
New York, NY 10005
212-907-0853

Begin forwarded message:

> **From:** "Belfi, Eric J." &<EBelfi@labaton.com&>
> **Date:** May 6, 2013 at 7:50:34 AM EDT
> **To:** "Robert L. Lieff" &<RLIEFF@lchb.com&>, "Garrett J. Bradley" &<gbradley@tenlaw.com&>, "Robert L. Lieff" &<rlieff@lieff.com&>, Michael Thornton &<MThornton@tenlaw.com&>
> **Cc:** Damon Chargois Esq. &<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 spilt 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

&

EX. 169

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 6/21/2016 4:10:01 PM
To: =SMTP:GBradley@tenlaw.com
Subject: Damon

Nice work. Now if we can just get it in.

-----Original Message-----
From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Tuesday, June 21, 2016 12:10 PM
To: Belfi, Eric J. <EBelfi@labaton.com>
Subject: Re: Damon

He wants me to write it up so he can see it but he thought it seemed fair given all the dynamics.

Garrett

> On Jun 21, 2016, at 12:08 PM, Belfi, Eric J. <EBelfi@labaton.com> wrote:
>
> He agreed?
>
> -----Original Message-----
> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
> Sent: Tuesday, June 21, 2016 12:08 PM
> To: Belfi, Eric J. <EBelfi@labaton.com>
> Subject: Re: Damon
>
> Told him I need him at 5% and that it could be very late this year but we had some late problems.
>
> Garrett
>
>> On Jun 21, 2016, at 12:01 PM, Belfi, Eric J. <EBelfi@labaton.com> wrote:
>>
>> What's the number? Also did you tell him, who knows when we are getting paid?
>>
>> -----Original Message-----
>> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
>> Sent: Tuesday, June 21, 2016 11:59 AM
>> To: Belfi, Eric J. <EBelfi@labaton.com>
>> Subject: Damon
>>
>> Damon called me right up and I had a real good call. Sending it in writing to him.
>>
>> Garrett
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>
>
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EX. 170

Message

From: Bradley, Garrett J. [GBradley@labaton.com]
Sent: 7/8/2016 9:36:54 PM
To: Keller, Christopher J. [ckeller@labaton.com]
Subject: Re: State street fee.

Thanks

Garrett

On Jul 8, 2016, at 5:31 PM, Keller, Christopher J. <ckeller@labaton.com> wrote:
great work getting this done.

Christopher Keller
Partner || Labaton Sucharow LLP
140 Broadway
New York, NY 10005
212-907-0853

Begin forwarded message:
From: "Robert L. Lieff" <RLIEFF@lchb.com>
Date: July 8, 2016 at 4:05:03 PM EDT
To: "Garrett J. Bradley" <gbradley@tenlaw.com>
Cc: Michael Thornton <MThornton@tenlaw.com>, "Sucharow, Lawrence" <LSucharow@labaton.com>, Robert Lieff <rlieff@lieff.com>, "Daniel P. Chiplock" <DCHIPLOCK@lchb.com>, "Keller, Christopher J." <ckeller@labaton.com>, "Belfi, Eric J." <EBelfi@labaton.com>, Damon Chargois Esq. <damon@cmhllp.com>
Subject: Re: State street fee.
We LCHB are in agreement with the 5.5 to Chargois. Now let's continue to resolve the split among us.

Sent from my iPhone

On Jul 8, 2016, at 9:06 PM, Garrett Bradley <GBradley@tenlaw.com> wrote:

Gentlemen,

As we discuss how to distribute the fee between ourselves, and of course the ERISA attorneys, I have had discussion with Damon Chargois, the local attorney in this matter who has played an important role. Damon and his firm are willing to accept 5.5% of the total fee awarded by the Court in the State Street class case now pending before Judge Wolf. As you know, we had a prior deal with him that his fee would be "off the top". He understands that ERISA counsel is now in the same pool of money. He has agreed to come done to this number with a guarantee that it will be off the court awarded fee number. Please reply all if you agree. Given that it is off the total number their is no need to add the ERISA counsel to this email chain.

Thank you,

Garrett Bradley

EX. 171

From: Goldsmith, David <dgoldsmith@labaton.com>
Sent: Tuesday, November 22, 2016 1:14 PM
To: Sucharow, Lawrence; Garrett J. Bradley; Keller, Christopher J.; Belfi, Eric J.
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX

Ok.& Can one of you send me Damon's contact info please.
&

From: Sucharow, Lawrence
Sent: Tuesday, November 22, 2016 12:01 PM
To: Goldsmith, David; Garrett J. Bradley; Keller, Christopher J.; Belfi, Eric J.
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
Need two letters with breakdown.
ERISA just gets sent to & ERISA counsel with 10% off top and then 1/3 each.
Class co-counsel gets one with:
ERISA 10% off top
Damon's percentage also off top
Then each of class co-counsel split with percentages agreed to.
&
In short, no reason for ERISA to see Damon's split.& They only need to see their 10% and then split 3 ways.
By the way I want to *Asterisk the 10% to ERISA with a footnote saying "Although our fee agreement with ERISA counsel only provides for a 9% allocation, & Class co-counsel have determined to increase that to 10% in light of the excellent work and contribution of ERISA counsel."
&

From: Goldsmith, David
Sent: Tuesday, November 22, 2016 11:49 AM
To: Garrett J. Bradley; Sucharow, Lawrence; Keller, Christopher J.; Belfi, Eric J.
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
We thought we'd do a separate letter to him.
&

From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Tuesday, November 22, 2016 11:48 AM
To: Goldsmith, David; Sucharow, Lawrence; Keller, Christopher J.; Belfi, Eric J.
Subject: Fwd: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
I think you should put Damon on this letter.

Garrett

Begin forwarded message:

> **From:** Lynn Sarko &<lsarko@KellerRohrback.com&>
> **Date:** November 22, 2016 at 11:40:23 AM EST
> **To:** "Lieff, Robert L." &<RLIEFF@lchb.com&>, "'Goldsmith, David'" &<dgoldsmith@labaton.com&>, Michael Thornton &<MThornton@tenlaw.com&>, "Garrett J. Bradley" &<gbradley@tenlaw.com&>, Michael Lesser &<MLesser@tenlaw.com&>, "Chiplock, Daniel P." &<DCHIPLOCK@lchb.com&>, 'Robert Lieff' &<rlieff@lieff.com&>, "'Kravitz, Carl S.'" &<ckravitz@zuckerman.com&>, "'Brian McTigue'"

&<bmctigue@mctiguelaw.com&>
Cc: "Sucharow, Lawrence" &<LSucharow@labaton.com&>, "Belfi, Eric J." &<EBelfi@labaton.com&>, "Stocker, Michael W." &<MStocker@labaton.com&>, "Zeiss, Nicole" &<NZeiss@labaton.com&>
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX

Ditto for KR.& We will sign- but let's include the breakdown in a draft letter.
Thanks
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: Lieff, Robert L. [mailto:RLIEFF@lchb.com]
Sent: Monday, November 21, 2016 4:25 PM
To: 'Goldsmith, David' &<dgoldsmith@labaton.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>; 'Robert Lieff' &<rlieff@lieff.com&>; Lynn Sarko &<lsarko@KellerRohrback.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Sucharow, Lawrence &<LSucharow@labaton.com&>; Belfi, Eric J. &<EBelfi@labaton.com&>; Stocker, Michael W. &<MStocker@labaton.com&>; Zeiss, Nicole &<NZeiss@labaton.com&>; Lieff, Robert L. &<RLIEFF@lchb.com&>
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
David,
&
I have no concerns regarding the proposed letter.& I think that it is appropriate and I intend to sign it.
&
What I would like to see is a breakdown as to the fees and cost reimbursements going to each counsel listed in the letter.& I know that we have all agreed to the distribution; however, I think we should have a dollar breakdown to be paid December 8.
&
Thank you,
&
Bob
&

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Monday, November 21, 2016 3:55 PM
To: Michael Thornton; Garrett J. Bradley; Michael Lesser; Chiplock, Daniel P.; 'Robert Lieff'; Lynn Sarko; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Belfi, Eric J.; Stocker, Michael W.; Zeiss, Nicole
Subject: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
All:

&
Attached please find a draft letter setting out our plan with regard to the November 10 letter we filed with the Court and future distribution of fees and expenses.
&
Please let us know if you have any comments or concerns.& We'd like to circulate a final version and collect signatures before the holiday if possible.
&
Thanks,
David
&
&
&
&
&

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. 172

From: Belfi, Eric J. <EBelfi@labaton.com>
Sent: Tuesday, November 22, 2016 1:16 PM
To: Goldsmith, David
Cc: Sucharow, Lawrence; Garrett J. Bradley; Keller, Christopher J.
Subject: Re: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX

I need to speak to him first.&

Eric J. Belfi& |& Partner
Labaton Sucharow LLP
140 Broadway, New York, New York 10005
T:& (212) 907-0878& |& & F:& (212) 883-7078
E:& ebelfi@labaton.com& & |& & W:www.labaton.com
&
 & &  & & 

On Nov 22, 2016, at 12:13 PM, Goldsmith, David &<dgoldsmith@labaton.com&>wrote:

> Ok.& Can one of you send me Damon's contact info please.
> &
> ---
> **From:** Sucharow, Lawrence
> **Sent:** Tuesday, November 22, 2016 12:01 PM
> **To:** Goldsmith, David; Garrett J. Bradley; Keller, Christopher J.; Belfi, Eric J.
> **Subject:** RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
> &
> Need two letters with breakdown.
> ERISA just gets sent to & ERISA counsel with 10% off top and then 1/3 each.
> Class co-counsel gets one with:
> ERISA 10% off top
> Damon's percentage also off top
> Then each of class co-counsel split with percentages agreed to.
> &
> In short, no reason for ERISA to see Damon's split.& They only need to see their 10% and then split 3 ways.
> By the way I want to *Asterisk the 10% to ERISA with a footnote saying "Although our fee agreement with ERISA counsel only provides for a 9% allocation, & Class co-counsel have determined to increase that to 10% in light of the excellent work and contribution of ERISA counsel."
> &
> ---
> **From:** Goldsmith, David
> **Sent:** Tuesday, November 22, 2016 11:49 AM
> **To:** Garrett J. Bradley; Sucharow, Lawrence; Keller, Christopher J.; Belfi, Eric J.
> **Subject:** RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
> &
> We thought we'd do a separate letter to him.
> &

From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Tuesday, November 22, 2016 11:48 AM
To: Goldsmith, David; Sucharow, Lawrence; Keller, Christopher J.; Belfi, Eric J.
Subject: Fwd: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
I think you should put Damon on this letter.

Garrett

Begin forwarded message:

From: Lynn Sarko &<lsarko@KellerRohrback.com&>
Date: November 22, 2016 at 11:40:23 AM EST
To: "Lieff, Robert L." &<RLIEFF@lchb.com&>, "'Goldsmith, David'" &<dgoldsmith@labaton.com&>, Michael Thornton &<MThornton@tenlaw.com&>, "Garrett J. Bradley" &<gbradley@tenlaw.com&>, Michael Lesser &<MLesser@tenlaw.com&>, "Chiplock, Daniel P." &<DCHIPLOCK@lchb.com&>, 'Robert Lieff' &<rlieff@lieff.com&>, "'Kravitz, Carl S.'" &<ckravitz@zuckerman.com&>, "'Brian McTigue'" &<bmctigue@mctiguelaw.com&>
Cc: "Sucharow, Lawrence" &<LSucharow@labaton.com&>, "Belfi, Eric J." &<EBelfi@labaton.com&>, "Stocker, Michael W." &<MStocker@labaton.com&>, "Zeiss, Nicole" &<NZeiss@labaton.com&>
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX

Ditto for KR.& We will sign- but let's include the breakdown in a draft letter.
Thanks
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: Lieff, Robert L. [mailto:RLIEFF@lchb.com]
Sent: Monday, November 21, 2016 4:25 PM
To: 'Goldsmith, David' &<dgoldsmith@labaton.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>; 'Robert Lieff' &<rlieff@lieff.com&>; Lynn Sarko &<lsarko@KellerRohrback.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Sucharow, Lawrence &<LSucharow@labaton.com&>; Belfi, Eric J. &<EBelfi@labaton.com&>; Stocker, Michael W. &<MStocker@labaton.com&>; Zeiss, Nicole &<NZeiss@labaton.com&>; Lieff, Robert L. &<RLIEFF@lchb.com&>
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX

&
David,
&
I have no concerns regarding the proposed letter.& I think that it is appropriate and I intend to sign it.
&
What I would like to see is a breakdown as to the fees and cost reimbursements going to each counsel listed in the letter.& I know that we have all agreed to the distribution; however, I think we should have a dollar breakdown to be paid December 8.
&
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&
Bob
&

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Monday, November 21, 2016 3:55 PM
To: Michael Thornton; Garrett J. Bradley; Michael Lesser; Chiplock, Daniel P.; 'Robert Lieff'; Lynn Sarko; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Belfi, Eric J.; Stocker, Michael W.; Zeiss, Nicole
Subject: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
All:
&
Attached please find a draft letter setting out our plan with regard to the November 10 letter we filed with the Court and future distribution of fees and expenses.
&
Please let us know if you have any comments or concerns.& We'd like to circulate a final version and collect signatures before the holiday if possible.
&
Thanks,
David
&
&
&
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David J. Goldsmith | Partner
140 Broadway, New York, New York 10005
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E: dgoldsmith@labaton.com& |& W: www.labaton.com
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EX. 173

From: Sucharow, Lawrence <LSucharow@labaton.com>
Sent: Tuesday, November 22, 2016 1:35 PM
To: Garrett J. Bradley
Cc: Goldsmith, David; Keller, Christopher J.; Belfi, Eric J.
Subject: Re: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX

If we do it at 10 it should be clean. Except for being obviously part of any clawback&

Sent from my iPhone

On Nov 22, 2016, at 12:30 PM, Garrett Bradley &<GBradley@tenlaw.com&>wrote:

> On the extra 1 percent are you conditioning that on the fee not changing or just having the 10 percent subject to partial clawback?&
>
> On Nov 22, 2016, at 12:01 PM, Sucharow, Lawrence &<LSucharow@labaton.com&>wrote:
>
> > Need two letters with breakdown.
> > ERISA just gets sent to & ERISA counsel with 10% off top and then 1/3 each.
> > Class co-counsel gets one with:
> > ERISA 10% off top
> > Damon's percentage also off top
> > Then each of class co-counsel split with percentages agreed to.
> > &
> > In short, no reason for ERISA to see Damon's split.& They only need to see their 10% and then split 3 ways.
> > By the way I want to *Asterisk the 10% to ERISA with a footnote saying "Although our fee agreement with ERISA counsel only provides for a 9% allocation, & Class co-counsel have determined to increase that to 10% in light of the excellent work and contribution of ERISA counsel."
> > &
> > **From:** Goldsmith, David
> > **Sent:** Tuesday, November 22, 2016 11:49 AM
> > **To:** Garrett J. Bradley; Sucharow, Lawrence; Keller, Christopher J.; Belfi, Eric J.
> > **Subject:** RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
> > &
> > We thought we'd do a separate letter to him.
> > &
> > **From:** Garrett Bradley [mailto:GBradley@tenlaw.com]
> > **Sent:** Tuesday, November 22, 2016 11:48 AM
> > **To:** Goldsmith, David; Sucharow, Lawrence; Keller, Christopher J.; Belfi, Eric J.
> > **Subject:** Fwd: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
> > &
> > I think you should put Damon on this letter.
> >
> > Garrett
> >
> > Begin forwarded message:

From: Lynn Sarko &<lsarko@KellerRohrback.com&>
Date: November 22, 2016 at 11:40:23 AM EST
To: "Lieff, Robert L." &<RLIEFF@lchb.com&>, "'Goldsmith, David'" &<dgoldsmith@labaton.com&>, Michael Thornton &<MThornton@tenlaw.com&>, "Garrett J. Bradley" &<gbradley@tenlaw.com&>, Michael Lesser &<MLesser@tenlaw.com&>, "Chiplock, Daniel P." &<DCHIPLOCK@lchb.com&>, 'Robert Lieff' &<rlieff@lieff.com&>, "'Kravitz, Carl S.'" &<ckravitz@zuckerman.com&>, "'Brian McTigue'" &<bmctigue@mctiguelaw.com&>
Cc: "Sucharow, Lawrence" &<LSucharow@labaton.com&>, "Belfi, Eric J." &<EBelfi@labaton.com&>, "Stocker, Michael W." &<MStocker@labaton.com&>, "Zeiss, Nicole" &<NZeiss@labaton.com&>
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX

Ditto for KR.& We will sign- but let's include the breakdown in a draft letter.
Thanks
Lynn

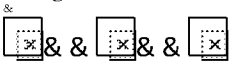
Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
&
Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

&

From: Lieff, Robert L. [mailto:RLIEFF@lchb.com]
Sent: Monday, November 21, 2016 4:25 PM
To: 'Goldsmith, David' &<dgoldsmith@labaton.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>; 'Robert Lieff' &<rlieff@lieff.com&>; Lynn Sarko &<lsarko@KellerRohrback.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Sucharow, Lawrence &<LSucharow@labaton.com&>; Belfi, Eric J. &<EBelfi@labaton.com&>; Stocker, Michael W. &<MStocker@labaton.com&>; Zeiss, Nicole &<NZeiss@labaton.com&>; Lieff, Robert L. &<RLIEFF@lchb.com&>
Subject: RE: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&

David,
&
I have no concerns regarding the proposed letter.& I think that it is appropriate and I intend to sign it.
&
What I would like to see is a breakdown as to the fees and cost reimbursements going to each counsel listed in the letter.& I know that we have all agreed to the distribution; however, I think we should have a dollar breakdown to be paid December 8.
&
Thank you,
&
Bob
&

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Monday, November 21, 2016 3:55 PM
To: Michael Thornton; Garrett J. Bradley; Michael Lesser; Chiplock, Daniel P.; 'Robert Lieff'; Lynn Sarko; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Belfi, Eric J.; Stocker, Michael W.; Zeiss, Nicole
Subject: SST--DRAFT Letter to Co-Counsel re Fee Distribution_Undertaking.DOCX
&
All:
&
Attached please find a draft letter setting out our plan with regard to the November 10 letter we filed with the Court and future distribution of fees and expenses.
&
Please let us know if you have any comments or concerns.& We'd like to circulate a final version and collect signatures before the holiday if possible.
&
Thanks,
David
&
&
&
&
&

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. 174

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

LABATON SUCHAROW LLP'S RESPONSE TO SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST SET OF INTERROGATORIES TO LABATON SUCHAROW LLP – JUNE 9 RESPONSE

Labaton Sucharow LLP ("Labaton Sucharow" or the "Firm") responds as follows to the Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP ("First Interrogatories"). This response addresses those interrogatories that, following conferral with counsel to the Special Master, are to be provided on June 9, 2017.

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 First 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. Per agreement of counsel to the Special Master, 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 First 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 First 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 First 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 First 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 First 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 16:

Describe in detail all agreements between the Firm/Plaintiffs' Law Firms, on the one hand, and the ERISA firms, on the other, to allocate to the ERISA firms a fixed percentage of the total Fee Award rendered by the Court in the SST Litigation. As to any agreement that did not represent the final agreement for allocation of the Fee Award, explain the reason for modifying a previous agreement, including all persons involved in these discussions and their affiliation/firm.

RESPONSE TO INTERROGATORY 16:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: In December 2013, Labaton Sucharow, Lieff Cabraser, and Thornton entered into the "Agreement Between Counsel for Consumer and ERISA Plaintiffs Regarding Division of Attorneys' Fees," dated as of December 11, 2013, with: McTigue Law LLP; Zuckerman Spaeder LLP; Beins, Axelrod, P.C.; Richardson, Patrick, Westbrook & Brickman; and Keller Rohrback L.L.P ("ERISA Fee Agreement"). The ERISA Fee Agreement provided that the parties thereto agreed that any attorneys' fees awarded by the Court in connection with the Class Actions would be divided 91% to Plaintiffs' Law Firms and 9% to ERISA counsel. The ERISA Fee Agreement contained various other provisions concerning, among other things, that the division of fees applied regardless of whether the Court awarded a single sum for all claims or not, that each counsel remained responsible for representing their own clients, and that the agreement did not relate to expenses.

Subsequently, at some point prior to the Final Approval Hearing on November 2, 2016, Lawrence Sucharow of Labaton suggested to Garrett Bradley of Thornton Law, and Daniel Chiplock and Robert Lieff of Lieff Cabraser, that in light of (i) the efforts of ERISA counsel in assisting with achieving the global settlement of the Class Actions and (ii) that the Indirect FX Trading Volume of class members that are ERISA Plans or eligible Group Trusts was greater

than what was understood to be the case at the time of the execution of the ERISA Fee Agreement, that the 9% contractual commitment should be voluntarily supplemented by the Plaintiffs' Law Firms by an additional 1%, thus increasing the allocation to ERISA counsel to 10%. The Thornton and Lieff Cabraser firms agreed. There is no written agreement with ERISA counsel concerning this voluntary supplement.

INTERROGATORY 36:

Explain what knowledge, if any, the Firm had about the existence of a cost-sharing agreement(s) (formal or informal) between Lieff Cabraser and Thornton to allocate and/or share costs for certain of Lieff's Staff Attorneys assigned to work on the SST Litigation.

RESPONSE TO INTERROGATORY 36:

The Firm incorporates the General Objections set forth above, and construes this interrogatory to refer to the period during the SST Litigation. Subject to and without waiving the foregoing objections, the Firm states the following:

Some attorneys at Labaton Sucharow, including Michael Rogers and David Goldsmith but not including Nicole Zeiss, generally knew that certain of Lieff Cabraser's Staff Attorneys assigned to work on the SST Litigation would be paid for by Thornton. By implication, the Firm generally knew of the existence of a cost-sharing agreement between Lieff and Thornton to allocate and/or share costs for those Staff Attorneys assigned to work on the SST Litigation. The Firm had no knowledge of the specific terms of such cost-sharing agreement.

INTERROGATORY 40:

Describe what knowledge, if any, the Firm had in early 2015 about Michael Bradley's involvement in the SST Litigation, including any knowledge of Thornton's agreement to pay Mr. Bradley an agreed-upon rate of $500/hour.

RESPONSE TO INTERROGATORY 40:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: Based on a review of documents in connection with the Special Master's investigation, the Firm has identified an email dated May 20, 2014, from Michael Lesser of Thornton to David Goldsmith of Labaton Sucharow, which set forth Thornton's "document review hours, excluding mine [Mr. Lesser's]." The e-mail listed four document reviewers: "Mike Bradley (attorney)"; "Andrea Carruth (paralegal)"; "Jotham Kinder (attorney)"; and "Evan Hoffman (attorney)". The e-mail did not indicate hourly rates for these four persons. The names Mike Bradley, Andrea Carruth, and Jotham Kinder had no particular significance to Mr. Goldsmith at the time.

INTERROGATORY 41:

Identify and describe all communications relating to Michael Bradley's participation in the SST Litigation/SST Document Review from 2010 through November 2016, including relating to compensation or an hourly billing rate that Thornton would charge for Mr. Bradley's time spent on the matter.

RESPONSE TO INTERROGATORY 41:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm identifies the following communications and sets of communications relating to Michael Bradley's participation in the SST Litigation/SST Document Review from 2010 through November 2016, including relating to compensation or an hourly billing rate that Thornton would charge for Michael Bradley's time spent on the matter:

(a) The May 20, 2014 e-mail described in the Answer and Objections to Interrogatory No. 40 above.

(b) E-mail communications between Thornton and Labaton Sucharow during September 2016 attaching draft and final Thornton lodestar reports. The lodestar reports listed Michael Bradley as a Staff Attorney at an hourly

billing rate of $500. His listing was not noticed by the Firm and to the best of available recollections there were no discussions about it during the process of finalizing the Fee Petition.

(c) An e-mail dated November 1, 2016 from Garrett Bradley of Thornton to Nicole Zeiss of Labaton Sucharow, asking: "How many hours did my brother put in on state street and how much was his rate?" Ms. Zeiss forwarded the e-mail internally to David Goldsmith and asked: "Do you have any idea what he is talking about?" Ms. Zeiss separately replied to Mr. Bradley and asked: "Who is your brother?" Mr. Goldsmith replied to Ms. Zeiss: "Garrett's lodestar report shows Michael Bradley did 406.4 hrs at $500/hr. I have a feeling he was one of the STAs here who was assigned to Thornton." Ms. Zeiss then further replied to Mr. Goldsmith and stated "Ya, I just saw that and told him." Ms. Zeiss does not recall whether she communicated the number of hours and hourly rate to Mr. Bradley by e-mail or by telephone.

(d) A telephone conversation on November 8, 2016 between Garrett Bradley and David Goldsmith. On that date, Mr. Bradley called Mr. Goldsmith and told Mr. Goldsmith that a reporter from the *Boston Globe* had called Mr. Bradley earlier that day with questions about, among other things, Michael Bradley's involvement in the SST Litigation and his hourly rate. Garrett Bradley's reference to "my brother" during the call led Mr. Goldsmith to understand that Michael Bradley is Garrett Bradley's brother.

(e) An e-mail dated November 16, 2016 from Andrea Estes, a reporter with the *Boston Globe*, to David Goldsmith and Brian Kelly and Jim Vallee of Nixon Peabody. Ms. Estes's e-mail referenced Thornton's fee affidavit and asked Mr. Goldsmith, among other questions, if he knew "that Garrett Bradley's brother, who does district court defense work, was included at $500 an hour?" Mr. Goldsmith promptly forwarded the e-mail internally to the Firm's Executive Committee, Michael Stocker (a partner who serves as the Firm's General Counsel), and the internal team responsible for media relations.

Answering further, pursuant to Fed. R. Civ. P. 33(d), the Firm references its production in response to Special Master Honorable Gerald E. Rosen's (Ret.) First Request for the Production of Documents, Request Nos. 52-55.

INTERROGATORY 44:

Explain how the Law Firm determines annual billing rates for all attorneys, including Staff Attorneys. Please identify and describe all factors considered and/or resources relied upon in making these determinations.

RESPONSE TO INTERROGATORY 44:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: On an annual basis, the Firm does a comprehensive nationwide analysis of comparable law firm billing rates thru many public sources of information. The first step in the process involves compiling a list of law firms to research, based (among other things) on previous reports. The list is populated with firms that Labaton Sucharow typically litigates with, on the plaintiff side, and against, on the defense side.

The billing rates data is then collected from various filings that are available on PACER. Generally, defense lodestars come from monthly and interim fee applications filed during bankruptcy proceedings. Once this data is gathered in PDF format, it is manually input into Microsoft Excel, where it is organized and further exported to Microsoft Access. The Firm then uses Excel to assemble the comparative portions of its report, and Access to generate formatted representations of the individual billing rates retrieved from the lodestars (the "raw data"). The Firm then breaks down, by firm, the billing rates of employees in various positions (by title) in order to view the lowest, highest, and average rates charged under each title, as well as where the rates rank (by percentile) as compared to the entire cohort of firms. Each firm's data is then compared to its data from previous years.

The results of this exercise are presented to the Billing Rate Sub-Committee. The Sub-Committee reviews the research and makes recommendations on changes for each individual Firm attorney, including staff attorneys, generally in response to changes in market rates

revealed by the data collected, as well as increased seniority and promotions. Once all of the changes are finalized, the recommendation of the Sub-Committee is submitted to the Executive Committee for approval. Generally the Sub-Committee meets in December and makes recommendations for rates to be used in the following calendar year.

Once the Executive Committee approves the rates, they are submitted to the Firm's accounting department so that rate change adjustments can be made on the Firm's accounting system, with an effective date of January 1st of the following year.

INTERROGATORY 45:

Please explain how the process described above does or does not vary in determining billing rates charged to hourly clients and why.

RESPONSE TO INTERROGATORY 45:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Billing rates approved are the standard billing rates in the uncommon circumstance when we have hourly clients who pay by invoice.

INTERROGATORY 51:

Explain how the Firm adjusts its hourly rates for cases brought outside of New York. If the Firm does not adjust its rate, explain why not.

RESPONSE TO INTERROGATORY 51:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Firm does not have a practice of adjusting its standard hourly rates for cases brought outside of New York. The Firm does not adjust is standard hourly rates for cases outside of New York, because our practice areas and cases are complex civil litigations that are typically national in scope. The defendants in our

cases are represented by many of the largest and most prominent law firms in the world, with billing rates that match their experience and the complexity of their practices. The Supreme Court has explained that a fee applicant should show that "the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. A rate determined in this way is normally deemed to be reasonable, and is referred to – for convenience—as the prevailing market rate." *Blum v. Stenson*, 465 U.S. 886, 896 n. 11 (1984). Based on the Firm's annual review as discussed in response to Interrogatory No. 44 above, including its annual review of bankruptcy fee petitions filed nationwide and the rates in those fee petitions, the Firm believes that its rates are commensurate with the rates used by national peer plaintiff and defense-side law firms litigating matters of a similar magnitude.

INTERROGATORY 54:

Describe in detail how the Firm prepared the Fee Petition and identify all individuals who assisted in the preparation and the nature of their contribution(s).

RESPONSE TO INTERROGATORY 54:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Firm prepared the Fee Petition essentially as follows. The 47-page Declaration of Lawrence A. Sucharow (ECF No. 104), or "Omnibus Declaration," was drafted by David Goldsmith of Labaton Sucharow. Nicole Zeiss of the Firm prepared an initial framework, which Mr. Goldsmith took from there through filing. Internally, Mr. Goldsmith invited comments from Lawrence Sucharow (Chairman of the Firm), Eric Belfi (the relationship partner for ARTRS), and Ms. Zeiss. A draft was provided to George Hopkins of ARTRS as well. Externally, Mr. Goldsmith invited comments from Michael Thornton, Garrett Bradley, Michael Lesser, and Evan Hoffman of Thornton; Robert Lieff, Daniel

Chiplock, and Michael Miarmi of Lieff Cabraser; Lynn Sarko and David Copley of Keller Rohrback; Carl Kravitz of Zuckerman Spaeder; and Brian McTigue and Regina Markey of McTigue Law. The draft Omnibus Declaration included information and drafting contributed by Mr. Lesser, Mr. Chiplock, and Mr. Copley concerning damages issues, the similar *Bank of New York Mellon* FX litigation, and aspects of the ERISA claims, and these three attorneys provided comments on the draft submission. Finally, as a courtesy, Mr. Goldsmith provided a near-final version of the Omnibus Declaration to William Paine, Daniel Halston, and Timothy Perla of WilmerHale, counsel for State Street.

With respect to relevant exhibits to the Omnibus Declaration, Mr. Goldsmith prepared the Declaration of George Hopkins (Ex. 1, ECF No. 104-1) for his approval and signature after seeking certain factual information and comments and approval internally. Mr. Goldsmith also had a role in the preparation of the Declaration of Jonathan B. Marks, the mediator (Ex. 5, ECF No. 104-5), to which Mr. Chiplock also contributed. The Firm had no role in the preparation of the declarations of the ERISA Plaintiffs (Exs. 7-12, ECF Nos. 104-7 to 104-12).

Ms. Zeiss was responsible for preparing the individual fee and expense Declaration of Lawrence Sucharow (Ex. 15, ECF No. 104-15), and for soliciting and coordinating the receipt of comparable fee and expense declarations from Thornton, Lieff Cabraser, Keller Rohrback, Zuckerman Spaeder, McTigue Law, Beins Axelrod, Feinberg Campbell, and Richardson Patrick (Exs. 16-23, ECF Nos. 104-16 to 104-23). Howard Goldberg, Labaton Sucharow Litigation Coordinator, assisted Ms. Zeiss in these tasks.

With respect to the Firm's individual fee and expense declaration, Ms. Zeiss first worked with Mr. Goldberg to complete the template for the Firm. Mr. Goldsmith, Mr. Rogers, and Mr. Sucharow contributed to the narrative discussion of the Firm's role in the litigation.

To prepare the lodestar exhibit (Exhibit A), consistent with her standard practice when preparing a fee petition, Ms. Zeiss requested that Mr. Goldberg provide her with an Excel spreadsheet containing all time entries recorded by the Firm's timekeepers in the SST Litigation. Ms. Zeiss reviewed the time entries generally to confirm that the work billed to the SST Litigation related to the litigation and was reasonable. As a result of this review, some time entries, and their associated lodestars, were written-off. (Please see the Firm's answer to Interrogatory No. 60 for additional information.) After the review was complete, Mr. Goldberg prepared Exhibit A to the Firm's individual declaration.

To prepare the expense exhibit (Exhibit B) and the litigation fund exhibit (Exhibit C), Mr. Goldberg provided Ms. Zeiss with Excel spreadsheets containing each of expenses billed to the litigation. Ms. Zeiss reviewed the spreadsheets and raised questions with Mr. Goldberg as needed. As a result of this review, some expenses were written-off. (Please see the Firm's answer to Interrogatory No. 60 for additional information.) After the review, Mr. Goldberg prepared drafts of Exhibits B and C, which Ms. Zeiss also reviewed and commented on. When Ms. Zeiss's review was complete, Mr. Goldberg prepared final versions of Exhibits B and C, which were included in the Firm's individual declaration.

With respect to the individual fee and expense declarations other than the Firm's own, Ms. Zeiss began by e-mailing a shell, or template, declaration and exhibits to Thornton, Lieff Cabraser, Keller Rohrback, Zuckerman Spaeder, and McTigue Law, with instructions. Ms. Zeiss asked ERISA Counsel to share the template with Beins Axelrod, Feinberg Campbell, and Richardson Patrick. During a period of approximately one week before the Fee Petition was filed, drafts of each firm's declaration, with draft exhibits, were provided to Ms. Zeiss. Ms.

Zeiss reviewed all of the declarations and lodestar reports for form, and provided comments to each of the firms, either directly or, in some instances, through McTigue Law.

Ms. Zeiss reviewed all of the expense reports for form and substance, and communicated with counsel so that the expense categories were consistent across the expense reports, and that the reported expenses were clear and reasonable. As a result of these discussions, some expenses were reduced. Ms. Zeiss also discussed the drafts internally with Mr. Goldsmith and Mr. Rogers, particularly the descriptions of each firm's role in the litigation.

Ms. Zeiss prepared the Master Lodestar and Expense Chart (Ex. 24, ECF No. 104-24) from the data in the final fee and expense declarations. Exhibit 25 (ECF No. 104-25), a compilation of defense law firms' billing rates gathered from bankruptcy court filings in 2015, was not prepared for the Fee Petition in this action. Rather, Exhibit 25 was prepared by the Firm in connection with the Firm's Rate Sub-Committee's annual review of billing rates.

INTERROGATORY 55:

Describe in detail any review or steps taken to scrutinize or verify the time reported by the Law Firm prior to submitting the Firm's Fee Petition/Lodestar calculation. If the answer is none, explain why.

RESPONSE TO INTERROGATORY 55:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: Prior to submitting the Firm's Fee Petition/Lodestar calculation, and consistent with her standard practice when preparing a fee petition, Nicole Zeiss requested that Howard Goldberg provide her with an excel spreadsheet containing all time entries recorded by the Firm's timekeepers in the SST Litigation. Ms. Zeiss reviewed the time entries generally to confirm that the work billed to the SST Litigation related to the litigation and was reasonable. As a result of this review, some time entries, and their

associated lodestars, were removed from the Firm's Fee Petition. (Please see the Firm's answer to Interrogatory No. 60 for additional information.)

INTERROGATORY 56:

Describe what, if any, steps the Law Firm took to review, verify, or compare the Fee Petitions and/or Lodestar calculations prepared by the Plaintiffs' Firms or ERISA firms with the Firm's Fee Petition prior to filing its Fee Petition with the Court. If no action was taken, explain why not.

RESPONSE TO INTERROGATORY 56:

The Firm incorporates the General Objections set forth above and its answer to Interrogatory No. 54 above. Subject to and without waiving the foregoing objections, the Firm states the following: It was not Ms. Zeiss' practice, at the time, to engage in any detailed review of the lodestar supplied in fee and expense declarations from other firms, because she in general had no access to the time records of other firms and thus no means of "checking" reported lodestar in another firm's fee declaration. To that extent, Ms. Zeiss relies in large part on the diligence performed by the other firms submitting fee declarations in connection with a fee petition. Similarly, Ms. Zeiss did not have a usual practice of *comparing* lodestars reported in other firms' individual fee declarations, because ordinarily there is no reason to believe that there should be any overlap between employees of different firms. In this instance, Ms. Zeiss was not informed by anyone internal to Labaton, nor anyone from the Thornton or Lieff firms, that there was the potential for attorney time to be reported on more than one fee declaration.

Accordingly, she did not compare the various lodestar reports to each other.

INTERROGATORY 57:

Identify and describe all communication the Firm had with the Plaintiffs' Law Firms and/or ERISA counsel relating to the Firm's preparation of the Fee Petition, including but not limited to preparation of the Lodestar calculation, the inclusion of Staff Attorneys for whom Thornton had paid costs, calculation of a Lodestar multiplier, and reasonableness of attorneys' fees.

RESPONSE TO INTERROGATORY 57:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The firm incorporates by reference its answer to Interrogatory No. 54 above. The Firm does not recall any communications with other counsel in connection with preparation of the Fee Petition concerning the specifics of calculating the lodestar or the lodestar multiplier. No one at the Firm has any recollection of receiving any communication from the Thornton firm concerning its intention to include the shared Staff Attorney time in its fee declaration. The calculations are straightforward and a function of the final lodestar numbers and fee request. The final numbers were not known until September 14, 2016, the day before the Fee Petition was filed. Multiple drafts of the fee brief, which included a section discussing the lodestar cross-check, were circulated among the Plaintiffs' Law Firms and ERISA counsel.

The Firm does not recall any communications with other counsel in connection with the preparation of the Fee Petition concerning the reasonableness of the attorneys' fees. Prior to the preparation of the Fee Petition, within the context of discussing the percentage fee that would be requested at the time of approval of the Settlement and reported in 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" (the "Notice"), there were discussions concerning the overall reasonableness of a 25% attorneys' fee in the SST Litigation.

Answering further, pursuant to Fed. R. Civ. P. 33(d), the Firm references its production in response to Special Master Honorable Gerald E. Rosen's (Ret.) First Request for the Production of Documents, Request Nos. 42, 45.

INTERROGATORY 58:

Identify all individuals at the Firm who reviewed, assisted or contributed to the preparation and submission of Thornton's Fee Petition and describe the nature of their contributions.

RESPONSE TO INTERROGATORY 58:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The firm incorporates by reference its answer to Interrogatory No. 54. Ms. Zeiss was the principle person that reviewed the Thornton Fee Petition, with some limited review done by Mr. Goldsmith and Mr. Rogers. The collective Fee Petition, including the Thornton Fee Petition, was physically filed using the Court's CM/ECF system by a paralegal at Labaton.

INTERROGATORY 60:

Identify all billing entries, costs and/or expenses incurred by the Firm during the SST Litigation that the Firm did not include in its Fee Petition/Lodestar calculation, and the reasons therefor.

RESPONSE TO INTERROGATORY 60:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states that it is its normal practice to reduce or eliminate certain expenses, including charges for airfare, meals, and related items. Similarly, the Firm in normal practice routinely excludes certain billed time in a fee petition, such as when less than five hours of work was performed, when the work performed was by a very junior employee, and when the work may have related to another litigation.

In this case, the following costs/expenses were not included in the Firm's Fee Petition:

Cost/Expense	Total Amount	Reason
In-House Catering	$245.00	Practice of Not Requesting
CD Duplication	$100.00	Minimal
Local Working Meals	$2,130.45	Expenses were removed or reduced either because: (1) charge related to a regular team meeting lunch; (2) charge was above Labaton's cap for out-of-office working meals; or (3) charge related to another case.
Airfare	$4,895.35	Expenses were removed or reduced either because: (1) first-class airfare was reduced to economy; (2) charge related to another case; or (3) charge incurred by Garrett Bradley as of counsel to Labaton and was written-off to avoid potential duplication.
Local and Overtime Transportation	$1,172.03	Expenses were removed because: (1) charge related to another case; or (2) charge incurred by Garrett Bradley as of counsel to Labaton and was written-off to avoid potential duplication.
Hotel	$3,148.05	Expenses were removed because they related to another case
Out-of-Town Working Meals	$349.70	Expenses were removed or reduced either because: (1) charge was above Labaton's cap for out-of-office working meals; (2) charge appeared to be more personal in nature than work-related; or (3) charge incurred by Garrett Bradley as of counsel to Labaton and was written-off to avoid potential duplication.
Miscellaneous Travel	$413.86	Expenses were removed because they appeared to be more personal in nature than work-related.
TOTAL	$12,454.44	

The following billing entries were not included in the Firm's Fee Petition, for one of several reasons: (1) the time-keeper had fewer than five hours or more than five hours but very minimal involvement in the case; (2) the time related to a different case; or (3) the time-keeper was a student. These entries total 196.8 hours and have a lodestar value of $97,502.50.

Timekeeper Name	Status	Date	Hours	Narrative
Moy, Edward	RA	11/04/2009	2.5	State Street analysis , [redacted] analysis
Moy, Edward	RA	11/12/2009	0.5	State Street [redacted] analysis
Green, Jordan	PL	11/13/2009	2.7	Met with Javier Bleichmar and Stephanie Sundel; Research financial statements.
Cooper, Stuart H.	I	11/16/2009	1.5	Office conference; review amended complaint.
Green, Jordan	PL	11/16/2009	5.4	Research financial.
Cooper, Stuart H.	I	11/17/2009	1.0	Review amended complaint and notes.
Green, Jordan	PL	11/17/2009	3.3	Research financials and custodian agreements.
Moy, Edward	RA	11/17/2009	2.0	Analysis of [redacted] state street for D. Auld
Chan, Victor	RA	01/21/2010	1.0	Loss Analysis.
Chan, Victor	RA	02/02/2010	1.0	Analyzed data received from [redacted] and estimated recognized losses and payments.
Avan, Rachel A.	OC	05/11/2010	4.8	Reviewed securities lending agreement cases. Westlaw research for Arkansas law re standards and trends for fiduciary duties; negligence; and breach of contract; worked on same with SJS
Dolgoff, Mindy S.	A	09/15/2010	0.1	Attorney meeting to discuss status of investigation and possible allegations
Goldman, Mark	OC	09/15/2010	0.1	Meetings of Counsel - Attorney meeting to discuss status of investigation and possible allegations
Nguyen, Angelina	OC	09/15/2010	0.1	Attorney meeting to discuss status of investigation and possible allegations.
Smith, Phillip	A	09/15/2010	0.1	Attorney meeting to discuss status of investigation and possible allegations.
Dolgoff, Mindy S.	A	09/22/2010	0.1	Attorney meeting to discuss legal theories and status of investigation
Nguyen, Angelina	OC	09/22/2010	0.1	Attorney meeting to discuss legal theories and status of investigation
Smith, Phillip	A	09/22/2010	0.1	Attorney meeting to discuss legal theories and status of investigation.
Goldman, Mark	OC	09/23/2010	0.1	Meetings of Counsel - Attorney meeting to discuss legal theories and status of investigation
Gardner, Jonathan	P	09/24/2010	0.9	Research for Mellon Bank claims; conversation with P. Scarlato.
Gardner, Jonathan	P	09/27/2010	1.1	Confer with P. Scarlato and C. Martin re: Mellon Bank claims for PA.
Gardner, Jonathan	P	09/28/2010	1.1	Attend to research for claims against Mellon Bank; confer with C. Martin and P. Scarlato.
Nguyen, Angelina	OC	09/28/2010	0.2	Attorney meeting to discuss foreign exchange fees and possible legal theories.
Smith, Phillip	A	09/28/2010	0.2	Attorney meeting to discuss foreign exchange fees and possible legal theories.

Timekeeper Name	Status	Date	Hours	Narrative
Villegas, Carol C.	P	09/28/2010	0.2	Attorney meeting to discuss foreign exchange
Gardner, Jonathan	P	09/29/2010	1.1	Attend to research for claims against Mellon
Gardner, Jonathan	P	09/30/2010	1.2	Prepare memo on claims against Mellon Bank.
Gardner, Jonathan	P	10/01/2010	1.6	Prepare memo on BNY; correspond with
Gardner, Jonathan	P	10/04/2010	1.1	Research SOL for claims against BNY Mellon.
Goldman, Mark	OC	10/06/2010	0.2	Meetings of Counsel - Attorney meeting to
Nguyen, Angelina	OC	10/06/2010	0.2	Attorney meeting to discuss complaint, legal
Smith, Phillip	A	10/06/2010	0.2	Attorney meeting to discuss complaint, legal
Villegas, Carol C.	P	10/06/2010	0.2	Attorney meeting to discuss complaint, legal
Gardner, Jonathan	P	10/12/2010	1.5	Prepare memo on tolling for statute of limitations
Goldman, Mark	OC	10/12/2010	0.1	Meetings of Counsel - Attorney meeting to
Nguyen, Angelina	OC	10/12/2010	0.1	Attorney meeting to discuss legal theories
Smith, Phillip	A	10/12/2010	0.1	Attorney meeting to discuss legal theories.
Villegas, Carol C.	P	10/12/2010	0.1	Attorney meeting to discuss legal theories.
Goldman, Mark	OC	11/08/2010	0.1	Meetings of Counsel - Attorney meeting to discuss status of client search and complaint
Hallowell, Serena	P	11/08/2010	0.1	Attorney meeting to discuss status of client search and complaint.
Nguyen, Angelina	OC	11/08/2010	0.1	Attorney meeting to discuss status of client search and complaint.
Smith, Phillip	A	11/08/2010	0.1	Attorney meeting to discuss status of client search and complaint.
Villegas, Carol C.	P	11/08/2010	0.1	Attorney meeting to discuss status of client search and complaint.
Penn-Taylor, Margo	PL	11/10/2010	0.1	Copy memos from firm system for Amy Greenbaum.
Penn-Taylor, Margo	PL	11/12/2010	2.0	Worked on preparing binders for Amy Greenbaum.
Goldman, Mark	OC	11/18/2010	0.2	Meetings of Counsel - Attorney meeting to discuss status of investigation, possible clients and qui tam actions
Hallowell, Serena	P	11/18/2010	0.2	Attorney meeting to discuss status of investigation, possible clients and qui tam actions.
Nguyen, Angelina	OC	11/18/2010	0.2	Attorney meeting to discuss status of investigation, possible clients and qui tam actions
Penny, Brian D	OC	11/18/2010	0.2	Meetings of Counsel - Attorney meeting to discuss status of investigation, possible clients and qui tam actions

Timekeeper Name	Status	Date	Hours	Narrative
Smith, Phillip	A	11/18/2010	0.2	Attorney meeting to discuss status of investigation, possible clients and qui tam actions.
Villegas, Carol C.	P	11/18/2010	0.2	Attorney meeting to discuss status of investigation, possible clients and qui tam
Hallowell, Serena	P	40511	2.0	Meeting regarding case; research regarding qui tam actions
Goldman, Mark	OC	11/30/2010	0.1	Meetings of Counsel - Attorney meeting to discuss clients, status of investigation and qui tam issues
Goto, Yoko	A	11/30/2010	0.1	Lit Group weekly meeting.
Hallowell, Serena	P	11/30/2010	6.5	Research regarding qui tam actions and relators and memo regarding relators and editing of same and email regarding same; meeting regarding state street and qui tam
Hallowell, Serena	P	11/30/2010	0.1	Attorney meeting to discuss clients, status of investigation, and qui tam issues.
Nguyen, Angelina	OC	11/30/2010	0.1	Attorney meeting to discuss clients, status of investigation, and qui tam issues
Penny, Brian D	OC	11/30/2010	0.1	Meetings of Counsel - Attorney meeting to discuss clients, status of investigation and qui tam issues
Smith, Phillip	A	11/30/2010	0.1	Attorney meeting to discuss clients, status of investigation, and qui tam issues.
Villegas, Carol C.	P	11/30/2010	0.1	Attorney meeting to discuss clients, status of investigation, and qui tam issues.
Dolgoff, Mindy S.	A	12/14/2010	0.2	Attorney meeting to discuss legal theories and status of investigation
Goldman, Mark	OC	12/14/2010	0.2	Meetings of Counsel - Attorney meeting to discuss legal theories and status of investigation
Nguyen, Angelina	OC	12/14/2010	0.2	Attorney meeting to discuss legal theories and status of investigation.
Penny, Brian D	OC	12/14/2010	0.2	Meetings of Counsel - Attorney meeting to discuss legal theories and status of investigation
Smith, Phillip	A	12/14/2010	0.2	Attorney meeting to discuss legal theories and status of investigation.
Villegas, Carol C.	P	12/14/2010	0.2	Attorney meeting to discuss legal theories and status of investigation.
Dolgoff, Mindy S.	A	01/05/2011	0.2	Attorney meeting to discuss status of investigation and complaint
Goldman, Mark	OC	01/05/2011	0.2	Meetings of Counsel - Attorney meeting to discuss investigation and complaint
Nguyen, Angelina	OC	01/05/2011	0.2	Attorney meeting to discuss status of investigation and complaint.
Dolgoff, Mindy S.	A	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues

Timekeeper Name	Status	Date	Hours	Narrative
Evans, Iona M.	A	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Gardner, Jonathan	P	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Goldman, Mark	OC	01/25/2011	0.1	Meetings of Counsel - Attorney meeting to discuss Mellon Bank qui tam case and client issues
Greenbaum, Amy N.	I	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Hector, Nicholas R.	A	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Malonzo, Francisco R.	PL	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Nguyen, Angelina	OC	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Scarlato, Paul	OC	01/25/2011	0.1	Meetings of Counsel - Attorney meeting to discuss Mellon Bank qui tam case and client issues
Smith, Phillip	A	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Villegas, Carol C.	P	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Fonti, Joseph	P	02/01/2011	1.8	Conference regarding case strategy. Review memo to client and draft complaint.
Fonti, Joseph	P	02/03/2011	4.5	Strategy meeting regarding GMP with J. Gardner and P. Scarlato. Conference regarding RFP process. Further analysis.
Fonti, Joseph	P	02/04/2011	4.8	Further analysis of claims. Correspondence with team and co-counsel. Strategy on filing CMP.
Fonti, Joseph	P	02/05/2011	1.8	Correspondence. Review/revise complaint. Provide draft to team.
Moehlman, Mathew C.	A	02/05/2011	3.5	Research unjust enrichment law in Mass.; draft count for complaint for same.
Fonti, Joseph	P	02/06/2011	1.5	Correspondence regarding complaint and strategy.
Fonti, Joseph	P	02/07/2011	1.8	Correspondence regarding complaint substance/strategy.
Stocker, Michael W.	P	02/07/2011	2.3	Legal research regarding claims.
Stocker, Michael W.	P	02/07/2011	0.8	Review and edit 23(g) motion. Also did additional research.
Fonti, Joseph	P	02/08/2011	0.8	Correspondence regarding filing complaint.
Moehlman, Mathew C.	A	02/08/2011	2.1	Research re verified complaint; discuss same w/ J. Gardner.
Fonti, Joseph	P	02/10/2011	1.0	Correspondence regarding transition to Joel. Correspondence regarding CMP.
Cordoba-Riera, Diana M.	PL	03/18/2011	1.0	Assist with filing procedures; draft documentation regarding rules for filing in the D. MA.

Timekeeper Name	Status	Date	Hours	Narrative
Stocker, Michael W.	P	03/22/2011	0.4	Interim lead papers review.
McDonald, Christopher J.	P	03/24/2011	0.2	Conference with Eric Belfi. Reviewing complaint and background materials.
Cordoba-Riera, Diana M.	PL	03/25/2011	0.7	Research procedures on pro hac vice admission in the D. MA.
Stocker, Michael W.	P	03/30/2011	2.5	Meeting with client and Eric Belfi. Prepare for client meeting.
Avan, Rachel A.	OC	04/01/2011	0.9	Prepared fee agreement; worked on same with Christopher J. Keller.
Avan, Rachel A.	OC	04/05/2011	0.3	Revised letter agreement with Christopher J. Keller's comments.
Avan, Rachel A.	OC	04/07/2011	0.4	Worked on letter agreement with Christopher J. Keller; revised same.
Cordoba-Riera, Diana M.	PL	04/22/2011	0.6	Follow-up with the clerk at D. MA regarding Pro Hac Vice Status.
Alex, Martis	P	04/29/2011	0.8	Meeting re: litigation status
Wattenberg, Steven	PL	05/26/2011	0.5	Research and register Paul Scarlato, Mike Rogers and Joel Bernstein for ECF in USDC - Massachusetts.
Giles, Matthew	RA	06/03/2011	0.5	Read through complaint and related documents.
Appenfeller, Mathew	LC	06/08/2011	2.0	Pulling pertinent cases from case and defendant's Motion to Dismiss.
Bliss, Jean H.	PL	06/08/2011	2.0	Pulling and indexing 93 cases cited in Defendants' Memo in Support of their Motion to Dismiss. Printed, bindered and saved to shared drive as well.
Zhang, Kan	LC	06/08/2011	3.6	Research complaint and motion to dismiss. Meeting with Mike Rogers.
Appenfeller, Mathew	LC	06/09/2011	7.0	Briefing analysis and researching issues presented in cases mentional above.
Bliss, Jean H.	PL	06/09/2011	3.0	Pulling and indexing 93 cases cited in Defendants' Memo in Support of their Motion to Dismiss. Printed, bindered and saved to shared drive as well.
Zhang, Kan	LC	06/09/2011	3.0	Research on Nullum Tempus.
Appenfeller, Mathew	LC	06/10/2011	2.0	Researching details of Breach of Contract argument in defendant's Motion to Dismiss.
Appenfeller, Mathew	LC	06/15/2011	6.0	Breach of contract research on State Street.
Appenfeller, Mathew	LC	06/16/2011	4.0	Breach of Contract research for State Street.
Appenfeller, Mathew	LC	06/21/2011	4.0	Breach of Contract research for State Street.
Appenfeller, Mathew	LC	06/22/2011	5.0	Breach of Contract research for State Street.
Appenfeller, Mathew	LC	06/30/2011	2.0	Research on 'ambiguity held against the drafter' law in Arkansas.Salvage of GoLive Time
Giles, Matthew	RA	06/30/2011	1.5	Read through and re-formatted client documents on the shared drive.Salvage of GoLive Time

Timekeeper Name	Status	Date	Hours	Narrative
Wattenberg, Steven	PL	07/11/2011	0.4	Research J. Bernstein ECF login info for USDC-MASS and to arrange to obtain new one.Salvage of GoLive Time
Alex, Martis	P	07/12/2011	0.5	Litigation stratgey meeting
Appenfeller, Mathew	LC	07/12/2011	4.0	Research on custodial contracts that discuss fee schedule mergers.
Appenfeller, Mathew	LC	07/12/2011	3.0	Research on AR courts definition of "free of charge."
Salzman, Hollis L.	P	07/13/2011	0.1	Analyze litigation control issues
Appenfeller, Mathew	LC	07/14/2011	3.0	Research on overlapping class action claims in CA.
Fonti, Joseph	P	07/14/2011	0.3	Prep and attend lit control discussion.Salvage of GoLive Time
Wattenberg, Steven	PL	08/08/2011	0.2	Research proper category to file a Notice of Supplemental Authority under in the USDC-MASS.
Muchmore, Edward	I	10/13/2011	3.3	Review complaint.
Alexander, Jeffrey R.	A	12/02/2011	5.5	Research and prepare documents for application for special master.
Joyner, Rodney	PL	12/16/2011	1.0	State Street (Maryland Erisa) - Searched and Pulled dockets from PACER (050) 1hrs
Good, Katie	PL	01/23/2012	0.5	Review case docket and pull recent filings for BNY (SEPTA).
Good, Katie	PL	01/23/2012	0.3	Review case docket and pull recent filings for BNY (SEPTA).
Good, Katie	PL	01/24/2012	0.7	Review case docket and pull recent filings for BNY (SEPTA).
Evans, Iona M.	A	04/17/2012	2.4	Meeting re depositions.
Good, Katie	PL	08/17/2012	1.0	Pull documents from docket and save to shared drive.
Fernando, Terrence D.	SA	12/20/2012	2.3	Reviewed documents to be produced to defendants in order to identify those that are privileged.
Kosa, John	SA	12/20/2012	3.0	Reviewed documents in the non consecutive Bates range SST-ARTRS 0008420 to SSR-ARTRS 0012744 to search for relevant names mentioned in documents.
Tzall, Robert	SA	12/20/2012	6.0	Investigation Selected guided searches of potentially privilege documents to insure privledged documents would to be released to Plaintiffs
Kosa, John	SA	12/21/2012	1.0	Reviewed documents to search for relevant names mentioned in documents.
Murro, Daniel	SA	02/01/2013	1.0	Investigation Conference call and Catalyst Insight document review software training.
Einstein, Joseph H.	OC	03/06/2013	0.7	Review Precision Agreement and correspondence.

Timekeeper Name	Status	Date	Hours	Narrative
Bleichmar, Javier	P	04/12/2013	0.1	Litigation Strategy and Analysis.
Fonti, Joseph	P	04/12/2013	0.1	Update and strategy discussion.
Chan, Victor	RA	01/03/2014	4.5	Researched whether monitored clients with custodian bank State Street traded foreign exchange currencies, the time of each trade, and highlighted transactions that are within 5 minutes of the hour or at the 4PM London time.
Bradley, Garrett	OC	05/14/2015	0.1	Reviewing settlement outline.
Bradley, Garrett	OC	05/26/2015	0.1	Reviewing mediation strategies.
Dubbin, Jeffrey	A	06/17/2015	1.0	Researched CAFA notice and settlement schedule; conference with Lou Gottlieb re: the same. Prepared settlement schedule proposal.
Dubbs, Thomas A.	P	06/17/2015	1.9	Conference C. Keller; conference L. Gottlieb regarding CAFA issues; work on CAFA memo.
Dubbs, Thomas A.	P	06/18/2015	2.2	Work on CAFA memo.
Potts, Marissa	LC	06/18/2015	3.5	Researched to determine when the 90 day waiting period begins for CAFA
Goldsmith, David J.	P	10/13/2015	2.8	Review settlement approval and fee briefs in BNY Mellon settlement; strategy for fee request
Tse, Victoria	RA	10/20/2015	0.5	Account listing for all State Street state clients
Tse, Victoria	RA	10/23/2015	2.0	Custodial checking all accounts for State Street Clients for custodial emails
Bradley, Garrett	OC	05/03/2016	1.0	Review Documents re State Street.
Bradley, Garrett	OC	05/24/2016	2.0	State Street.
Arisohn, Mark S.	P	06/27/2016	0.1	Attend team meeting re: litigation strategy.
Crevier, Jonathan	LC	06/27/2016	0.1	Attend team meeting re: litigation strategy.
Hrutkay, Matthew	A	06/27/2016	0.1	Attend team meeting re: litigation strategy.
Okun, Barry	OC	06/27/2016	0.1	Attend team meeting re: litigation strategy.
TOTALS			**196.8**	**$97,502.50**

In the "status" column of this chart, "P" represents a partner, "OC" represents of counsel, "A" represents associate, "RA" represents research analyst, "I" represents investigator, "PL" represents paralegal, and "LC" represents law clerk.

INTERROGATORY 61:

Explain the significance of the statement made in Paragraph 7 of Exhibit A to the *Declaration of Lawrence A. Sucharow* (Docket #104-15), affirming that the hourly rates included in Exhibit A are the Firm's "regular rates charged for their services, which have been accepted in other complex class actions." Please describe any other instances in which the Firm has submitted a Fee Petition with the same or similar language.

RESPONSE TO INTERROGATORY 61:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: It is typical in class action fee declarations to include a statement characterizing the billing rates reported. Different firms use different statements, as evidenced by the individual fee and expense declarations submitted with the Fee Petition (ECF No. 104-15 to 104-23). The intent of the statement used by Labaton, as set forth above, was to convey to the Court that the rates in Exhibit A are the firm's regular standard rates, which were not applied for a specific case or depending on the nature of the type of work performed, and that other Courts had found them reasonable when charged to a class in other litigation. Moreover, as reflected in the Firm's responses to Interrogatory 45 above, the rates are the standard billing rates in the uncommon circumstance when the Firm has hourly clients who pay by invoice. (Please see the Firm's answer to Interrogatory No. 71 for additional information.)

Labaton submitted fee petitions with similar language in at least 10 other cases (see below). The phrase "complex class actions" was used in the Firm's Fee Petition in the SST Litigation, rather than the "securities or shareholder litigations" used below, because the Class Actions were not securities or shareholder litigations.

Case	Language from Labaton's Individual Fee and Expense Declaration	Dated Filed
In re Amgen Inc. Sec. Litig., No. 07-cv-2536 (C.D. Cal.)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations." (ECF No. 591-5)	9/20/2016
Van Noppen v. *InnerWorkings, Inc.*, No. 14-cv-01416 (N.D. Ill.)	"The hourly rates for the attorneys and professional support staff of my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations." (ECF No. 100-4)	9/6/2016
In re Nu Skin Enterprises, Inc. Sec. Litig., No. 14-cv-00033 (D. Utah)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations." (ECF No. 140-4)	8/31/2016
In re: Spectrum Pharmaceuticals, Inc., Sec. Litig., No. 13-cv-00433 (D. Nev.)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations." (ECF No. 152-4)	5/9/2016
In re Neustar, Inc. Sec. Litig., No. 14-cv-00885 (E.D. Va.)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations." (ECF No. 60-5)	10/29/2015
Freedman v. Weatherford Int'l, Ltd., No. 12-cv-2121 (S.D.N.Y.)	"The hourly rates for the attorneys and professional support staff of my firm included in Exhibit A are my firm's usual and customary billing rates, and are consistent with the rates accepted in other securities or shareholder litigations." (ECF No. 202-6)	9/29/2015

Case	Language from Labaton's Individual Fee and Expense Declaration	Dated Filed
In re ViroPharma Inc. Sec. Litig., No. 12-2714 (E.D. Pa.)	"The hourly rates for the attorneys and professional support staff of my firm included in Exhibit B are my firm's usual and customary billing rates, which have been accepted in other securities or shareholder litigations." (ECF No. 91-6)	9/25/2015
In re Celestica Inc. Sec. Litig., No. 07-cv-00312 (S.D.N.Y.)	"The hourly rates for the attorneys and professional support staff of my firm included in Exhibit B are my firm's usual and customary billing rates, which have been accepted in other securities or shareholder litigations." (ECF No. 262-1)	6/23/2015
In re Colonial BancGroup, Inc. Sec. Litig., No. 09-cv-00104 (M.D. Ala.)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as the regular rates charged for their services and have been accepted in other securities or shareholder litigation." (ECF No. 557-7)	5/14/2015
In re Fannie Mae 2008 Sec. Litig., No. 08-cv-7831 (S.D.N.Y.)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as the regular rates charged for their services in other securities or shareholder litigations." (ECF No. 539-9)	1/16/2015

INTERROGATORY 62:

Do you contend that the rates listed in the Firm's Fee Petition represent the prevailing rates 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 TO INTERROGATORY 62:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: Yes, the Firm does contend that the rates listed in the Firm's Fee Petition represent the prevailing rates in the community for similar services performed by lawyers of reasonably comparable skill, experience and reputation for each of the respective tasks performed. As explained in the Fee Petition, Plaintiffs'

Counsel's hourly billing rates in the SST Litigation ranged from $350 to $1,000 for Partners[1], $455 to $1,000 for Of Counsel, and $325 to $725 for other attorneys. (*See* ECF 104 at ¶177.) As explained in response to Interrogatory No. 44, the Firm does an annual review of fee petitions submitted in bankruptcy court filings nationwide by law firms that specialize in complex commercial litigation, as Labaton Sucharow and the other Plaintiffs' Counsel do. The 2015 data set, summarized in Ex. 25 to the Fee Petition and the most recent available at the time of the Fee Petition, showed that these defense-side firms' billing rates were either comparable to the rates of Plaintiffs' Counsel or exceed Plaintiffs' Counsel's rates.

INTERROGATORY 64:

Describe when and how the Law Firm first learned about the Boston Globe's inquiry into the Fee Award, and underlying billing practices employed by the Firm and other counsel in the SST Litigation, that preceded the publication of the December 17, 2016 Article.

RESPONSE TO INTERROGATORY 64:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Firm first learned about the *Boston Globe*'s inquiry into the Fee Award, and underlying billing practices employed by the Firm and other counsel in the SST Litigation, that preceded the publication of the December 17, 2016 Article, on November 8, 2016. On that date, Garrett Bradley of Thornton called David Goldsmith of Labaton Sucharow and advised him that he had received a telephone call earlier that day from a reporter at the *Boston Globe* concerning the Fee Petition. Also on that date, Garrett Bradley and Evan Hoffman of Thornton called Nicole Zeiss of Labaton Sucharow separately and advised her that a journalist had made inquiries concerning Staff Attorney time reported in the Fee Petition.

[1] Elizabeth Cabraser, Richard Heimann, and Robert Lieff of the Lieff Cabraser firm were the only attorneys with rates of $1,000 per hour.

INTERROGATORY 65:

Describe when and how the Law Firm first identified duplicative billing entries reflected in the Firm's Fee Petition and describe all actions taken by the Firm to review, confirm and/or correct those errors.

RESPONSE TO INTERROGATORY 65:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Firm first identified duplicative billing entries reflected in the Firm's Fee Petition on November 8, 2016, after the telephone communications from Garrett Bradley and Evan Hoffman of Thornton described in the Answers and Objections to Interrogatory No. 64 above. Promptly after these telephone calls, David Goldsmith, Howard Goldberg, and Nicole Zeiss compared the Labaton Sucharow and Thornton lodestar reports, and recognized for the first time that certain Staff Attorneys who appeared on both lodestar reports were listed as having worked precisely the same number of hours. Mr. Goldsmith and Ms. Zeiss promptly spoke with Michael Lesser and Evan Hoffman of Thornton and received information from the Thornton Firm. Mr. Goldsmith also notified Joel Bernstein, a senior partner of the Firm and then a member of the Executive Committee, Michael Stocker, a partner who serves as the Firm's General Counsel, and Michael Rogers, a partner of the Firm who worked on the action. (Lawrence Sucharow, Chairman of the Firm, could not be notified in person because he was on vacation overseas; he returned to work on November 14 and was promptly briefed.)

Mr. Goldsmith and Ms. Zeiss also notified internal personnel involved in the SST Document Review, Staff Attorney hiring and coordination, accounting, and litigation coordination, and convened one or more in-person meetings to discuss the issue. Finally, Mr. Goldsmith spoke with Daniel Chiplock of Lieff Cabraser while he was out of town on unrelated

business. Mr. Goldsmith alerted Mr. Chiplock to the issue and asked him to perform a detailed review of the Thornton and Lieff Cabraser lodestar reports, even if only as a due diligence measure. The Firm's investigation and communications with Thornton and Lieff Cabraser, and later with ERISA Counsel, culminated in the disclosures set forth in the November 10, 2016 Letter filed with the Court.

INTERROGATORY 66:

Describe in detail how the Law Firm drafted the November 10, 2016 Letter, including the full names of all individuals who contributed to the Letter, the nature of any internal review by the Firm, and all individuals outside the firm who reviewed and/or contributed to the Letter and the nature of their contribution(s).

RESPONSE TO INTERROGATORY 66:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The November 10, 2016 Letter was drafted by David Goldsmith of Labaton Sucharow on November 8-10, 2016. Mr. Goldsmith shared the initial draft with Nicole Zeiss of Labaton Sucharow on November 8, 2016. Drafts were then shared internally beginning on November 9, 2016 with Ms. Zeiss and Labaton Sucharow partners Joel Bernstein, Michael Stocker, and Eric Belfi (the relationship partner for ARTRS and a member of the Firm's Executive Committee), then Daniel Chiplock of Lieff Cabraser, then Garrett Bradley and Evan Hoffman of Thornton, with responsive markups shared with Mr. Stocker and Mr. Chiplock. Further drafts were circulated internally to the Firm's Executive Committee, and finally with Keller Rohrback, Zuckerman Spaeder, and McTigue Law (*i.e.*, ERISA Counsel) together with Thornton and Lieff Cabraser. Additional drafts circulated among this full counsel group, with certain drafts also circulated internally to the Executive Committee or certain members thereof. The effective working group ultimately narrowed on

November 10, 2016 to Mr. Goldsmith, Michael Lesser of Thornton, Mr. Chiplock, and Carl Kravitz of Zuckerman Spaeder, leading to final signoff and submission of the Letter to the Court.

Individuals who contributed to the Letter, listed alphabetically (the Firm interprets "contributed" to exclude individuals who generally approved the Letter but did not provide edits or comments):

Garrett Bradley; Daniel Chiplock; Howard Goldberg (Labaton Sucharow Litigation Coordinator, who assembled relevant data); David Goldsmith; James Johnson (partner at Labaton Sucharow and member of the Executive Committee); Christopher Keller (same); Carl Kravitz; Michael Lesser; Brian McTigue (McTigue Law); Nicole Zeiss.

Individuals outside the Firm who reviewed and/or contributed to the Letter, listed alphabetically (the Firm interprets "reviewed" here to include each individual who appears to have received at least one draft of the Letter, regardless of whether he or she actually reviewed the draft(s)):

Jonathan Axelrod (Beins Axelrod); Garrett Bradley; Daniel Chiplock; Brooke Edwards (McTigue Law); Evan Hoffman; Carl Kravitz; Michael Lesser; Robert Lieff (Lieff Cabraser); Regina Markey (McTigue Law); Brian McTigue; James Moore (McTigue Law); Lynn Sarko (Keller Rohrback).

Nature of internal review by the Firm, i.e., *partners of the Firm who received drafts of the Letter, listed alphabetically:*

Martis Alex (then a member of the Executive Committee); Eric Belfi; Joel Bernstein; Thomas Dubbs (member of the Executive Committee); David Goldsmith; James Johnson; Christopher Keller; Edward Labaton (former member of the Executive Committee); Michael Stocker; Lawrence Sucharow; Nicole Zeiss.

INTERROGATORY 67:

Identify and describe all documents relied upon by the Law Firm in drafting the November 10, 2016 Letter.

RESPONSE TO INTERROGATORY 67:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: David Goldsmith of Labaton Sucharow relied upon the following documents and categories of documents in drafting the November 10, 2016 Letter:

(a) [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, ECF No. 103-1.

(b) Labaton Sucharow Lodestar Report, ECF No. 104-15, at 7-9.

(c) Thornton Lodestar Report, ECF No. 104-16, at 7-8.

(d) Lieff Cabraser Lodestar Report, ECF No. 104-17, at 8-9.

(e) Keller Rohrback Lodestar Report, ECF No. 104-18, at 6-7.

(f) McTigue Law Lodestar Report, ECF No. 104-19, at 11.

(g) Zuckerman Spaeder Lodestar Report, ECF No. 104-20, at 7.

(h) Feinberg Campbell Lodestar Report, ECF No. 104-21, at 6.

(i) Beins Axelrod Lodestar Report, ECF No. 104-22, at 8.

(j) Richardson Patrick Lodestar Report, ECF No. 104-23, at 6.

(k) Master Chart, ECF No. 104-24.

(l) Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 111.

(m) November 2, 2016 Hearing Transcript.

(n) Excel file titled "State Street Doc Review Time by date," showing number of hours billed on a daily basis by Staff Attorneys common to Labaton Sucharow and Thornton, prepared internally by Howard Goldberg (Labaton Sucharow Litigation Coordinator) on November 8, 2016.

(o) Excel file titled "Labaton/Thornton Hour Comparison," showing rates, hours and billings by Staff Attorneys common to Labaton Sucharow and Thornton, prepared internally by Howard Goldberg on November 8, 2016.

(p) E-mail dated November 9, 2016 from Daniel Chiplock (Lieff Cabraser) to David Goldsmith, copying Evan Hoffman and Michael Lesser (both of Thornton), concerning discrepancies between Lieff Cabraser and Thornton Lodestar Reports.

(q) Various markups of draft Letter, received on November 9 and 10, 2016 internally from Nicole Zeiss and James Johnson and from Michael Lesser, Daniel Chiplock, Carl Kravitz (Zuckerman Spaeder), and Brian McTigue (McTigue Law).

(r) Various e-mails concerning subject matter and language of the Letter, received on November 9 and 10, 2016 internally from Christopher Keller and others and from Michael Lesser, Daniel Chiplock, and Carl Kravitz.

INTERROGATORY 70:

Identify, in detail, any additional errors in your any communication with the Court or with the Special Master, since filing of the Fee Petition(s) and explain each step or action taken to correct each error, including all documents or information consulted or relied upon in making the correction(s).

RESPONSE TO INTERROGATORY 70:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm has no further response to this Interrogatory.

INTERROGATORY 71:

Identify and explain any mistakes you have identified in the Fee Petition, Motion for Attorneys' Fees, and/or Fee Award, not described above.

RESPONSE TO INTERROGATORY 71:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm responds that, although it does not consider it to have been a "mistake," the Firm is now aware that some have interpreted Paragraph 7 of the Declaration of Lawrence A. Sucharow on Behalf of Labaton Sucharow LLP in Support of Lead

Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses (ECF No. 104-15) in a manner other than as intended. That sentence, a version of which appears in declarations submitted by other Plaintiffs' firms and has appeared in Labaton Sucharow's fee petitions for several years, says:

> The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions.

Labaton Sucharow now understands that some interpreted that sentence to mean that the Firm's rates submitted with the referenced declaration are billed to clients that pay for the Firm's services on an hourly basis. In fact, although in limited circumstances the Firm has had hourly clients who were actually billed at the rates to which this language has made reference, the overwhelming majority of the Firm's clients retain Labaton Sucharow's services on a contingency basis. The language was intended to impart that the same annual rates are used in the lodestar reports for all fee petitions in the given year and are not project specific, nor do they apply only to specific cases or depend on the nature of the type of work performed. Given the apparent ambiguity, Labaton Sucharow now believes it would be preferable going forward to provide additional explanation so that the Court understands that the rates being used by Labaton Sucharow in connection with the lodestar check of the fee award, although fully supported, customary in the industry, and (as stated) accepted in other complex class actions, are used for all lodestar reports in a given year but are not typically billed to clients of the Firm inasmuch as clients do not typically pay an hourly rate.

In addition, during the course of responding to the Special Master's discovery requests, Nicole Zeiss identified two additional types of errors in the Firm's Fee Petition.

In preparing a response to Interrogatory No. 60 relating to fees and expenses not included in the final fee submission, and responding to other interrogatories, Ms. Zeiss consulted the

Firm's time records previously produced to the Special Master. While she was referring to the time records, she noticed several entries related to the Fee Petition, which ordinarily would have been removed from the Firm's lodestar report. She asked Howard Goldberg to create the report of the Firm's written-off time, reported above in the response to Interrogatory No. 60, and to create a report of the Firm's time entries potentially related to the Fee Petition, reported below. (This process also revealed an entry for Joel Bernstein on 4/25/16 that should have been removed because this was time spent by David Goldsmith.) Unfortunately, the time entries below were mistakenly included in the Firm's Fee Petition. These entries total 108.1 hours and have a lodestar value of $80,330.00. This time did not represent the entirety of the Firm's time spent preparing the Fee Petition, in that the lodestar reports have a cut-off date of August 30, 2016 and a significant amount of time was spent on the Fee Petition after August 30, 2016 – time that was not included in the Firm's Fee Petition.

Ordinarily, these types of entries would and should have been removed from the Firm's lodestar report prior to submission with a fee motion. In its ordinary practice, the Firm searches its time entries for the word "fee" in order to catch such entries, but that practice was either not performed here or was incomplete. Going forward, to ensure that such entries are indeed removed from fee applications, both Ms. Zeiss and Mr. Goldberg will each identify time entries related to the preparation of the fee motion at issue, by searching for entries related to "fee", "expenses, and "lodestar," and will confer about their removal. Before a lodestar report is finalized, Mr. Goldberg will prepare a report of all written-off time and Ms. Zeiss will confirm that the time has indeed been removed.

The following billing entries were mistakenly included in the Firm's Fee Petition:

Timekeeper Name	Status	Date	Hours	Narrative
Joel Bernstein	P	04/25/16	4.0	Review/markup Plan of Allocation; e-mails with Nicole Zeiss and co-counsel re same; e-mails with Nicole Zeiss and Mike Rogers re co-counsel expenses issues; review markup of Settlement Agreement and Nicole Zeiss comments; prepare for Tuesday call.
David Goldsmith	P	08/16/16	1.5	Research for fee and expense brief.
Roger Yamada	SA	08/16/16	1.5	Began preparing a table to add to the brief, or attach as an appendix, reporting class action settlements (consumer and securities) ranging from $200 M to $400 M as well as the awarded fee.
David Goldsmith	P	08/17/16	2.5	Research re fee brief issues
Nicole Zeiss	P	08/17/16	1.0	Dealt with fee issues.
Roger Yamada	SA	08/17/16	3.0	Narrowed westlaw results for "common fund" and "class action" in preparing a table to add to the brief, or attach as an appendix, reporting class action settlements (consumer and securities) ranging from $200 M to $400 M as well as the awarded fee.
Roger Yamada	SA	08/17/16	3.0	Began preparing a table to add to the brief, or attach as an appendix, reporting class action settlements (consumer and securities) ranging from $200 M to $400 M as well as the awarded fee.
David Goldsmith	P	08/19/16	2.5	Review research materials for fee brief
David Goldsmith	P	08/22/16	8.8	Research/draft fee brief
Roger Yamada	SA	08/22/16	1.0	Created a table reporting class action settlements (consumer and securities) ranging from $200 M to $400 M and the awarded fee, and began populating the table by running a common fund search on Westlaw.
David Goldsmith	P	08/23/16	14.0	Research/draft fee brief; e-mails with M. Miarmi and D. Chiplock; e-mails with Nicole Zeiss
David Goldsmith	P	08/24/16	10.2	Research/draft fee brief; e-mails with D. Chiplock; disc strategy with G. Bradley.
Roger Yamada	SA	08/24/16	3.0	Referenced Westlaw to obtain multiplier and fee information for Tyco, Raytheon, First Databank, Neurontin, Lupron, and CVS cases for David Goldsmith.
Roger Yamada	SA	08/24/16	3.0	Reviewed the $100+ million settlement cases and determined fee and multiplier information for the settlements table; discussed with David Goldsmith.
David Goldsmith	P	08/25/16	9.4	Research/draft fee brief; e-mails with Roger Yamada.

Timekeeper Name	Status	Date	Hours	Narrative
Roger Yamada	SA	08/25/16	3.0	Continued reviewing the $100+ million settlement cases and determined fee and multiplier information for the settlements table; discussed with David Goldsmith.
Roger Yamada	SA	08/25/16	2.0	Reviewed outlier cases encountered in the search for $100+ million settlement cases; discussed with Nicole Zeiss and included in the settlements chart.
David Goldsmith	P	08/26/16	9.9	Research/draft fee brief; review co-counsel draft settlement brief; e-mails re same
David Goldsmith	P	08/27/16	7.7	Research/draft fee brief
David Goldsmith	P	08/28/16	11.1	Research/draft fee brief; send draft to co-counsel and internally.
David Goldsmith	P	08/29/16	2.0	Revise fee brief per Larry Sucharow comments and recirculate
David Goldsmith	P	08/30/16	2.5	Review/address Mike Lesser comments on fee brief; review Nicole Zeiss draft firm fee/expense.
Nicole Zeiss	P	08/30/16	1.5	Worked on fee declaration.
TOTALS			**108.1**	**$80,330.00**

Second, the firm has identified the following expense items, which should not have been included with the Firm's Fee Petition:

Cost/Expense	Total Amount	Reason
Local Transportation	$242.28	Expenses applied to a different case or were already reimbursed.
Hotel Charge	$426.42	Expense was already reimbursed.
TOTAL	**$668.70**	

INTERROGATORY 72:

Identify any other individuals, not listed above, who have knowledge of the Interrogatories and/or the SST Litigation and explain the general nature of such knowledge.

RESPONSE TO INTERROGATORY 72:

The Firm incorporates the General Objections set forth above. The Firm further objects to the Interrogatory as vague and overbroad, inasmuch as it could be read to require identifying any person anywhere who knows anything at all about the SST Litigation. Labaton Sucharow

will construe this Interrogatory as a request that the Firm identify (to the extent not otherwise identified in its response to the Interrogatories) the principal Labaton Sucharow attorneys or staff who worked on, or have unique knowledge regarding, the topics being reviewed by the Special Master. Construed in that fashion, and subject to the foregoing objections, the Firm states the following:

The foregoing Interrogatory responses identify the principal Labaton Sucharow attorneys and staff members who worked on, or have unique knowledge regarding, the topics that the Firm understands are being reviewed by the Special Master. Should the Special Master want a more fulsome list that includes all timekeepers who recorded more than five hours to the SST Litigation, Labaton Sucharow refers the Special Master to the list of attorneys, research analysts, investigators and paralegals set forth on the Labaton Sucharow Lodestar Report (ECF No. 104-15, at 7-9).

Dated: June 9, 2017

Joan A. Lukey (BBO No. 307340)
Justin J. Wolosz (BBO No. 643543)
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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.) First Set of Interrogatories to Labaton Sucharow LLP – June 9 Response. 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 June, 2017.

_____

Lawrence A. Sucharow, Chairman

CERTIFICATE OF SERVICE

I, Justin J. Wolosz, hereby certify that on this Ninth day of June I have caused a copy of the foregoing Labaton Sucharow LLP's Response To Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – June 9 Response 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

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EX. 175

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

LIEFF CABRASER HEIMANN & BERNSTEIN LLP'S RESPONSES TO SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST SET OF INTERROGATORIES DUE ON JUNE 9, 2017

In accordance with the Federal Rules of Civil Procedure, Lieff Cabraser Heimann & Bernstein, LLP ("LCHB" or the "Firm") hereby responds to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories (the "Interrogatories"), propounded on LCHB on May 18, 2017, as revised on May 23, 2017, and due on June 9, 2017.

GENERAL OBJECTIONS

LCHB makes the following general objections, which are incorporated by reference into each Interrogatory response, whether or not a specific further objection is made with respect to a specific Interrogatory. Each Interrogatory response incorporates, is subject to and does not waive the general objections.

1. LCHB objects to the Interrogatories and Instructions to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, or that otherwise is privileged, protected or exempt from discovery.

2. LCHB objects to the Interrogatories and Instructions 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.

3. LCHB objects to the Interrogatories and Instructions 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.

4. In responding to the Interrogatories, LCHB 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 LCHB, LCHB reserves the right to supplement its responses.

5. LCHB will make all reasonable efforts to respond to the Interrogatories on or before the dates specified in the Special Master's May 23, 2017 revised Interrogatories. LCHB, however, reserves the right to supplement its responses should it require additional time, and/or should responsive information be discovered following the designated dates for the responses.

6. LCHB objects to Definition No. 1 and Instruction B, to the extent they seek Interrogatory responses from any source other than the Law Firm, its partners, associates, of counsel, employees and contractors. LCHB has no "affiliates," and no "agents" or "representatives" that are or would be in the possession of responsive information.

RESPONSES TO THE INTERROGATORIES

INTERROGATORY NO. 17:

Describe in detail all agreements between the Firm/Plaintiffs' Law Firms, on the one hand, and the ERISA firms, on the other, to allocate to the ERISA firms a fixed percentage of the total Fee Award rendered by the Court in the SST Litigation. As to any agreement that did not represent the final agreement for allocation of the Fee Award, explain the reason for modifying a previous agreement, including all persons involved in these discussions and their affiliation/firm.

RESPONSE TO INTERROGATORY NO. 17:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague and seeks information that is not relevant to the subject matter of this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

A written agreement dated on or about December 11, 2013 was entered into by Plaintiffs' Law Firms and the ERISA firms to allocate 9 percent of the total Fee Award rendered by the Court in the SST Litigation to the ERISA firms. On or about August 30, 2016, Plaintiffs' Law Firms agreed amongst themselves to increase the percentage of the total Fee Award to be

allocated to the ERISA firms to 10 percent. Mr. Chiplock believes that this was done at the suggestion of Lawrence Sucharow at Labaton, to which counsel from the other Plaintiffs' Law Firms (Michael Thornton, Daniel Chiplock, and Robert L. Lieff) agreed, and that the increase was to recognize the role that certain counsel from the ERISA firms (in particular, Lynn Sarko and Carl Kravitz) played in the mediation and in liaising with the DOL.

Daniel P. Chiplock, LCHB Partner, and Robert L. Lieff, LCHB Of Counsel, have knowledge of the information provided in this Response.

INTERROGATORY NO. 37:

Explain what knowledge, if any, the Firm had about the existence of a cost-sharing agreement(s) (formal or informal) between Labaton and Thornton to allocate and/or share costs for certain of Labaton's Staff Attorneys assigned to work on the SST Litigation.

RESPONSE TO INTERROGATORY NO. 37:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is burdensome to the extent it seeks information LCHB has provided in other Interrogatory responses, or in the production of documents in this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

The Firm was aware that beginning in or shortly after January 2015, both Labaton and LCHB would be either hosting or sharing costs for certain Staff Attorneys with Thornton in order to try to equitably share such costs for the SST Document Review with Thornton. The Firm was not aware of any similar arrangement between Labaton and Thornton prior to that date.

Daniel P. Chiplock, LCHB Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 43:

Describe what knowledge, if any, the Firm had in early 2015 about Michael Bradley's involvement in the SST Litigation, including any knowledge of Thornton's agreement to pay Mr. Bradley an agreed-upon rate of $500/hour.

RESPONSE TO INTERROGATORY NO.43:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds as follows:

In early 2015, LCHB had no knowledge of Michael Bradley's involvement in the SST Litigation or Thornton's agreement to pay Mr. Bradley an agreed-upon rate of $500/hour.

Daniel P. Chiplock, LCHB Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 44:

Identify and describe all communications relating to Michael Bradley's participation in the SST Litigation/SST Document Review from 2010 through November 2016, including relating to compensation or an hourly billing rate that Thornton would charge for Mr. Bradley's time spent on the matter.

RESPONSE TO INTERROGATORY NO. 44:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is overbroad and burdensome to the extent it seeks information not in the possession of LCHB. Subject to and without waiving those objections, LCHB responds as follows:

LCHB was not part of any communications at all relating to Mr. Bradley's participation in the SST Litigation/SST Document Review from 2010 through November 10, 2016. After that

date, LCHB received several emails from attorneys at Labaton and Thornton inquiring whether it was possible to document through the Catalyst database or user data any time that Mr. Bradley spent on the Catalyst database. Mr. Dugar of our Firm confirmed that this was not possible due to the Catalyst database having been taken offline more than a year prior (2015). LCHB was not part of any communications at any time relating to compensation or an hourly billing rate that Thornton would charge for Mr. Bradley's time spent on the matter, and accordingly can identify no such communications.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response. Kirti Dugar, Litigation Support Manager, has knowledge of some of the information provided in this Response.

INTERROGATORY NO. 47:

Explain how the Law Firm determines annual billing rates for all attorneys, including Staff Attorneys. Please identify and describe all factors considered and/or resources relied upon in making these determinations.

RESPONSE TO INTERROGATORY NO. 47:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague and overbroad and that it provides no timeframe for the information sought. LCHB further objects to this Interrogatory on the grounds that it is burdensome in that this information was or could have been elicited during the deposition of Steven E. Fineman in this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

LCHB determines annual billing rates for all Firm attorneys, including Staff Attorneys, in January-February of each calendar year. In recent years, as reflected in documents produced by

LCHB in this proceeding, LCHB's billing rates have increased modestly on an annual basis. These annual adjustments are consistent with our understanding of the market rates for other plaintiff-side firms that handle complex and class litigation in the San Francisco and New York markets, where the vast majority of LCHB's attorneys, including Staff Attorneys, practice.

The process by which LCHB's annual billing rates are adjusted includes initial communication between the Firm's Managing Partner, Steven E. Fineman, and the Firm's Director of Operations, Joseph Dragicevic. During that initial communication (or communications), Mr. Fineman and Mr. Dragicevic discuss the changes in the relevant market places for legal services, the accessibility of publicly available information concerning the hourly rates of comparable plaintiff-side law firms and of "big law" firms in the New York and San Francisco markets. Such publicly available information may include publicly filed fee applications or published salary surveys. Based on the Firm's historical hourly rates, the collection of any new and instructive publicly available information about billable rates, and most importantly, based on what courts have said in the preceding year or years about the Firm's rates, Mr. Fineman makes a recommendation to the Firm's Executive Committee on adjustments to the Firm's billable rates for that calendar year. That recommendation is then typically discussed and approved at an Executive Committee meeting or as a result of subsequent e-mail communications or telephone conversations by and among members of the Executive Committee.

With respect to Staff Attorneys specifically, for a number of years prior to 2016, hourly rates were set to be consistent with the rates of "on-track" Firm attorneys with the same or comparable levels of experience. However, as our Staff Attorneys became increasingly experienced and senior, that approach began to result in rates the Firm felt were too high.

Therefore, beginning in 2016, all Firm Staff Attorneys who continued to work at the Firm billed at a rate of $415 per hour (the equivalent of a fourth year "on-track" associate). This rate was determined based on the Firm's understanding of the market for Staff Attorneys performing document review, coding and analysis, and the preparation of issue and witness memoranda in the kind of large complex cases handled by LCHB. The Firm determined this to be a fair and appropriate rate, even though LCHB's Staff Attorneys, by and large, have many more than four years of relevant experience (in the SST litigation, for example, five of the Staff Attorneys have more than 15 years of experience, six have between 10 and 15 years of experience, and six have between 5 and 10 years of experience). The Firm determined to set the same rate for all Staff Attorneys (including attorneys on LCHB's payroll and hired via agencies) beginning in 2016 as the functions of the Staff Attorneys are primarily the same and do not appreciably vary year to year (though the rates may gradually increase as the relevant market dictates). Thus far, courts that have considered our Staff Attorneys' rates have found them appropriate for purposes of lodestar crosscheck or lodestar fee payment.

Steven E. Fineman, LCHB's Managing Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 48:

Please explain how the process described above does or does not vary in determining billing rates charged to hourly clients and why.

RESPONSE TO INTERROGATORY NO. 48:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague and overbroad and that it provides no timeframe for the information sought. LCHB further objects to this Interrogatory on the grounds that it is

burdensome in that this information was or could have been elicited during the deposition of Steven E. Fineman in this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

Although LCHB is normally compensated for legal services on a contingent fee basis, the Firm has occasionally represented plaintiffs on an hourly basis. In those instances, the Firm has charged its customary hourly rates (*see* Response to Interrogatory No. 47, above) unless otherwise agreed to by LCHB and a specific client. On occasion, the Firm has discounted its hourly rates in negotiation with specific hourly clients.

Steven E. Fineman, LCHB's Managing Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 53:

Explain how the Firm adjusts its hourly rates to reflect the geographic region in which a matter is filed/pending. If the Firm does not adjust its rates, explain why not.

RESPONSE TO INTERROGATORY NO. 53:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague and overbroad and that it provides no timeframe for the information sought. Subject to and without waiving those objections, LCHB responds as follows:

LCHB does not adjust its hourly rates to reflect the geographic region in which a matter is filed/pending. All of the Firms' "hourly" representations have taken place in California or New York – the principal places of the firm's business. In the vast majority of the Firm's class action cases, fees are provided for on a contingent, percentage of the recovery basis (subject to court approval), and therefore hourly rates are not an essential part of the representation. In

those instances in which a court in a class action case performs a lodestar crosscheck against a percentage of the recovery fee, or awards a fee based on lodestar, the Firm relies on its customary rates (*see* Response to Interrogatory No. 47, above). The Firm has never been advised by a court that its rates are inappropriate or unacceptable because they were not expressly predicated on the market rates in a jurisdiction other than California or New York.[1]

Steven E. Fineman, LCHB's Managing Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 56:

Describe in detail how the Firm prepared the Fee Petition and identify all individuals who assisted in the preparation and the nature of their contribution(s).

RESPONSE TO INTERROGATORY NO. 56:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it vague and overbroad, and seeks information that is not relevant to the subject matter of this proceeding. LCHB further objects to the Interrogatory to the extent it seeks attorney work product. Subject to and without waiving those objections, LCHB responds as follows:

Daniel Chiplock prepared the individual Fee Petition for the Firm, which was submitted as an exhibit to the Declaration of Lawrence A. Sucharow in Support of Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and Lead Counsel's Motion for an Award of Attorneys' Fees,

[1] A meaningful portion of the Firm's business involves representation of plaintiffs in federal multidistrict litigation proceedings based in jurisdictions throughout the United States. In such proceedings, to the extent the Firm's lodestar is relevant, it is always submitted as it is maintained in the normal course of business by the Firm. The same is true for all other plaintiff-side firms in MDL proceedings.

Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs ("Sucharow Declaration"). Much of the language in the Firm's individual Fee Petition (particularly, the language in paragraph 5) was provided via template by Labaton. Staff in the Firm's Accounting Department supplied lodestar and cost reports for the duration of the SST Litigation to Mr. Chiplock. While drafting and finalizing the Firm's Fee Petition, Mr. Chiplock corresponded with Nicole Zeiss and David Goldsmith at Labaton, who provided edits and requests for formatting changes in the Firm's Fee Petition to Mr. Chiplock. Mr. Chiplock also supplied a small handful of edits to the Sucharow Declaration on or about September 13, 2016, mostly addressing the scope of the Staff Attorneys' work in the SST Litigation and specific questions concerning the settlement in the BNY Mellon Action.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 57:

Describe in detail any review or steps taken to scrutinize or verify the time reported by the Law Firm prior to submitting the Firm's Fee Petition/Lodestar calculation. If the answer is none, explain why.

RESPONSE TO INTERROGATORY NO. 57:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the phrases "scrutinize or verify" is vague. Subject to and without waiving those objections, LCHB responds as follows:

Prior to submitting the Firm's Fee Petition/Lodestar calculation, on at least two separate occasions, Mr. Chiplock examined the Firm's timekeeping records with a particular eye toward ensuring that no time exclusively devoted to unrelated or separate matters (such as time spent on

individual *qui tam* cases or the California Action) was included in the time submitted with the Firm's Fee Petition.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 58:

Describe what, if any, steps the Law Firm took to review, verify, or compare the Fee Petitions and/or Lodestar calculations prepared by the Plaintiffs' Firms or ERISA firms with the Firm's Fee Petition prior to filing its Fee Petition with the Court. If no action was taken, explain why not.

RESPONSE TO INTERROGATORY NO. 58:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the word "verify" is vague. Subject to and without waiving those objections, LCHB responds as follows:

The Firm was not privy to the individual Fee Petitions (whether in draft or final form) and/or complete Lodestar calculations prepared by the other Plaintiffs' Firms or ERISA firms prior to the filing of each Fee Petition with the Court, and thus was not able to review, verify, or compare them with the Firm's Fee Petition. To the best of the Firm's knowledge, only Labaton had access to all of the Plaintiffs' Law Firms Fee Petitions and complete Lodestar calculations before they were filed with the Court on September 15, 2016.

During the life of the SST Litigation, LCHB circulated its then-current lodestar reports to Labaton and/or Thornton on at least three occasions—on or about 12/9/13, 5/15/14, and 5/21/15—each time at the request of either Labaton or Thornton. LCHB reciprocally received Labaton's lodestar reports on at least two occasions—5/27/14 and 6/29/15. However, LCHB

never received a complete and/or current lodestar report from Thornton (with Staff Attorney names and hours identified) before the Fee Petitions were filed with the Court.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 59:

Identify and describe all communication the Firm had with the Plaintiffs' Law Firms and/or ERISA counsel relating to the Firm's preparation of the Fee Petition, including but not limited to preparation of the Lodestar calculation, the inclusion of Staff Attorneys for whom Thornton had paid costs, calculation of a Lodestar multiplier, and reasonableness of attorneys' fees.

RESPONSE TO INTERROGATORY NO. 59:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague, overbroad and seeks information that is not relevant to the subject matter of this proceeding. LCHB further objects to this Interrogatory to the extent it seeks attorney work product. LCHB further objects to this Interrogatory on the grounds that it is burdensome to the extent responsive communications have been or will be produced in this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

The Firm communicated principally with attorneys at Labaton relating to the Firm's preparation of its Fee Petition, which took place between August 31 and September 15, 2016, and these communications (principally between Mr. Chiplock of LCHB and Mr. Goldsmith and Ms. Zeiss at Labaton) related primarily to (a) the circulation of a template for the Fee Petition by Labaton, (b) making minor lodestar adjustments requested by Labaton (such as removing any timekeepers with fewer than 5 hours), (c) confirming the Firm's litigation fund contributions and

expert costs during the SST Litigation, (d) the inclusion of Robert L. Lieff's costs and lodestar in the Firm's Fee Petition, (e) presenting time and cost information in a uniform format, and (f) one email received by LCHB late in the evening on 9/14/16 (the evening before the Fee Petitions were filed) in which Labaton provided the total lodestar number (and resulting multiplier when compared to the requested 25% fee) for all Plaintiffs' Firms and ERISA firms.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 60:

Identify all individuals at the Firm who reviewed, assisted or contributed to the preparation and submission of Thornton's Fee Petition and, if appropriate, describe the nature of their contributions.

RESPONSE TO INTERROGATORY NO. 60:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it lacks foundation. LCHB further objects to this Interrogatory that it is burdensome to the extent it seeks information not in the possession of LCHB. Subject to and without waiving those objections, LCHB responds as follows:

No individuals at the Firm reviewed, assisted or contributed to the preparation and submission of Thornton's Fee Petition.

Daniel P. Chiplock, LCHB Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 62:

Identify all billing entries, costs and/or expenses incurred by the Firm during the SST Litigation that the Firm did not include in its Fee Petition/Lodestar calculation and the reasons therefor.

RESPONSE TO INTERROGATORY NO. 62:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it seeks information that is not relevant to the subject matter of this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

Time entries for any personnel who worked minimal (fewer than 5) hours in the SST Litigation were not included in the Firm's Fee Petition/Lodestar calculation. This is a fairly routine modification to lodestar reports in complex class cases such as this. The deleted attorney time and lodestar for the Firm included the following: 0.5 hours by Robert J. Nelson totaling $437.50, 1.6 hours by Kathryn E. Barnett totaling $1,200.00, 0.7 hours by Rachel J. Geman totaling $490.00, 0.1 hours by Roger Heller totaling $62.50, 0.8 hours by Sharon E. Lee totaling $480.00, 3.3 hours by Nancy Chung totaling $1,617.00, 2 hours by Pamela Owens totaling $830.00, and 2.8 hours by Bruce W. Leppla totaling $1,918.00. The deleted staff-level time and lodestar entries (predominantly for paralegals and research associates) included a combined 19.8 hours by 11 timekeepers, totaling $6,094.50.

The Firm also did not include any time entries for time expended preparing the Firm's Fee Petition/Lodestar calculation, for the final approval hearing on November 2, 2016, or on time otherwise expended on settlement issues between August 30, 2016 and November 8, 2016. This time and lodestar totaled 43.7 hours (37 hours by Daniel Chiplock, 2.8 hours by Robert L.

Lieff, 3.8 hours by Michael J. Miarmi, and 0.1 hours by Paralegal Alexander Zane), or $32,011.00 (at current rates).

With respect to costs and expenses, any unreimbursed costs incurred by the Firm in connection with the SST Litigation are minimal. In responding to this Interrogatory, the Firm is not including any time or expense associated with the Special Master's inquiry.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 63:

Explain the significance of the statement made in Paragraph 5 to the *Declaration of Daniel P. Chiplock on Behalf of Lieff Cabraser Heimann & Bernstein, LLP In Support of Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Expenses* (Docket #104-17), affirming that the hourly rates included in Exhibit A to the Declaration are the Firm's "regular rates charged for their services, which have been accepted in other complex class actions." Please describe any other instances in which the Firm has submitted a Fee Petition with the same or similar language.

RESPONSE TO INTERROGATORY NO. 63:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the word "significance" and the phrase "…or similar language" are vague and overbroad. LCHB further objects to this Interrogatory on the grounds that it is vague and overbroad and seeks information not relevant to the subject matter this proceeding in that no timeframe is placed on the request for a description of fee applications in other LCHB cases. LCHB further objects that it would be unduly burdensome to collect and review every Firm fee petition, without regard to a specific timeframe, to determine instances in which the

Firm submitted a fee petition with "similar language" to that used in the *Declaration of Daniel P. Chiplock* in the SST litigation. Subject to and without waiving those objections, LCHB responds as follows:

The language quoted in this Interrogatory was intended to signify that the rates reflected in the Firm's Fee Petition are the Firm's regular rates which have been routinely accepted in other complex class actions for purposes of a lodestar cross-check. LCHB has also charged the same or comparable rates to paying clients of the Firm in non-contingent fee cases. The Firm submitted a Fee Petition in the BNY Mellon Action with language that conveyed the same information, and has done the same in fee petitions in other complex class actions.

Daniel P. Chiplock, LCHB Partner, has knowledge of the information provided in this Response as it relates to his Declaration in the SST litigation. Steven E. Fineman, LCHB's Managing Partner, has knowledge of the information provided in this Response regarding "other instances" in which the firm has submitted a fee petition with "the same or similar language" to that used in the *Declaration of Daniel P. Chiplock* in the SST litigation.

INTERROGATORY NO. 64:

Do you contend that the rates listed in the Firm's Fee Petition represent the prevailing rates 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 TO INTERROGATORY NO. 64:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds as follows:

For the reasons stated in Response to Interrogatory No. 47, above, LCHB answers this Interrogatory in the affirmative. Most fee awards in the Firm's class action cases have been

awarded on a percentage of the recovery basis. In recent years, some courts have conducted a "lodestar cross-check" to determine that the percentage of the recovery award is not excessive. And, in rare cases, courts have determined our class action fees on a lodestar basis. In both the cross-check and lodestar fee award contexts, LCHB's hourly rates, including those of our Staff Attorneys, are routinely included and approved in class action fee awards. For example:

- *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, 12-md-2335 LAK (S.D.N.Y.) – Over 28,000 hours of Staff Attorney time, involving many of the same Staff Attorneys at issue here and at roughly the same hourly rates applied in the SST Litigation, were included as part of the lodestar cross-check conducted by Judge Kaplan in approving class counsel's requested attorneys' fees. At the final fairness and attorney fee hearing, Judge Kaplan of the Southern District of New York said, in part: "This was an outrageous wrong committed by the Bank of New York Mellon, and plaintiffs' counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job. I accept the lodestar. I accept as fair, reasonable and accurate everything that went into it."
- *Allagas, et al. v. BP Solar International, Inc., et al.*, 3:14-cv-00560-SI (N.D. Ca.) – In 2016, Judge Illston of the Northern District of California approved a percentage of the recovery fee for LCHB and co-class counsel but also conducted a lodestar cross-check. Judge Illston concluded that the Firm's "hourly rates, used to calculate the lodestar here, are in line with prevailing rates in this District and have recently been approved by federal and state courts." Judge Illston's lodestar

cross-check included two LCHB Staff Attorneys billed at $415 per hour, the same as most of the Staff Attorneys in the SST Litigation.

- *In re High Tech Employee Antitrust Litigation*, No. 11-cv-02509-LHK (N.D. Ca.) – In this complex antitrust class action in 2015, Judge Koh of the Northern District of California awarded LCHB and its co-lead counsel attorneys' fees based on the lodestar methodology. Judge Koh found:

> Having reviewed the billing rates for the attorneys, paralegals, litigation support staff at each of the firms representing Plaintiffs in this case [including co-lead counsel LCHB], the Court finds these rates are reasonable in light of prevailing market rates in this district and that counsel for Plaintiffs have submitted adequate documentation justifying those rates.

Judge Koh further found in *High Tech* that the "billing rates submitted vary appropriately based on experience," and found that the "billing rates for non-partner attorneys, including senior counsel, counsel, senior associates, associates and staff attorneys, range from about $310 to $800, with most under $500." (Emphasis added.). LCHB's lodestar submission included a number of Staff Attorneys whose hourly rates were consistent with the rates submitted in the SST Litigation a year later.

- *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL 3:07-md-1827 SI (N.D. Ca.) – In 2011, Judge Illston approved a percentage of the fee recovery for LCHB and its co-lead counsel "and confirmed" the fee by a lodestar cross-check. Included in LCHB's lodestar submission was the time of several Staff Attorneys whose rates ranged from $385 to $475 per hour in 2011 when the fee submission was made.

Steven E. Fineman, LCHB's Managing Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 66:

Describe when and how the Law Firm first learned about the Boston Globe's inquiry into the Fee Award, and underlying billing practices employed by the Firm and other counsel in the SST Litigation, that preceded the publication of the December 17, 2016 Article.

RESPONSE TO INTERROGATORY NO. 66:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it lacks foundation in that the firm is not aware that the Boston Globe is engaged in an inquiry into the "underlying billing practices employed by the Firm." LCHB further objects to this Interrogatory on the grounds that the suggestion in the Interrogatory that the Boston Globe is inquiring into the "underlying billing practices employed by the Firm" is argumentative. LCHB further objects to this Interrogatory on the ground that it seeks information that is not relevant to the subject matter of this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

The Firm first learned about the Boston Globe's inquiry into the Fee Award by way of a telephone call from David Goldsmith at Labaton to Daniel Chiplock of LCHB on November 8, 2016. The Boston Globe has not, to the Firm's knowledge, questioned LCHB's "billing practices," and notably omitted to report (as disclosed at the March 7, 2017 hearing before Judge Wolf, at which the Boston Globe was present) that LCHB has charged paying clients regular market rates that are the same or comparable to those reported in LCHB's Fee Petition. The Firm has never been contacted by the Boston Globe in this matter, either before the December 17, 2016 Article or afterwards.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 67:

Describe when and how the Law Firm first identified duplicative billing entries reflected in the Firm's Fee Petition and describe all actions taken by the Firm to review, confirm, and/or correct those errors.

RESPONSE TO INTERROGATORY NO. 67:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the phrase "duplicative billing entries" lacks foundation and is argumentative in that LCHB did not "bill" any client in this case. LCHB submits the proper inquiry should be when and how LCHB first identified duplicative "time" entries reflected in the *Declaration of Daniel P. Chiplock.* Subject to and without waiving those objections, LCHB responds as follows:

The Firm first identified duplicative time entries reflected in the Firm's Fee Petition on November 9, 2016. Mr. Chiplock identified the duplicative time entries (a) by re-tracing prior email correspondence between and among Firm personnel and personnel from the other Plaintiffs' Law Firms during the early to mid-2015 timeframe, (b) through confirmatory emails from Mr. Diamand, the Firm's Accounting Department, and counsel at Thornton, (c) by re-reviewing the detailed lodestar reports for the Staff Attorneys whom LCHB either shared with or hosted for Thornton, and (d) reviewing Thornton's Fee Petition.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 68:

Describe in detail how the Law Firm participated in the drafting of the November 10, 2016 Letter, including the full names of all individuals who contributed to the Letter, the nature of any internal review by the Firm, and all individuals outside the firm who reviewed and/or contributed to the Letter and the nature of their contribution(s).

RESPONSE TO INTERROGATORY NO. 68:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the "how" and phrase "internal review" are vague. LCHB further objects to this Interrogatory on the grounds that the requests for information concerning individuals "outside the firm who reviewed and/or contributed to the Letter" lacks foundation. Subject to and without waiving those objections, LCHB responds as follows:

Mr. Chiplock reviewed and contributed edits to the November 10, 2016 Letter during its drafting. Robert L. Lieff, Of Counsel to the Firm, also reviewed and contributed some edits to the November 10, 2016 Letter. A draft of the November 10, 2016 Letter also was circulated to Steven E. Fineman, the Firm's Managing Partner, and to the Firm's Executive Committee prior to its submission to the Court.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response. Richard M. Heimann, LCHB Partner, Steven E. Fineman, LCHB Managing Partner, and Robert L. Lieff, LCHB Of Counsel, also have some knowledge of some of the information provided in this Response.

INTERROGATORY NO. 69:

Identify and describe all documents relied upon by the Law Firm in the drafting of the November 10, 2016 Letter.

RESPONSE TO INTERROGATORY NO. 69:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds as follows:

In reviewing and contributing edits to the November 10, 2016 Letter, the Firm relied upon the same documents identified in response to Interrogatory No. 67 above.

Daniel P. Chiplock, LCHB Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 72:

Identify, in detail, any additional errors in your any communication with the Court or with the Special Master, since filing of the Fee Petition(s) and explain each step or action taken to correct each error, including all documents or information consulted or relied upon in making the correction(s).

RESPONSE TO INTERROGATORY NO. 72:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the phrase "additional" errors is vague. LCHB understands the question to be whether we have identified errors in the Fee Petition, specifically the *Declaration of Daniel P. Chiplock*, in addition to or other than those described in the November 10, 2016 Letter. Subject to and without waiving those objections, LCHB responds as follows:

Since filing the corrective letter on November 10, 2016, the Firm has identified the inadvertent and erroneous inclusion in the firm's Lodestar total for the SST Litigation of 4 hours on 5/11/14 by Michael J. Miarmi, LCHB Partner, for an unrelated matter with a similar internal LCHB timekeeping number. We believe this time was included in the firm's Lodestar total for the SST Litigation due to keystroke error, and it has since been moved over to the appropriate

matter. This error was disclosed in a communication to Counsel for the Special Master on March 23, 2017, and corrected at that time.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 73:

Identify and explain any mistakes you have identified in the Fee Petition, Motion for Attorneys' Fees, and/or Fee Award, not described above.

RESPONSE TO INTERROGATORY NO. 73:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that it has not identified any other mistakes in its Fee Petition or the Motion for Attorney's Fees not described above or in the November 10, 2017 Letter. The Firm does not believe there was a mistake in the Fee Award.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 74:

Identify any other individuals, not listed above, who have knowledge of the Interrogatories and/or the SST Litigation and explain the general nature of such knowledge.

RESPONSE TO INTERROGATORY NO. 74:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that there are no individuals at the Firm with knowledge material to the Firm's Responses to the Interrogatories that are not otherwise mentioned or identified in these Responses (including those Responses that were served previously or those to be served on July 10). As for other individuals at the Firm with knowledge of the SST Litigation

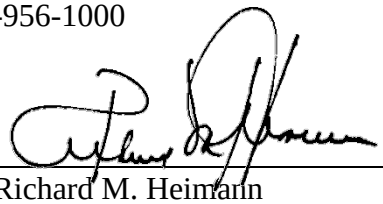
generally, the firm refers to the Firm's Fee Petition and the timekeepers listed therein as having knowledge specific to their assignments or involvement in the SST Litigation, as reflected in their detailed timekeeping entries (which have been produced).

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

Dated: June 9, 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

EX. 176

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

THORNTON LAW FIRM, LLP'S JUNE 9, 2017 RESPONSES TO SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST SET OF INTERROGATORIES

Pursuant to the March 8, 2017 Memorandum and Order of the Honorable Judge Mark Wolf (the "Order"), and the Federal Rules of Civil Procedure, Thornton Law Firm, LLP ("TLF") hereby submits its responses to the First Set of Interrogatories of the Special Master, the Honorable Gerald E. Rosen (Retired) ("Special Master"), as revised by the Special Master's counsel and transmitted to counsel for TLF on May 24, 2017. In those revised Interrogatories, the Special Master prioritized the Interrogatories according to a three-tiered response timeline, with responses due on June 1, 2017, June 9, 2017, and July 10, 2017. TLF has previously responded to the Special Master's June 1, 2017 Interrogatories. The Interrogatories responded to herein are the ones the Special Master has designated as due for response on June 9, 2017.

Each of TLF's responses and objections below incorporates the general objections submitted by TLF on May 26, 2017. In making the responses below, TLF relies on information presently known. TLF reserves its right to amend, modify, or supplement the responses herein as additional facts, documents, and/or information are discovered.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 12:

Explain the Firm's relationship with the U.S. Attorney's Office, including the local Boston office, and identify and describe any conversations between Thornton and the U.S. Attorneys' Office relating to the SST Litigation.

RESPONSE TO INTERROGATORY NO. 12:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. TLF notes the Special Master's May 24, 2017 clarification that this Interrogatory is

limited to conversations relating to the State Street Litigation. Subject to and without waiving its objections, TLF responds as follows:

At the end of May 2015, Garrett Bradley of TLF contacted Justin O' Connell of the U.S. Attorney's Office ("USAO") in Boston to request a meeting regarding the ongoing State Street Litigation. *See* TLF-SST-011171, TLF-SST-011173, TLF-SST-011175. This meeting, attended by Justin O'Connell and Rosemary Connolly on behalf of the USAO, among others, took place on June 2, 2015. *See* TLF-SST-011177. The purpose of the meeting was for TLF and the other Plaintiffs' firms to share information with the U.S. Attorney's Office regarding the status of the ongoing litigation. [redacted]. TLF, Lieff, and Labaton, each of which had representatives at the meeting, agreed that better communication would be beneficial to the case. In addition to convening the meeting, TLF participated in additional follow-up discussions with Ms. Connolly of the USAO after the meeting.

INTERROGATORY NO. 18:

Describe in detail all agreements between the Firm/Plaintiffs' Law Firms, on the one hand, and the ERISA firms, on the other, to allocate to the ERISA firms a fixed percentage of the total Fee Award rendered by the Court in the SST Litigation. As to any agreement that did not represent the final agreement for allocation of the Fee Award, explain the reason for modifying a previous agreement, including all persons involved in these discussions and their affiliation/firm.

RESPONSE TO INTERROGATORY NO. 18:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

In December 2013, Michael Thornton, Lawrence Sucharow, and Robert Lieff reached agreement with ERISA counsel that 9% of the total Fee Award should be allocated to the ERISA group. *See* TLF-SST-015649, TLF-SST-015758. Near the time of the filing of the Fee Petition in September 2016, Mr. Sucharow proposed awarding ERISA counsel an additional 1% of the fee for their efforts. Mr. Thornton and Mr. Lieff agreed with Mr. Sucharow's proposal.

INTERROGATORY NO. 27:

Explain how you determined the hourly rates charged for Lieff/Labaton Staff Attorneys for whom you shared costs, as reported in the Firm's Fee Petition.

RESPONSE TO INTERROGATORY NO. 27:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF determined the hourly rate charged for Staff Attorneys allocated to Thornton Law Firm and housed at Labaton or Lieff ($425 per hour) based on consultation with Labaton and Lieff. Lieff indicated to TLF that it had used a rate of $425 in the BNY Mellon Action (*In re Bank of New York Mellon Corp.*, 12-MD-02335, S.D.N.Y.). *See* TLF-SST-011263.

INTERROGATORY NO. 43:

Explain how Michael Bradley, Esq. became involved in the SST Litigation/Document Review and summarize all communications between the Firm and Michael Bradley relating to his potential involvement in the matter. Please identify all individuals who either participated in these discussions or had knowledge of Michael Bradley's involvement prior to preparing the Fee Petition.

RESPONSE TO INTERROGATORY NO. 43:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. TLF also incorporates its response to Interrogatory No. 28, submitted June 1, 2017. Subject to and without waiving its objections, TLF responds as follows:

Attorney Michael Bradley became involved in the SST Litigation in 2013, when Garrett Bradley asked him if he was willing and able to review documents. Garrett Bradley asked Michael Bradley to participate on a contingency basis, meaning that he would not be compensated unless and until a settlement was finalized and a fee awarded to TLF. This had the effect of permitting TLF to reduce its upfront cost. Michael Bradley's background as a prosecutor and as the former head of the Massachusetts Underground Economy Task Force made him additionally qualified to potentially provide a unique perspective on the documents he reviewed. Michael Bradley had contact with the following persons at TLF regarding his work on the SST Litigation: Garrett Bradley, Michael Lesser, Evan Hoffman, and Anastasia Maranian.

INTERROGATORY NO. 44:

Explain how the Firm and Michael Bradley agreed that Michael Bradley would receive an hourly rate of $500/hour as compensation for work he performed in the SST Litigation/Document Review. Please identify all individuals who participated in these discussions and/or had knowledge of the $500/hour rate prior to preparing the Fee Petition.

RESPONSE TO INTERROGATORY NO. 44:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

In 2013, when Michael Bradley began performing work on the SST Document Review, Garrett Bradley asked him how much he charged per hour for his services. Michael Bradley responded that, while he did not always charge clients on an hourly basis, he had recently charged a client $450 per hour for his services. Garrett and Michael Bradley agreed that because Michael Bradley would be performing the work on a contingent basis – *i.e.*, he would be paid only if the case resulted in the award of a fee to TLF – a slightly higher rate of $500 per hour would likely be appropriate.

Later, when preparing TLF's support for the Fee Petition, Evan Hoffman, Michael Lesser, and Garrett Bradley discussed the hourly fee for Michael Bradley's services. Garrett Bradley reached out to Michael Bradley again to confirm the $500 per hour rate.

INTERROGATORY NO. 45:

Identify and describe all work performed by Michael Bradley for or on behalf of the Firm, other than work performed as part of the SST Litigation, including the nature of that work, the total number of hours recorded, and the hourly rate/total compensation paid to Michael Bradley.

RESPONSE TO INTERROGATORY NO. 45:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

Michael Bradley has performed probate work for clients of the Thornton Law Firm. In August 2016, TLF paid him $1,689.80 for probate work performed on behalf of four TLF clients, equating to $422.45 per client. *See* TLF-SST-010704. Over the years, Mr. Bradley has also referred matters to TLF, for which he has received a one-third referral fee from TLF. These

matters include a case referred in 2010, for which he was paid $12,000 in April 2010; and a case referred in 2012, for which he was paid a referral fee of $6,333.33 in September 2012. *See id.*

INTERROGATORY NO. 46:

Identify and describe all communications relating to Michael Bradley's participation in the SST Litigation/Document Review from January 2009 through November 2016, including relating to compensation or the hourly billing rate that the Firm would charge for Michael Bradley's time spent on the matter.

RESPONSE TO INTERROGATORY NO. 46:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF refers to its responses to Interrogatories No. 28 and 44. TLF also refers to documents produced at the Bates range TLF-SST-000534 to TLF-SST-000611, and to documents identified in the Excel chart provided herewith as responsive to Requests for Production No. 46, 47, 48, 50, 51, and 52.

INTERROGATORY NO. 47:

Explain how the Firm supervised and/or performed quality control of the work performed by Michael Bradley in the SST Document Review, including the name, title, and nature of any supervising individual.

RESPONSE TO INTERROGATORY NO. 47:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

Like all Staff Attorneys participating in the SST Document Review, Michael Bradley reviewed documents in the Catalyst database hosted by Lieff. As custodian of the database, Lieff had the ability to track the tagging of documents in the database, including documents tagged by Michael Bradley. TLF did not have this capability to track and relied on Lieff, including asking Lieff at times to give TLF access to documents tagged as "hot" in the database. *See* TLF-SST-010865. TLF was aware that Lieff and Labaton had employees monitoring database metrics to quality control the work of the Staff Attorneys working on the SST Document Review. At Lieff, that employee was Kirti Dugar; at Labaton, that employee was Todd Kussin. In terms of supervising Michael Bradley's time spent performing SST Document Review, Evan Hoffman of TLF was responsible for receiving Mr. Bradley's time, and also assisted Mr. Bradley with technical and substantive issues he encountered during the review. *See, e.g,* TLF-SST-012859, TLF-SST-012864.

INTERROGATORY NO. 49:

Explain how the Law Firm determines annual billing rates for all attorneys. Please identify and describe all factors considered and/or resources relied upon in making these determinations.

RESPONSE TO INTERROGATORY NO. 49:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF performs the majority of its work on a contingency basis, and very rarely uses annual or hourly billing rates. On those matters that require specific billing rates, the attorneys of TLF set rates that accord with the experience and seniority of each attorney or professional staff

member performing work on the matter, and with rates for similar services that are common to the industry and/or have been accepted by courts in other actions.

INTERROGATORY NO. 50:

Please explain how the process described above does or does not vary in determining billing rates charged to hourly clients and why.

RESPONSE TO INTERROGATORY NO. 50:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF incorporates its response to Interrogatory No. 49 above.

INTERROGATORY NO. 51:

Please explain how the Firm determines the hourly rates charged for Staff Attorneys employed or allocated to the Firm, Firm staff, independent contractors and/or other individuals who participate in legal matters but are not associates or partners at the Firm.

RESPONSE TO INTERROGATORY NO. 51:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF incorporates its responses to Interrogatories No. 27, 49, and 50. TLF performs the majority of its work on a contingency basis, and very rarely uses annual or hourly billing rates. When it does use such rates, whether for attorneys or non-attorney staff, those rates are based on the experience of the individual, in accordance with what is common to the industry and/or has been accepted by courts in other actions.

INTERROGATORY NO. 55:

Explain how the Firm adjusts its hourly rates to reflect the geographic region in which a matter is filed/pending. If the Firm does not adjust its rates, explain why not.

RESPONSE TO INTERROGATORY NO. 55:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF incorporates its responses to Interrogatories No. 49, 50, and 51. TLF performs the majority of its work on a contingency basis, and very rarely uses annual or hourly billing rates. When it does, it looks to rates for similar services that are common to the industry and/or have been accepted by courts in other actions (not limited to geographic region).

INTERROGATORY NO. 58:

Describe in detail how the Firm prepared its Fee Petition and identify all individuals who assisted in the preparation and the nature of their contribution(s).

RESPONSE TO INTERROGATORY NO. 58:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

In preparation for the filing of the Fee Petition, TLF received a template declaration from lead counsel, Labaton, that it understood Labaton had used in previous fee petitions submitted to federal courts. *See* TLF-SST-013552. Michael Lesser of TLF was responsible for the review and drafting of the section of the TLF declaration that addressed TLF's specific contributions to

the case. Mr. Lesser, Garrett Bradley, and Evan Hoffman reviewed the TLF declaration before submitting it to Labaton. Mr. Bradley signed the declaration (Doc. 104-16).

INTERROGATORY NO. 59:

Describe in detail any review or steps taken to scrutinize or verify the time reported by the Law Firm, including time reported by Staff Attorneys allocated to the Firm, prior to submitting the Firm's Fee Petition/Lodestar calculation. If the answer is none, explain why.

RESPONSE TO INTERROGATORY NO. 59:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

With respect to Staff Attorney time, TLF references and incorporates its response to Interrogatory No. 31, in which it describes the process by which it requested, received, and accumulated hours for Staff Attorneys, which Evan Hoffman included in the master spreadsheet containing all of TLF's hours on the SST Litigation. (TLF has previously produced the most current version of this master spreadsheet at TLF-SST-000001, and has produced and/or will produce earlier iterations of it pursuant to the Special Master's Requests for Document Production.)

With respect to time spent by other TLF timekeepers, TLF accumulated and verified the hours spent through reference to calendars and contemporaneous handwritten and emailed time records. Additionally, on some occasions, TLF received and referenced records of attorneys from Labaton and Lieff to check against its own entries.

INTERROGATORY NO. 60:

Describe what, if any, steps the Law Firm took to review, verify, or compare the Fee Petitions and/or Lodestar calculations prepared by the Plaintiffs' Firms or ERISA firms with the Firm's Fee Petition prior to filing its Fee Petition with the Court. If no action was taken, explain why not.

RESPONSE TO INTERROGATORY NO. 60:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF was responsible for the preparation of Garrett Bradley's Declaration in Support of the Fee Petition (Doc. 104-16, "Declaration of Garrett J. Bradley, Esq. on Behalf of Thornton Law Firm, LLP In Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses"). As stated in the response to Interrogatory No. 58 above, TLF created this document by modifying a template provided by Labaton, which, as lead counsel, was compiling all of the supporting documents and filing the Fee Petition. TLF did not receive and did not review a copy of the declarations prepared by other counsel detailing the hours supporting their lodestar calculations. To the best of its recollection, TLF saw these documents for the first time after Labaton filed them with the court.

INTERROGATORY NO. 61:

Identify and describe all communication the Firm had with the Plaintiffs' Law Firms and/or ERISA counsel relating to the Firm's preparation of the Fee Petition, including but not limited to preparation of the Lodestar calculation, the inclusion of the Lieff and/or Labaton Staff

Attorneys for whom the Firm had paid costs, calculation of a Lodestar multiplier, and reasonableness of attorneys' fees.

RESPONSE TO INTERROGATORY NO. 61:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. TLF specifically objects to this Interrogatory, in so far as it calls on TLF to detail each and every communication, as overbroad. Subject to and without waiving its objections, TLF responds as follows:

TLF had numerous conversations with Plaintiff's counsel regarding the preparation of the Fee Petition. These discussions concerned, generally, information to be included in the fee petition, capping of applicable expenses, and use of contemporaneous or historical time rates for attorneys. Documents evidencing these communications are produced in response to RFPs 20, 21, and 35, as identified in the index accompanying TLF's production.

INTERROGATORY NO. 63:

Identify all billing entries, costs and/or expenses incurred by the Firm during the SST Litigation that the Firm did not include in its Fee Petition/Lodestar calculation, and the reasons therefor.

RESPONSE TO INTERROGATORY NO. 63:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF did not include various categories of time in its submission to the court, including at least the following:

(1) Time spent by any individual who worked fewer than 10 hours on the matter;

(2) Time spent by administrative assistants who worked with TLF partners on case-related matters;

(3) Time spent discussing the SST Litigation at weekly partners' meetings over the more than eight years that transpired between when the litigation was conceived and when it was settled;

(4) Time for certain research tasks performed by TLF attorneys relating to the litigation, including memoranda concerning fee petition and lodestar practices prepared in 2015 by a TLF attorney (Jotham Kinder). *See* TLF-SST-010742.

INTERROGATORY NO. 64:

Explain the significance of the statement made in Paragraph 4 of the Declaration of Garrett J. Bradley, Esq. On Behalf of Thornton Law Firm, LLP In Support of Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Expenses (Docket #104-16), affirming that the hourly rates included in Exhibit A to the Declaration are the Firm's "regular rates charged for their services, which have been accepted in other complex class actions." Please describe any other instances in which the Firm has submitted a Fee Petition with the same or similar language.

RESPONSE TO INTERROGATORY NO. 64:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

The language in Mr. Bradley's declaration was contained in the template declaration that TLF received from Labaton, which supplied the template to TLF in its capacity as lead counsel. As Garrett Bradley acknowledged at the hearing before the Court on March 7, 2017, the language in the declaration was not as clear as it should have been with respect to TLF. Specifically, the language concerning "regular rates . . . accepted in other complex class actions"

is inaccurate as to all of the Staff Attorneys listed in the declaration, including Michael Bradley, because TLF did not have "regular rates" for these individuals and had not submitted rates for these individuals "in other complex class actions." Rather, TLF was aware of the rates used in another FX case in which it was involved – the BNY Mellon Action – and understood the template language "accepted in other complex class actions" to refer to that Action.

As pertains to the rates listed for other individuals in the declaration – *i.e.*, TLF's attorneys and paralegal – the rates in the declaration are, with two exceptions, the same rates that TLF charged for its services in the BNY Mellon Action, and which were accepted by the court in that case. The two exceptions are the rate of Michael Lesser ($650 in the BNY Mellon Action; $700 in SST) and Evan Hoffman ($485 in the BNY Mellon Action; $535 in SST). In the case of Mr. Lesser, the $50 increase reflected his particular expertise, largely obtained through his work in the BNY Mellon Action, with FX trading cases. In the case of Mr. Hoffman, he was promoted from associate to partner in between the Fee Petition filed in the BNY Mellon Action and the SST Fee Petition.

INTERROGATORY NO. 65:

Explain the significance of the above-quoted statement as it applies to Michael Bradley's rate of $500/hour.

RESPONSE TO INTERROGATORY NO. 65:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

As Garrett Bradley acknowledged at the hearing before the Court on March 7, 2017, this statement is not accurate as it relates to Michael Bradley because TLF has not submitted time for

him in other complex class action cases. TLF refers to its response to Interrogatory No. 64 above.

INTERROGATORY NO. 66:

Do you contend that the rates listed in the Firm's Fee Petition represent the prevailing rates 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 TO INTERROGATORY NO. 66:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

Yes, TLF believes that the rates stated its declaration in support of the Fee Petition are comparable to prevailing rates for similar services. TLF notes that these rates were approved in other litigation, including, most saliently, the BNY Mellon Action. Additionally, TLF believes that the rates it charged are justified by factors specific to the SST litigation, including the complexity of the work completed, the years the costs were carried, and the skill of those involved.

INTERROGATORY NO. 69:

Describe when and how the Law Firm first identified duplicative billing entries reflected in the Fee Petitions submitted by Lieff and/or Labaton and describe what actions, if any, the Firm took to review, confirm and/or correct those errors.

RESPONSE TO INTERROGATORY NO. 69:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF first identified duplicative billing entries after its counsel received a media inquiry, which counsel reported to TLF, specifically to Garrett Bradley. After learning the information, Mr. Bradley went to Evan Hoffman's office and asked him to print the fee applications of Lieff and Labaton. They also informed Michael Lesser. Upon review of those documents, Mr. Bradley, Mr. Hoffman, and Mr. Lesser noticed discrepancies among the filings. Mr. Bradley immediately contacted David Goldsmith and Nicole Zeiss of Labaton. In addition, Mr. Hoffman and Mr. Lesser contacted Dan Chiplock of Lieff. Upon discovery of errors, Labaton undertook the writing of a letter to the court. TLF attorneys reviewed and provided suggested revisions to the letter. *See, e.g.,* TLF-SST-015640, TLF-SST-015644.

INTERROGATORY NO. 70:

Describe in detail the Law Firm's involvement in drafting the November 10, 2016 Letter, including the full names of all individuals who contributed to the Letter or underlying review in any way, internal review performed by the Firm, and all individuals outside the firm who reviewed and/or contributed to the Letter and the nature of their contribution(s).

RESPONSE TO INTERROGATORY NO. 70:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF participated in the drafting of the November 10, 2016 both at the conception/strategy stage (*i.e.,* determining how to address the issues with the Court) and the execution stage (*i.e.,* the drafting and revising of the letter). TLF has produced documents containing discussion of the November 2016 letter and drafts reflecting TLF's edits to the letter, including at TLF-SST-

015640 and TLF-SST-015644, and at the Bates ranges identified in the Excel chart provided herewith as responsive to Request for Production No. 43.

The individuals at TLF who contributed to the review of the November 10, 2016 letter are Michael Lesser, Evan Hoffman, and Garrett Bradley. Michael Thornton was also made aware of TLF's thoughts and edits concerning the letter.

INTERROGATORY NO. 71:

To the extent the Firm was involved in the drafting of the November 10, 2016 Letter, identify and describe all documents reviewed or relied upon by Firm as part of its involvement.

RESPONSE TO INTERROGATORY NO. 71:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

In reviewing and suggesting revisions to the November 10, 2016 letter, TLF relied on various documents pertaining to Staff Attorneys, including but not limited to time records and correspondence with co-counsel regarding the assignment of Staff Attorneys to TLF. TLF relied on documents received from Special Counsel and Hire Counsel, and documents received from Labaton and Lieff.

INTERROGATORY NO. 74:

Identify, in detail, any additional errors in any communications with the Court or with the Special Master, since filing of the Fee Petition(s) and explain each step or action taken to correct each error, including all documents or information consulted or relied upon in making the correction(s).

RESPONSE TO INTERROGATORY NO. 74:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF refers to its response to Interrogatory No. 75 below. TLF is not aware of any additional errors in its communications with the Court or with the Special Master.

INTERROGATORY NO. 75:

Identify and explain any mistakes you have identified in the any of the Fee Petitions, the Motion for Attorneys' Fees, and/or Fee Award, not described above.

RESPONSE TO INTERROGATORY NO. 75:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

In reviewing documents in conjunction with this inquiry, TLF has identified an additional error in its declaration filed September 15, 2016. Specifically, the hours listed for Staff Attorney Jonathan Zaul contain eight extra hours. This is the result of an inadvertent double entry on TLF's master spreadsheet used to create the chart in the declaration (TLF-SST-000001), which contains two entries for Mr. Zaul dated February 18, 2015, each for eight hours.

Additionally, in the course of reviewing Michael Bradley's time records, TLF has become aware that its declaration and the underlying master spreadsheet (TLF-SST-000001) included fewer hours for Michael Bradley than recorded in his contemporaneous time entries that he submitted to TLF. This equates to approximately 43 to 48 hours, based on a comparison of his records to TLF's declaration and master spreadsheet (compare TLF-SST-000534 to TLF-SST-000611 with TLF-SST-000001).

INTERROGATORY NO. 76:

Identify any other individuals, not listed above, who have knowledge of the Interrogatories and/or the SST Litigation and explain the general nature of such knowledge.

RESPONSE TO INTERROGATORY NO. 76:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. TLF specifically objects to the phrase "have knowledge of" as vague. Without waiving its objections, TLF responds as follows:

Between these Interrogatory Responses and the Responses submitted on June 1, 2017, TLF believes it has identified the individuals at TLF who have knowledge of the Interrogatories and/or the SST Litigation. For completeness, TLF states that the following individuals at TLF had substantive involvement in the SST Litigation: Michael Thornton, Garrett Bradley, Michael Lesser, Evan Hoffman, Jotham Kinder, Andrea Caruth (former paralegal for TLF), Katherine Brendel (former paralegal for TLF), and Anastasia Maranian (TLF's office administrator). Keith Lucca and Hadley Sweeney in TLF's Accounting Department may have had marginal roles relating to accounting that concerned the SST Litigation. In addition, other partners at TLF were aware of the SST Litigation, but did not play any substantive role in it.

Dated: June 9, 2017

Respectfully submitted,

/s/ Brian T. Kelly

Brian T. Kelly (BBO #549566)
Emily C. Harlan (D.C. Bar No. 989267)
Eric J. Walz (BBO #687720)
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Attorneys for the THORNTON LAW FIRM, LLP

EX. 177

From: Damon Chargois <damon@cmhllp.com>
Sent: Saturday, October 18, 2014 1:15 PM
To: Belfi, Eric J. <EBelfi@labaton.com>
Subject: Re: Eric, in reviewing your text regarding HP, it appe

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That helps, Eric. Thank you

Sent from my iPhone

> On Oct 18, 2014, at 12:14 PM, "Belfi, Eric J." <EBelfi@labaton.com> wrote:
>
> With Garrett and all referrers we deal with, it is done exactly in the same manner. As long as I have been with Labaton, we have never done it any other way. It is the only equitable way that we see dividing up the referral fees.

>
> -----Original Message-----
> From: Damon Chargois [mailto:damon@cmhllp.com]
> Sent: Saturday, October 18, 2014 12:59 PM
> To: Belfi, Eric J.
> Subject: Re: Eric, in reviewing your text regarding HP, it appe
>
> This isn't my understanding, but I will go over all of our correspondence before going further. Do you calculate Garrett's firm's fee split in the exact same manner (his referred client's percentage of loss relative to total loss alleged by all Labaton clients times Labaton's fee times 20%)?

>
> Sent from my iPhone
>
>> On Oct 18, 2014, at 11:08 AM, "Belfi, Eric J." <EBelfi@labaton.com> wrote:
>>
>> Damon:
>>
>> Unlike Colonial where there was a modification, here this is not a modification. Arkansas only represented 23 percent of the losses so you are only entitled to receive 23 percent of the 20 percent or 4.6%. In Colonial, after the fee split, we asked you to reduce the percentage below the pro rata split because the case was a loss to us. We could not afford to pay out 20 percent in that case.

>>
>> In this case, there were 4 different Labaton clients that we had obligations on all of them. As indicated to you yesterday, we would not have been appointed lead without those 3 other clients and our relationship with Motley Rice because their client had a much larger loss.

>>
>> Going forward, you should know that Arkansas is almost never sole lead so this is going to happen in almost every case. It is not a modification, it is just how the agreement works.

>>
>> I am around all day if you want to discuss further.
>>
>> Eric
>>
>> -----Original Message-----
>> From: Damon Chargois [mailto:damon@cmhllp.com]

>> Sent: Saturday, October 18, 2014 9:15 AM
>> To: Belfi, Eric J.
>> Subject: Eric, in reviewing your text regarding HP, it appe
>>
>> Eric, the call kept dropping, so I'm sending this email. In reviewing your text regarding HP, it appears that Labaton is trying to use the fee calculation done as a special consideration for Garrett's 20% additional interest in the Colonial Bank settlement (since both ATRS and clients via Garrett are in that case) as a precedent to change our fee agreement in ALL of the pension fund cases in which ATRS is a plaintiff. This is contrary to your express assurance to us that if we agreed to that accommodation in Colonial Bank, it would not be used as a precedent in cases where Garrett isn't involved. I acknowledge that we have discussed, in the past, treating certain cases where Labaton has multiple fee split obligations to referring firms differently on a case by case basis, but only after we both discuss and agree, with you giving me advanced notice of your intentions so that I can handle it with my partners on my end; not what you have done here in the HP case.

>>
>> I am very concerned that you guys are attempting to significantly, substantially and materially alter our agreement. Our deal with Labaton is straightforward-- we got you ATRS as a client (after considerable favors, political activity, money spent and time dedicated in Arkansas) and Labaton would use ATRS to seek lead counsel appointments in institutional investor fraud and misrepresentation cases. Where Labaton is successful in getting appointed lead counsel and obtains a settlement or judgment award, we split Labaton's attorney fee award 80/20. Period.

>>
>> As I said in my text to you regarding HP and your allocation, I understand the circumstances in this case and am ok with the fee split in this instance. We are not changing our fee split agreement for all of the other pension fund cases. You promised me that you would give me advanced notice of when you guys would seek a modification or accommodation on a given settlement and I want you to keep to that going forward.

>>
>>
>>
>>
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>>
>>
>>
>>
>> Sent from my iPhone
>>
>>
>> ***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.

>>
>>

EX. 178

Labaton Sucharow

David J. Goldsmith
Partner
212 907 0879 direct
212 883 7079 fax
dgoldsmith@labaton.com

November 10, 2016

By ECF

Hon. Mark L. Wolf
United States District Judge
United States District Court
District of Massachusetts
John Joseph Moakley
United States Courthouse
1 Courthouse Way
Boston, Massachusetts 02210

Re: Arkansas Teacher Retirement System v. State Street Bank & Trust Co.,
No. 11-CV-10230 MLW

Dear Judge Wolf:

We are writing respectfully to advise the Court of inadvertent errors just discovered in certain written submissions from Labaton Sucharow LLP, Thornton Law Firm LLP, and Lieff Cabraser Heimann & Bernstein LLP supporting Lead Counsel's motion for attorneys' fees, which the Court granted following the fairness hearing held on November 2, 2016. *See* Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs ("Fee Order," ECF No. 111).

These mistakes came to our attention during internal reviews that were conducted in response to an inquiry from the media received after the hearing. The purpose of this letter is to disclose the error and provide a corrected lodestar and multiplier. We respectfully submit that the error should have no impact on the Court's ruling on attorneys' fees.

As the Court is aware, the submissions supporting Lead Counsel's fee application included individual declarations submitted on behalf of Labaton Sucharow, Thornton, and Lieff Cabraser, reporting each firm's lodestar and number of hours billed. *See* ECF Nos. 104-15, at 7-9; 104-16, at 7-8; 104-17, at 8-9; *see also* ECF No. 104-24 (Master Chart).

The professionals and paraprofessionals listed in these firms' respective lodestar reports include persons denoted as Staff Attorneys, or "SAs." SAs are bar-admitted, experienced attorneys hired on a temporary, though generally long-term, basis, and are paid by the hour. The SAs in this action

Labaton Sucharow

were tasked principally with reviewing and analyzing the millions of pages of documents produced by State Street.

Seventeen (17) of the SAs listed on the Thornton lodestar report are also listed as SAs on the Labaton Sucharow lodestar report.[1] Six (6) of the SAs listed on the Thornton lodestar report are also listed as SAs on the Lieff Cabraser lodestar report.[2] Both sets of overlap reflect the fact that as the litigation proceeded, efforts were made to share costs among counsel, such that financial responsibility for certain SAs located at Labaton Sucharow's and Lieff Cabraser's offices was borne by Thornton.

We have now determined that:

- The hours of the Alper SAs reported in the Thornton lodestar report mistakenly were also reported in the Labaton Sucharow lodestar report.
- Certain hours reported by one of the Alper SAs (S. Dolben) in the Thornton lodestar report mistakenly duplicated certain hours of another Alper SA (D. Fouchong).
- A portion of the hours of two of the Jordan SAs reported in the Thornton lodestar report (C. Jordan and J. Zaul) mistakenly were also reported in the Lieff Cabraser lodestar report.
- The hours of two other Jordan SAs (A. Ten Eyck and R. Wintterle) mistakenly were included in the Lieff Cabraser lodestar report.[3]

Because of these inadvertent errors, Plaintiffs' Counsel's reported combined lodestar of $41,323,895.75, and reported combined time of 86,113.7 hours, were overstated. *See* ECF No. 104-24 (Master Chart).

---

[1] These SAs, listed alphabetically, are D. Alper, E. Bishop, N. Cameron, M. Daniels, S. Dolben, D. Fouchong, J. Grant, I. Herrick, D. Hong, C. Orji, D. Packman, A. Powell, A. Rosenbaum, J. Saad, B. Schulman, A. Vaidya, and R. Yamada (collectively, the "Alper SAs"). *Compare* ECF No. 104-16, at 7-8 (Thornton lodestar report) *with* ECF No. 104-15, at 7-8 (Labaton Sucharow lodestar report).

[2] These SAs, listed alphabetically, are C. Jordan, A. McClelland, A. Ten Eyck, V. Weiss, R. Wintterle, and J. Zaul (collectively, the "Jordan SAs"). *Compare* ECF No. 104-16, at 7 (Thornton lodestar report) *with* ECF No. 104-17, at 8 (Lieff Cabraser lodestar report).

[3] The lodestar reports in the individual firm declarations submitted by ERISA counsel (ECF Nos. 104-18 to 104-23) are unaffected.

Labaton Sucharow

We have corrected these errors by removing the duplicative time. When a given SA had different hourly billing rates, we removed the time billed at the higher rate. Deducting the duplicative time from the $41.32 million reported combined lodestar results in a reduced combined lodestar of **$37,265,241.25**, and a reduced combined time of 76,790.8 hours.

Cross-checking the $37.27 million reduced combined lodestar against the $74,541,250 percentage-based fee awarded by the Court yields a lodestar multiplier of **2.00**.[4] This is higher than the 1.8 multiplier we proffered in our submissions and during the hearing.

Plaintiffs' counsel respectfully submits that a 2.00 multiplier remains reasonable and well-within the range of multipliers found reasonable for cross-check purposes in common fund cases within the First Circuit, and that such an enhancement of the reduced lodestar represented by the 24.85% fee awarded by the Court remains well-supported by the $300 million Settlement obtained and fees awarded in comparable cases. *See* Fee Brief, ECF No. 103-1, at 24-25.

Accordingly, Plaintiffs' counsel respectfully submits that the Court should adhere to its ruling on attorneys' fees. *See* Fee Order ¶¶ 4, 6 (ECF No. 111)[5]; Nov. 2, 2016 Hrg. Tr. at 36:1-2 (finding 1.8 multiplier "reasonable").

We sincerely apologize to the Court for the inadvertent errors in our written submissions and presentation during the hearing. We are available to respond to any questions or concerns the Court may have.

Respectfully submitted,

David J. Goldsmith

---

[4] The Court found it "appropriate in this case to use the percentage of the common fund approach in determining the amount of attorneys' fees that should be awarded." Nov. 2, 2016 Hrg. Tr. at 22:25-23:2; *see also id.* at 35:12-13 ("I have used the percentage of common fund method. I've used the reasonable lodestar to check on that.").

[5] The Fee Order, at Paragraph 6(d), references the approximately 86,000 combined hours and $41.32 million combined lodestar reported in our written submissions.

Labaton Sucharow

DJG/idi

cc: All Counsel of Record
(by ECF)

Certificate of Service

I certify that on November 10, 2016, I caused the foregoing Letter to be filed through the ECF system in the above-captioned action, 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. 179

Lawrence A. Sucharow
Partner
212 907 0860 direct
212 883 7060 fax
lsucharow@labaton.com

November 21, 2016

By E-Mail

Michael P. Thornton, Esq.
Thornton Law Firm LLP
100 Summer Street, 30th Floor
Boston, Massachusetts 02110

Lynn Lincoln Sarko, Esq.
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, Washington 98101

Daniel P. Chiplock, Esq.
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, New York 10013

Carl S. Kravitz, Esq.
Zuckerman Spaeder LLP
1800 M Street, N.W.
Washington, D.C. 20036

Robert L. Lieff, Esq.
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, California 94111

J. Brian McTigue, Esq.
McTigue Law LLP
4530 Wisconsin Ave, N.W., Suite 300
Washington, D.C. 20016

Re: *Arkansas Teacher Retirement System v. State Street Bank & Trust Co.*,
No. 11-CV-10230 MLW (D. Mass.)
Henriquez v. State Street Bank & Trust Co.,
No. 11-CV-12049 MLW (D. Mass.)
The Andover Companies Employee Savings & Profit Sharing Plan v. State Street Bank & Trust Co.,
No. 12-CV-11698 MLW (D. Mass.)

Dear Counsel:

As you are aware, on November 8, 2016, after Judge Wolf issued the Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs (the "Fee Order," ECF No. 111), counsel in the *Arkansas* action received an inquiry from the *Boston Globe* concerning certain of the individual firm lodestar reports supporting our motion for attorneys' fees.

In response, as you are also aware, we filed a detailed letter with the Court on November 10, 2016 ("Letter," ECF No. 116). The Letter disclosed certain inadvertent errors in these submissions, and provided a corrected combined time spent, corrected combined lodestar, and the resulting corrected multiplier. Because the fee was determined based on the percentage-of-fund method, and the overstatement of the lodestar resulted only in a modest increase in the multiplier cross-check, we

argued that the fee was fully supportable under the Court's stated rationale and that no changes were required.

Further, the Letter offered our apology for the errors, and indicated that we were available to respond to any questions or concerns the Court may have.

The Fee Order and the Court's Order and Final Judgment (the "Judgment," ECF No. 110) become Final on December 2, 2016, and the Settlement will become Effective shortly thereafter, on December 7, 2016.[1] Because there were no objections to the Settlement or requested fees, no Class member has standing to appeal the Fee Order or Judgment.

As of today, the Court has not acted in response to the Letter. If the Court remains silent as of close of business on December 7, 2016, we will begin the process of withdrawing the approved fees, expenses, and service awards from the Lead Counsel Escrow Account for prompt distribution to your respective firms pursuant to our agreements.

It is possible, however, that the Court, on or after December 8, 2016, will respond adversely to the Letter and ultimately reduce the fee award. This could occur after the fees, expenses and service awards have been distributed to your respective firms (and to the other ERISA counsel).

Accordingly, before we distribute your share of the fees, expenses, and service awards, we will require an undertaking, evidenced by your signature below, confirming your agreement to refund to us within five (5) business days, for redeposit into the Lead Counsel Escrow Account, your *pro rata* share of any Court-ordered reduction of fees, expenses, and/or service awards.

Please sign below and return an executed copy to us. Thank you for your cooperation. Please let me know if you have any questions.

Very truly yours,

Lawrence A. Sucharow

---

[1] The time to appeal the Judgment and Fee Order expires on December 2, 2016 (a Friday), 30 days after entry. *See* Settlement Agmt. ¶ 1(z)(iii). After that, however, State Street has two (2) business days to make its formal settlement offer to the SEC before the Effective Date is reached. That brings the Effective Date to December 7.

LAS/idi

ACCEPTED AND AGREED:

Thornton Law Firm LLP
Name: _____
Dated: _____, 2016

Lieff Cabraser Heimann & Bernstein, LLP
Name: _____
Dated: _____, 2016

Robert L. Lieff, Esq.
Name: _____
Dated: _____, 2016

Keller Rohrback L.L.P.
Name: _____
Dated: _____, 2016

Zuckerman Spaeder LLP
Name: _____
Dated: _____, 2016

McTigue Law LLP
Name: _____
Dated: _____, 2016

EX. 180

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

MEMORANDUM AND ORDER

WOLF, D.J. February 6, 2017

I. SUMMARY

Questions have arisen with regard to the accuracy and reliability of information submitted by plaintiffs' counsel on

which the court relied, among other things, in deciding that it was reasonable to award them almost $75,000,000 in attorneys' fees and more than $1,250,000 in expenses. The court now proposes to appoint former United States District Judge Gerald Rosen as a special master to investigate those issues and prepare a Report and Recommendation for the court concerning them. After providing plaintiffs' counsel an opportunity to object and be heard, the court would decide whether the original award of attorneys' fees remains reasonable, whether it should be reduced, and, if misconduct has been demonstrated, whether sanctions should be imposed.

The court is now, among other things, providing plaintiffs' counsel the opportunity to consent or to object to: the appointment of a special master generally; to the appointment of Judge Rosen particularly; and to the proposed terms of any appointment. A hearing to address the possible appointment of a special master will be held on March 7, 2017, at 10:00 a.m.

II. BACKGROUND

After a hearing on November 2, 2016, the court approved a $300,000,000 settlement in this class action in which it was alleged that defendant State Street Bank and Trust overcharged its customers in connection with certain foreign exchange transactions. It also employed the "common fund" method to determine the amount of attorneys' fees to award. See In re

Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig., 56 F.3d 295, 305 (1st Cir. 1995). The court found to be reasonable an award to class counsel of $74,541,250 in attorneys' fees and $1,257,697.94 in expenses. That award represented about 25% of the common fund.

Like many judges, and consistent with this court's long practice, the court tested the reasonableness of the requested award, in part, by measuring it against what the nine law firms representing plaintiffs stated was their total "lodestar" of $41,323,895.75. See Nov. 2, 2016 Transcript ("Tr.") at 30-31, 34; see also Manual for Complex Litigation (Fourth) § 14.122 (2004) ("the lodestar is . . . useful as a cross-check on the percentage method" of determining reasonable attorneys' fees); Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1050 (9th Cir. 2002) ("[T]he lodestar may provide a useful perspective on the reasonableness of a given percentage award."). Plaintiffs' counsel represented that the total requested award involved a multiplier of $1.8%, which they argued was reasonable in view of the risk they undertook in taking this case on a contingent fee. See Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees (Docket No. 103-1) at 24-25 ("Fees Award Memo").

A lodestar is properly calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. See Blum v. Stenson, 465 U.S. 886, 889 (1984). The

Supreme Court has instructed that "[r]easonable fees . . . are to be calculated according to the prevailing rates in the relevant community." Id. at 895. "[T]he rate that private counsel actually charges for her services, while not conclusive, is a reliable indicum of market value." United States v. One Star Class Sloop Sailboat built in 1930 with hull no. 721, named "Flash II", 546 F.3d 26, 40 (1st Cir. 2008)(emphasis added).[1]

In their memorandum in support of the fee request, plaintiffs' counsel represented that to calculate the lodestar they had used "current rather than historical billing rates," for attorneys working on this case. Fees Award Memo. (Docket No. 103-1) at 24. Similarly, in the related affidavits filed on behalf of each law firm counsel stated that "the hourly rates for the attorneys and professional support staff in my firm . . . are the same as my firm's regular rates charged for their services . . . ." See, e.g., Declaration of Garett J. Bradley on behalf of Thornton Law Firm LLP ("Thornton") (Docket No. 104-16) at ¶4; Declaration of Lawrence A. Sucharow on behalf of Labaton Sucharow LLP ("Labaton") (Docket No. 104-15) at ¶7. In view of the well-established jurisprudence and the representations of counsel, the court understood that in calculating the lodestar plaintiffs' law firms

[1] The First Circuit cited a common fund case, In re Cont'l III Sec. Litig., 962 F.2d 566, 568 (7th Cir. 1992), for this proposition.

had used the rates they each customarily actually charged paying clients for the services of each attorney and were representing that those rates were comparable to those actually charged by other attorneys to their clients for similar services in their community.

On November 10, 2016, David J. Goldsmith of Labaton, on behalf of plaintiffs' counsel, filed the letter attached hereto as Exhibit A (Docket No. 116). Mr. Goldsmith noted that the court had used the lodestar calculated by counsel as a check concerning the reasonableness of the percentage of the common fund requested for attorneys' fees. Id. at 3, n.4. Counsel stated that as a result of an "inquiry from the media" "inadvertent errors [had] just been discovered in certain written submissions from Labaton Sucharow LLP, Thornton Law Firm LLP, and Lieff Cabraser Heiman & Bernstein LLP supporting Lead Counsel's motion for attorneys' fees . . . ." Id. at 1. Counsel reported that the hours of certain staff attorneys, who were paid by the hour primarily to review documents, had been included in the lodestar reports of more than one firm. Id. at 1-2. He also stated that in some cases different billing rates had been attributed to particular staff attorneys by different firms. Id. at 3.

The double-counting resulted in inflating the number of hours worked by more than 9,300 and inflating the total lodestar by more than $4,000,000. Id. at 2-3. As a result, counsel stated a multiplier of 2, rather than 1.8, should have been used to test

the reasonableness of the request for an award of $74,541,250 as attorneys' fees. Id. at 3. Counsel asserted that the award nevertheless remained reasonable and should not be reduced. Id. The letter did not indicate that the reported lodestar may not have been based on what plaintiffs' counsel, or others in their community, actually customarily charged paying clients for the type of work done by the staff attorneys in this case. Nor did the letter raise any question concerning the reliability of the representations concerning the number of hours each attorney reportedly worked on this case.

Such questions, among others, have now been raised by the December 17, 2016 Boston Globe article headlined "Critics hit law firms' bills after class action lawsuits" which is attached as Exhibit B. For example, the article reports that the staff attorneys involved in this case were typically paid $25-$40 an hour. In calculating the lodestar, it was represented to the court that the regular hourly billing rates for the staff attorneys were much higher -- for example, $425 for Thornton, see Docket No. 104-15 at 7-8 of 14, and $325-440 for Labaton, see Docket No. 104-15 at 7-8 of 52. A representative of Labaton reportedly confirmed the accuracy of the article in this respect. See Ex. B at 3.

The court now questions whether the hourly rates plaintiffs' counsel attributed to the staff attorneys in calculating the lodestar are, as represented, what these firms actually charged

for their services or what other lawyers in their community charge paying clients for similar services. This concern is enhanced by the fact that different firms represented that they customarily charged clients for the same lawyer at different rates. In general, the court wonders whether paying clients customarily agreed to pay, and actually paid, an hourly rate for staff attorneys that is about ten times more than the hourly cost, before overhead, to the law firms representing plaintiffs.

In addition, the article raises questions concerning whether the hours reportedly worked by plaintiffs' attorneys were actually worked. Most prominently, the article accurately states that Michael Bradley, the brother of Thornton Managing Partner Garrett Bradley, was represented to the court as a staff attorney who worked 406.40 hours on this case. See Docket No. 104-15 at 7 of 14. Garrett Bradley also represented that the regular rate charged for his brother's services was $500 an hour. Id. However the article states, without reported contradiction, that "Michael Bradley . . . normally works alone, often making $53 an hour as a court appointed defendant in [the] Quincy [Massachusetts] District Court." Ex. B at 1. These apparent facts cause the court to be concerned about whether Michael Bradley actually worked more than 400 hours on this case and about whether Thornton actually regularly charged paying clients $500 an hour for his services.

The acknowledged double-counting of hours by staff attorneys and the matters discussed in the article raise broader questions about the accuracy and reliability of the representations plaintiffs' counsel made in their calculation of the lodestar generally. These questions -- which at this time are only questions -- also now cause the court to be concerned about whether the award of almost $75,000,000 in attorneys' fees was reasonable.

III. THE PROPOSED SPECIAL MASTER

In view of the foregoing, the court proposes to appoint a special master to investigate and report concerning the accuracy and reliability of the representations that were made in connection with the request for an award of attorneys' fees and expenses, the reasonableness of the award of $74,541,250 in attorneys' fees and $1,257,697.94 in expenses, and any related issues that may emerge in the special master's investigation. In the final judgment entered on November 11, 2016, the court retained jurisdiction over, among other things, the determination of attorneys' fees and other matters related or ancillary to them. See Final Judgment (Docket No. 110) at 10. Federal Rule of Civil Procedure 23(h)(4) states that in class actions "the court may refer issues related to the amount of the [attorneys' fee] award to a special master . . . as provided in Rule 54(d)(2)(D)." Federal Rule of Civil Procedure 54(d)(2)(D) states that "the court may refer issues concerning the value of services to a special master under Rule 53 without regard

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to the limitations of Rule 53(a)(1)." As the 1993 Advisory Committee's Note explains, "the rule [] explicitly permits . . . the court to refer issues regarding the amount of a fee award in a particular case to a master under Rule 53. . . . This authorization eliminates any controversy as to whether such references are permitted . . . ." Fed. R. Civ. P. 54 Advisory Committee's Note to 1993 Amendment.

The court proposes to exercise this authority to appoint Gerald Rosen, a recently retired United States District Judge for the Eastern District of Michigan, to serve as special master; Judge Rosen's biography is attached as Exhibit C. The court proposes to authorize Judge Rosen to investigate all issues relating to the award of attorneys' fees in this case. If appointed, he would be empowered to, among other things, subpoena documents from plaintiffs' counsel and third parties, interview witnesses, and take testimony under oath. Judge Rosen would be authorized to communicate with the court ex parte on procedural matters, but encouraged to minimize ex parte communications, and to avoid them if possible. He would be expected to complete his duties within six-months of his appointment, if possible.

At the conclusion of his investigation, Judge Rosen would prepare for the court a Report and Recommendation concerning: (1) the accuracy and reliability of the representations made by plaintiffs' counsel in their request for an award of attorneys'

fees and expenses, including, but not limited to, whether counsel employed the correct legal standards and had proper factual bases for what they represented to be the lodestar for each firm and the total lodestar; (2) the reasonableness of the amount of attorneys' fees and expenses that were awarded, including whether they should be reduced; and (3) whether any misconduct occurred; and, if so, (4) whether it should be sanctioned, see, e.g., In re: Deepwater Horizon, 824 F.3d 571, 576-77 (5th Cir. 2016). The court would provide plaintiffs' counsel an opportunity to object to the Report and Recommendation and, if appropriate, conduct a hearing concerning any objections. See Fed. R. Civ. Proc. 53(f)(1). The special master's report would be reviewed pursuant to Federal Rule of Civil Procedure 53(f)(3), (4) & (5).

Judge Rosen would be compensated at his regular hourly rate as a member of JAMS of $800 an hour or $11,000 a day.[2] Judge Rosen could be assisted by other attorneys and staff, who would be compensated at a reasonable rate approved in advance by the court. Judge Rosen and anyone assisting him would also be reimbursed for their reasonable expenses.

The fees and expenses of the Special Master would be paid, by the court, from the $74,541,250 awarded to plaintiffs' counsel.

[2] The court notes that plaintiffs' counsel reported billing rates of up to $1,000 an hour. See, e.g., Docket No. 104-17 at 8 of 135.

The court may order that up to $2,000,000 be returned to the Clerk of the District Court for this purpose.

As required by Federal Rule of Civil Procedure 53(b)(3)(A), Judge Rosen has submitted an affidavit disclosing whether there is any ground for his disqualification under 28 U.S.C. §455, which is attached as Exhibit D. The only matter disclosed relates to Elizabeth Cabraser, a partner in one of plaintiffs' law firms. Ms. Cabraser reportedly worked 29.50 hours on this case. Judge Rosen reports that about four years ago he asked Ms. Cabraser to become, with him and others, a co-author of the book Federal Employment Litigation. Since then they have had annually, independently submitted updates to different chapters of the book. They, and the other authors, share royalties from the book. In addition, Judge Rosen and Ms. Cabraser have participated together on panels on class actions. Although at least one lawyer from plaintiffs' law firms has appeared before Judge Rosen, Judge Rosen has had no other association with any of them.

Judge Rosen represents that he has no bias or prejudice concerning anyone involved in this matter, or any personal knowledge of potentially disputed facts concerning it. Therefore, it does not appear that his disqualification would be required by 28 U.S.C. §455(b)(1). It also appears to Judge Rosen and the court that his relationship with Ms. Cabraser could not cause a reasonable person to question his impartiality. Therefore, it

appears that his recusal would not be justified pursuant to §455(a). See United States v. Sampson, 12 F. Supp. 3d 203, 205-08 (D. Mass. 2014) (Wolf, D.J.) (discussing standards for recusal under §455(a)).[3]

However, the court is providing plaintiffs' counsel the opportunity to consent to the appointment of Judge Rosen as special master on the terms discussed in this Memorandum, register any objections, and/or comment on the proposal. Among other things, plaintiffs' counsel may propose alternative eligible candidates for possible appointment. See Fed. R. Civ. P. 53(b)(1).[4]

IV. ORDER

In view of the foregoing it is hereby ORDERED that:

1. Plaintiffs' counsel shall file by February 20, 2017, a memorandum addressing, among other things deemed relevant: whether they object to the appointment of a special master; whether they object to the selection of Judge Rosen if a special master is to

[3] Ideally, the court would propose a special master who presents no question of possible recusal. However, the court has found in exploring potential candidates to serve as special master that lawyers in larger law firms are unavailable because their firms have adversarial relationships with plaintiffs' counsel in other cases. Therefore, the court concluded that proposing a recently retired judge would be most feasible and appropriate.

[4] Any proposed alternative candidate must file an affidavit demonstrating that he or she does not have any conflict of interest and is not subject to disqualification pursuant to 28 U.S.C. §455.

be appointed; whether they believe Judge Rosen's disqualification would be required under 28 U.S.C. § 455(a) or (b) and, in any event, whether they waive any such ground for disqualification; whether they object to any of the terms of the appointment and powers of a special master discussed in this Memorandum; and whether they propose the appointment of someone other than Judge Rosen as special master. Counsel shall provide an explanation, with supporting authority, for any objection or comment.

2. A hearing to address the proposed appointment of a special master generally, and Judge Rosen particularly, shall be held on March 7, 2017, at 10:00 a.m. Each of plaintiffs' counsel who submitted an affidavit in support of the request for an award of attorney's fees, see Docket Nos. 104-15 - 104-24, shall attend.[5] Michael Bradley shall also attend. In addition the representative of each lead plaintiff who supervised this litigation (not a lawyer) shall attend.[6]

[5] Such counsel are: Lawrence A. Sucharow of Labaton; Garrett J. Bradley of Thornton; Daniel P. Chiplock of Lieff, Cabraser, Heimann & Bernstein, LLP; Lynn Sarko of Keller Rohrback LLP; J. Brian McTigue of McTigue Law; Carl S. Kravtiz of Zuckerman Spaeder LLP; Catherine M. Campbell of Feinberg, Campbell & Zack, PC; Jonathan G. Axelrod of Beins, Axelrod, PC; and Kimberly Keevers Palmer of Richardson, Patrick, Westbrook & Brickman, LLC.

[6] Such individuals are: George Hopkins on behalf of Arkansas Teacher Retirement System; Arnold Henriquez; Michael T. Cohn; William R. Taylor; Richard A. Sutherland; James Pehoushek-

Judge Rosen shall also be present and may be questioned. Regardless of whether Judge Rosen is appointed special master, the court will order that he receive reasonable compensation for his time and expenses from the fee award previously made to plaintiffs' counsel.

/s/ Mark L. Wolf

UNITED STATES DISTRICT JUDGE

Stangeland; and Janet A. Wallace on behalf of The Andover Companies Employee Savings and Profit Sharing Plan.

EXHIBIT A

Labaton Sucharow

David J. Goldsmith
Partner
212 907 0879 direct
212 883 7079 fax
dgoldsmith@labaton.com

November 10, 2016

By ECF

Hon. Mark L. Wolf
United States District Judge
United States District Court
District of Massachusetts
John Joseph Moakley
United States Courthouse
1 Courthouse Way
Boston, Massachusetts 02210

Re: Arkansas Teacher Retirement System v. State Street Bank & Trust Co.,
No. 11-CV-10230 MLW

Dear Judge Wolf:

We are writing respectfully to advise the Court of inadvertent errors just discovered in certain written submissions from Labaton Sucharow LLP, Thornton Law Firm LLP, and Lieff Cabraser Heimann & Bernstein LLP supporting Lead Counsel's motion for attorneys' fees, which the Court granted following the fairness hearing held on November 2, 2016. *See* Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs ("Fee Order," ECF No. 111).

These mistakes came to our attention during internal reviews that were conducted in response to an inquiry from the media received after the hearing. The purpose of this letter is to disclose the error and provide a corrected lodestar and multiplier. We respectfully submit that the error should have no impact on the Court's ruling on attorneys' fees.

As the Court is aware, the submissions supporting Lead Counsel's fee application included individual declarations submitted on behalf of Labaton Sucharow, Thornton, and Lieff Cabraser, reporting each firm's lodestar and number of hours billed. *See* ECF Nos. 104-15, at 7-9; 104-16, at 7-8; 104-17, at 8-9; *see also* ECF No. 104-24 (Master Chart).

The professionals and paraprofessionals listed in these firms' respective lodestar reports include persons denoted as Staff Attorneys, or "SAs." SAs are bar-admitted, experienced attorneys hired on a temporary, though generally long-term, basis, and are paid by the hour. The SAs in this action

Labaton Sucharow

were tasked principally with reviewing and analyzing the millions of pages of documents produced by State Street.

Seventeen (17) of the SAs listed on the Thornton lodestar report are also listed as SAs on the Labaton Sucharow lodestar report.[1] Six (6) of the SAs listed on the Thornton lodestar report are also listed as SAs on the Lieff Cabraser lodestar report.[2] Both sets of overlap reflect the fact that as the litigation proceeded, efforts were made to share costs among counsel, such that financial responsibility for certain SAs located at Labaton Sucharow's and Lieff Cabraser's offices was borne by Thornton.

We have now determined that:

- The hours of the Alper SAs reported in the Thornton lodestar report mistakenly were also reported in the Labaton Sucharow lodestar report.
- Certain hours reported by one of the Alper SAs (S. Dolben) in the Thornton lodestar report mistakenly duplicated certain hours of another Alper SA (D. Fouchong).
- A portion of the hours of two of the Jordan SAs reported in the Thornton lodestar report (C. Jordan and J. Zaul) mistakenly were also reported in the Lieff Cabraser lodestar report.
- The hours of two other Jordan SAs (A. Ten Eyck and R. Wintterle) mistakenly were included in the Lieff Cabraser lodestar report.[3]

Because of these inadvertent errors, Plaintiffs' Counsel's reported combined lodestar of $41,323,895.75, and reported combined time of 86,113.7 hours, were overstated. *See* ECF No. 104-24 (Master Chart).

---

[1] These SAs, listed alphabetically, are D. Alper, E. Bishop, N. Cameron, M. Daniels, S. Dolben, D. Fouchong, J. Grant, I. Herrick, D. Hong, C. Orji, D. Packman, A. Powell, A. Rosenbaum, J. Saad, B. Schulman, A. Vaidya, and R. Yamada (collectively, the "Alper SAs"). *Compare* ECF No. 104-16, at 7-8 (Thornton lodestar report) *with* ECF No. 104-15, at 7-8 (Labaton Sucharow lodestar report).

[2] These SAs, listed alphabetically, are C. Jordan, A. McClelland, A. Ten Eyck, V. Weiss, R. Wintterle, and J. Zaul (collectively, the "Jordan SAs"). *Compare* ECF No. 104-16, at 7 (Thornton lodestar report) *with* ECF No. 104-17, at 8 (Lieff Cabraser lodestar report).

[3] The lodestar reports in the individual firm declarations submitted by ERISA counsel (ECF Nos. 104-18 to 104-23) are unaffected.

Labaton Sucharow

We have corrected these errors by removing the duplicative time. When a given SA had different hourly billing rates, we removed the time billed at the higher rate. Deducting the duplicative time from the $41.32 million reported combined lodestar results in a reduced combined lodestar of **$37,265,241.25**, and a reduced combined time of 76,790.8 hours.

Cross-checking the $37.27 million reduced combined lodestar against the $74,541,250 percentage-based fee awarded by the Court yields a lodestar multiplier of **2.00**.[4] This is higher than the 1.8 multiplier we proffered in our submissions and during the hearing.

Plaintiffs' counsel respectfully submits that a 2.00 multiplier remains reasonable and well-within the range of multipliers found reasonable for cross-check purposes in common fund cases within the First Circuit, and that such an enhancement of the reduced lodestar represented by the 24.85% fee awarded by the Court remains well-supported by the $300 million Settlement obtained and fees awarded in comparable cases. *See* Fee Brief, ECF No. 103-1, at 24-25.

Accordingly, Plaintiffs' counsel respectfully submits that the Court should adhere to its ruling on attorneys' fees. *See* Fee Order ¶¶ 4, 6 (ECF No. 111)[5]; Nov. 2, 2016 Hrg. Tr. at 36:1-2 (finding 1.8 multiplier "reasonable").

We sincerely apologize to the Court for the inadvertent errors in our written submissions and presentation during the hearing. We are available to respond to any questions or concerns the Court may have.

Respectfully submitted,

David J. Goldsmith

---

[4] The Court found it "appropriate in this case to use the percentage of the common fund approach in determining the amount of attorneys' fees that should be awarded." Nov. 2, 2016 Hrg. Tr. at 22:25-23:2; *see also id.* at 35:12-13 ("I have used the percentage of common fund method. I've used the reasonable lodestar to check on that.").

[5] The Fee Order, at Paragraph 6(d), references the approximately 86,000 combined hours and $41.32 million combined lodestar reported in our written submissions.

Labaton Sucharow

DJG/idi

cc: All Counsel of Record
(by ECF)

Certificate of Service

I certify that on November 10, 2016, I caused the foregoing Letter to be filed through the ECF system in the above-captioned action, and accordingly to be served electronically upon all registered participants identified on the Notices of Electronic Filing.

/s/ David J. Goldsmith
David J. Goldsmith

EXHIBIT B

SPOTLIGHT FOLLOW-UP

Critics hit law firms' bills after class-action lawsuits

By Andrea Estes | GLOBE STAFF DECEMBER 17, 2016

Attorneys at the Thornton Law Firm had just helped win a $300 million settlement from State Street Bank and Trust in a complicated lawsuit involving eight other law firms. Now, it was time to submit their legal fees to the judge so that they could get paid.

That's when the younger brother of Thornton managing partner Garrett Bradley emerged as a $500-an-hour "staff attorney" at the Boston firm.

Michael Bradley is a lawyer, but he normally works alone, often making $53 an hour as a court-appointed defender in Quincy District Court, records show. Yet, according to his older brother's sworn statement on Sept. 14, 2016, Michael Bradley's services were worth nearly 10 times that rate in the State Street case.

The elder Bradley said Michael worked 406.4 hours on the lawsuit, which centered on international currency trades, at a cost of $203,200.

Michael Bradley wasn't the only lawyerfor whose work Thornton claimed stratospheric — and questionable — legal costs in the filing to US District Court Judge Mark L. Wolf. Garrett Bradley listed 23 other staff attorneys, each with hourly rates of $425, who collectively accounted for $4 million in costs.

Comments

Law firm 'bonuses' tied to political donations

A small Boston law firm became a top funder of the national Democratic Party by paying lawyers "bonuses" for their political donations.

Candidates returning donations from Thornton Law Firm attorneys

Hassan to return law firm's donations

But one of the lawyers told the Globe he was actually paid just $30 an hour for his services — and not by Thornton. Like all the other staff attorneys on Garrett Bradley's list, except his brother, he worked for another firm in the case, which also counted his hours on its list of costs.

The sworn statement by Garrett Bradley — until recently an assistant House majority leader on Beacon Hill — raises troubling questions about the way Thornton and the other firms that brought the State Street lawsuit tallied legal costs to justify their enormous $75.8 million payday.

BRADLEY FOR SELECTMAN

Michael Bradley, Quincy attorney.

More than 60 percent of the costs that Thornton and two other law firms submitted to Judge Wolf came from the work of staff attorneys — all of them assigned hourly rates at least 10 times higher than the $25 to $40 an hour typical for these low-level positions — which involves document review.

A spokesman for the lead law firm in the case acknowledged that hourly rates the firms listed for staff attorneys were above the lawyers' actual wages, but argued that, essentially, everyone does it. Diana Pisciotta, spokeswoman for the Labaton Sucharow law firm in New York City, called it "commonly accepted practice throughout the legal community."

Critics of the way lawyers are paid in class-action lawsuits acknowledge that firms often dramatically mark up the rates of their lower-paid attorneys when seeking legal fees in court, but they say Thornton has pushed the practice to an extreme.

"This happens all the time," said Ted Frank, a lawyer at the Competitive Enterprise Institute in Washington and a leading national critic of legal fees in class-action lawsuits. "Lawyers pad their bills with overstated hourly work to make their fee request seem less of a windfall."

Lawyers in class-action lawsuits commonly receive a major share of any settlement because they are taking the risk that, if they lose, they will be paid nothing.

In fact, plaintiffs in the State Street case, many of them public pension funds, agreed in advance to set aside a quarter of any settlement for attorneys in their lawsuit alleging that the Boston-based bank routinely overcharged clients for their foreign currency exchanges, costing them more than $1 billion.

But, to actually collect the money, lawyers document their costs by filing affidavits under penalty of perjury.

The accounting must be based on actual time records, listing the names and hourly rates of the lawyers who worked on the case, and the total amount billed. The hourly rate is supposed to be what the lawyer would charge a paying client for

similar work, including the lawyer's salary and a markup for office costs and other expenses.

That's where, critics of contingency fee lawsuits say, lawyers have a built-in opportunity to inflate their bills. And, for a variety of reasons, their bills often get little scrutiny.

"Imagine you're a lawyer and you're allowed to write your own check for your fee," explained Lester Brickman, a Yeshiva University law professor and author of "Lawyer Barons: What Their Contingency Fees Really Cost America."

"I could write $3,000, but I could add a zero and write $30,000 or add two zeroes and charge $300,000," Brickman said. "That's the honor system."

Thornton officials insist that they did nothing wrong and that the 23 staff attorneys who actually work for Labaton or a firm in San Francisco belonged on Thornton's list.

Under a cost-sharing agreement between the firms, Thornton paid part of their wages while they were reviewing millions of pages of documents in the State Street case. These lawyers just receive their usual salary and don't share in the proceeds from the settlement.

Garrett Bradley's brother, by contrast, will receive the $203,200 listed for him on the filing to Judge Wolf, according to Thornton spokesman Peter Mancusi, who noted that Michael Bradley, unlike the other staff attorneys, was not paid previously for his work.

Neither Michael Bradley nor a spokesman for Thornton would say what he did on the case, but the spokesman described him as an experienced prosecutor and fraud investigator.

Globe questions about the legal bills prompted the lead law firm in the State Street case to submit an extraordinary letter to Judge Wolf admitting that Thornton and

$4 million. The author, David Goldsmith of Labaton Sucharow, blamed the inflated bills on “inadvertent errors.”

According to Goldsmith’s Nov. 10 letter, Labaton and another firm, Lieff Cabraser Heimann & Bernstein, claimed the same staff attorneys that Thornton had listed on its legal expenses, double-counting the lawyers’ cost. Goldsmith said the double-counted lawyers were employees of either Labaton or Lieff Cabraser, but their hours and costs should have been counted only once — by Thornton Law.

To resolve the issue, he said, the other firms dropped the lawyers and Thornton lowered the hourly rate it charged for numerous staff attorneys because it had assigned a higher rate than the other firms.

Despite the resulting drop in combined legal fees, Goldsmith urged Wolf not to reduce the lawyers’ payment from the settlement. In class-action cases, lawyers commonly receive a payment that not only covers costs, but a financial reward for bringing a risky case that could have failed and paid nothing.

Goldsmith suggested that Wolf simply boost the reward to offset the reduced legal fees so that the firms still split the same $74 million, including $14 million for Thornton.

“We respectfully submit that the error should have no impact on the court’s ruling on attorneys’ fees,” wrote Goldsmith, whose firm often joins forces with Thornton.

That may not be enough to satisfy Wolf, who has a reputation for closely questioning claims made in his court.

He called the legal fees “reasonable” at a Nov. 2 hearing and praised the plaintiffs’ lawyers for taking on a “novel, risky case.” But he approved the fees in part based on sworn statements that the lawyers now admit were in error. Wolf could reduce their payments, which were issued earlier this month, or hold a hearing to determine whether the lawyers knowingly submitted false information, a serious breach of professional ethics.

"The double-counting was likely the result of sloppiness, assuming that there would be no objectors' or court scrutiny of the fee request," said Frank, who has successfully challenged several settlements and fee requests in other cases, recouping more than $100 million for class members.

Frank said the problems with the legal fees go beyond the double-counting of attorneys. Other law firms contacted by the Globe said it's common to list an hourly rate for an attorney several times higher than the attorney's own pay, because the law firm has many other expenses aside from the lawyer him or herself. However, Thornton listed attorneys' rates at up to 14 times the lawyer's wages.

Frank said his analysis suggests that the $75.8 million award to the nine law firms was excessive — by at least $20 million and as much as $48.3 million — in part because the lawyers asked too much in the first place. He said that the lawyers' own documents show that, in similarly sized settlements, the legal fees average only 17.8 percent.

Thornton Law Firm, a personal injury firm that specializes in asbestos-related cases, is already the target of three investigations for its controversial campaign contribution program in which the law firm paid millions of dollars in "bonuses" to partners that offset their political contributions.

Federal prosecutors as well as two other agencies are investigating whether the bonuses were an illegal "straw donor" scheme to allow the firm to vastly exceed limits on campaign contributions. Thornton officials have insisted they did nothing wrong, because the bonuses were paid out of the lawyers' own equity in the firm.

Thornton's legal fees in the State Street case feed into a larger debate about how lawyers get paid in class-action lawsuits. Defenders of paying lawyers on contingency say the prospect of a high payoff encourages lawyers to take on exceptionally difficult cases, such as suing a wealthy bank like State Street.

However, Frank said there's little oversight of lawyers' fee claims. Defendants usually don't care what the plaintiffs' lawyers receive, because their costs don't change regardless of how much the plaintiffs' lawyers receive.

And individual plaintiffs typically get too little money to have a strong incentive to challenge legal fees. In the State Street case, the 1,300 plaintiffs would see increases in their individual payments of only about $20,000 apiece if the lawyers' fees were reduced by $20 million, Frank calculated. A plaintiff might have to spend that much or more to hire another lawyer to investigate.

None of the plaintiffs in the State Street case objected to their lawyers' request for legal fees. But neither the lawyers nor their clients apparently noticed that the exact same hours for nearly two dozen staff attorneys were claimed by more than one law firm.

"The mistakes came to our attention during internal reviews that were conducted in response to an inquiry from the media," explained Labaton partner Goldsmith, in his letter to Wolf.

Nor did they notice that Thornton consistently assigned a higher rate than the other firms for the same attorneys — often a difference of $90 an hour.

Labaton officials, in a prepared statement, said the affidavits supporting the fee request weren't as important as the percentage of the settlement fund the lawyers sought — just over 25 percent, once expenses are added.

"This fee award is reviewed by the Court for fairness . . . we believe the fees awarded are still fair," wrote Diana Pisciotta, a spokeswoman for Labaton.

In addition to its fees from the State Street case, Thornton Law will receive a portion of the $20 million the Securities and Exchange Commission awarded a whistle-blower who alerted regulators to State Street's international currency practices.

How low-paid lawyers cashed in by doubling legal bills

Comments

Law firms commonly hire junior-level “staff attorneys” to review documents for $25 to $40 an hour. Thornton Law Firm took advantage of these low-paid lawyers to make millions in its lawsuit against State Street Bank.

1 Thornton says it employed 24 staff attorneys in the State Street case.

2 In court documents, Thornton listed the hourly rates for the staff attorneys at $425 to $500, more than ten times their actual pay.

One attorney's actual pay	$30
Rate listed by Thornton	$425

3 Thornton said the staff attorneys worked more than 10,000 hours on the case at a total cost of $4.5 million, accounting for 60 percent of the total costs of the case.

4 A federal judge approved Thornton's bills, and gave them a bonus for taking on such a risky lawsuit.

5 But there was a problem: 23 of Thornton’s 24 staff attorneys were also listed as lawyers for other law firms working on the same case. Thornton and the other law firms double-counted the work of the staff attorneys, inflating their combined bills by $4 million.

6 The lawyers admitted the “inadvertent errors” to the judge and asked him not to reduce their legal fees.

SOURCE: Court records

GLOBE STAFF

Related

- Walsh, Clinton join growing number of politicians returning donations from Thornton Law Firm

EXHIBIT C

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Case Manager

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"Mediation works, and can produce great benefits much more efficiently than other approaches. There are four keys to success: candor, cooperation, creativity and courage. If the Detroit bankruptcy is any guide, early and committed use of mediated negotiation is likely to produce benefits that otherwise might never be achievable."
-Hon. Gerald E. Rosen (Ret.)

"Judge Rosen was indispensable and critical to the successful conclusion of the case. He and his fellow mediators were heroic in their commitment of time

Hon. Gerald E. Rosen (Ret.)

Hon. Gerald E. Rosen (Ret.) joins JAMS following 26 years of distinguished service on the federal bench as a United States District Judge for the Eastern District of Michigan, including seven years as that Court's Chief Judge.

While on the bench, Judge Rosen had wide experience in facilitating settlements between parties in a great many cases, including highly complex Multi-District Litigation (MDL) matters and class actions. Most recently, the Judge served as the Chief Judicial Mediator for the Detroit Bankruptcy case—the largest, most complex municipal bankruptcy in our nation's history—which resulted in an agreed upon, consensual plan of adjustment in just 17 months.

Prior to taking the bench, the Judge was a Senior Partner at the law firm of Miller, Canfield, Paddock and Stone where he was a trial lawyer specializing in commercial, employment and constitutional litigation.

*Read **counsel comments** about Judge Rosen's skills and style as a neutral.*

ADR Experience and Qualifications
Judge Rosen has extensive experience in the resolution of complex disputes in the following areas:

- Antitrust
- Bankruptcy (Municipal)
- Business/Commercial
- Class Action/Mass Tort
- Employment/FMLA
- Civil Rights/§1983
- Intellectual Property
- Real Property
- Securities
- Special Master/Discovery Referee

Representative Matters

- **Antitrust**
  - *Cason-Merenda v. Detroit Medical Center*, No. 06-15601 (Nurse wage case)
  - *In re Northwest Airlines Corp., et al*., Antitrust Litigation, No. 96-74711 (Hidden-city ticketing case)
- **Arbitration**
  - *Quixtar Inc. v. Brady*, No. 08-14346, and *Amway Global v. Woodward*, No. 09-12946 (Addressing arbitrability of disputes and confirmation of arbitrator's award)
- **Bankruptcy**
  - *In re: City of Detroit* (Chapter 9 municipal bankruptcy)
  - *United States v. City of Detroit* (Detroit water and sewer case) (Mediated settlements)
- **Class Action/Mass Tort**
  - *Tankersley v. Ameritech Publishing, Inc.* (FLSA collective action and Rule 23 class action)
  - *Marquis v. Tecumseh Products Co*., No. 99-75971 (Class action alleging sexual harassment at manufacturing plant)
  - *In re Rio Hair Naturalizer Products*, MDL 1055 (Multi-district product liability action)

and effort in the entire process."
-Detroit Bankruptcy Counsel

"[Y]ou demonstrate[d] a keen sense of how to get parties moving together and closing deals."
-Financial Creditor Party, Detroit Bankruptcy

- **Employment/FMLA**
  - *Redd v. Brotherhood of Maintenance of Way Employees Division of International Brotherhood of Teamsters*, No. 08-11457 (ERISA)
- **Civil Rights/§1983**
  - *Cheolas v. City of Harper Woods*, No. 06-11885 (Police raid of party with underage drinking)
  - *Flagg v. City of Detroit*, No. 05-74253 (Tamara Greene case)
- **Intellectual Property**
  - *I.E.E. International Electronics & Engineering, S.A. v. TK Holdings Inc.*, No. 10-13487 (Vehicle occupant sensors patent)
  - *Lear Automotive Dearborn, Inc. v. Johnson Controls, Inc.*, No. 04-73461 (Remote-control garage door opener patent)
- **Real Property**
  - *United States v. Certain Land Situated in the City of Detroit* (Detroit International Bridge land condemnation case)
- **Securities**
  - *In re General Motors Corp. Securities and Derivative Litigation*, MDL No. 06-1749
  - *In re Collins & Aikman Corp. Securities Litigation*, No. 03-71173
  - *In re: Delphi Corporation Securities*, Derivative & "ERISA" Litigation, MDL 1725 (Multi-district securities fraud/ERISA action)

Honors, Memberships, and Professional Activities

- Widely published on a wide range of topics including, civil procedure, evidence, due process, criminal law, labor law and legal advertising, including:
  - Co-Author, *Federal Civil Trials and Evidence*, The Rutter Group Practice Guide, 1999-Present
  - Co-Author, *Federal Employment Litigation*, The Rutter Group Practice Guide, 2006-2016
  - Co-Author, *Michigan Civil Trials and Evidence*, The Rutter Group Michigan Practice Guide, 2008-2016
  - Contributing Editor, *Federal Civil Procedure Before Trial*, The Rutter Group Practice Guide, 2008-2016
- Co-Chair, Judicial Evaluation Committee for the U.S. District Court for the Eastern District of Michigan, 1983-1988
- Adjunct Professor, Evidence:
  - University of Michigan Law School, 2008
  - Wayne State University Law School, 1992-Present
  - University of Detroit-Mercy Law School, 1994-1996
  - Thomas M. Cooley Law School, 2004-2013
- U.S. Representative, United States Department of State's Rule of Law Program in Moscow, Russia; Tbilisi, Georgia; Beijing, China; Cairo, Egypt, Hebrew University (Jerusalem); and Malta
- Judicial Consultant, United States Departments of State and Justice missions to Thailand and the Ukraine
- Member, Sixth Circuit Judicial Council, 2009-2015
- Member, Board of Directors, Federal Judges Association, 1996-2002
- Member on the Board of Directors of several charitable organizations, including: Focus: HOPE; the Detroit Symphony Orchestra; the Community Foundation of Southeastern Michigan and the Michigan Chapter of the Federalist Society
- Member, Board of Advisors, George Washington University Law School, 2005-Present
- Member, U.S. Judicial Conference, Committee on Criminal Law, 1995-2001
- Founding Member, Michigan Intellectual Property Inn of Court

Selected Articles About the Detroit Bankruptcy

- *Howes: Detroit Bankruptcy Kudos Widely Shared*, Detroit News, February 26, 2015.
- *Detroit Bankruptcy Shows Mediation Can Get the Job Done*, Detroit Free Press, January 18, 2015.
- *Detroit Bankruptcy Pros Write Off Millions in Fees*, Detroit Free Press, December 11, 2014.
- *How Detroit Was Reborn*, Detroit Free Press, Special Section, November 9, 2014.
- *Judge, A Mediator in Bankruptcy, Sees Hope for Detroit*, Detroit Free Press, November 9, 2014.

- *Finding $816 Million, and Fast, to Save Detroit*, The New York Times, November 7, 2014.
- Judge Rosen's Tough Tack on Creditors Helped Speed Detroit Bankruptcy Case, Crain's Detroit Business, November 6, 2014.
- *Mediator in Detroit Bankruptcy Walks Fine Line Between City, Creditors*, The Wall Street Journal, February 14, 2014.
- *How Mediation Has Put Detroit Bankruptcy on the Road to Resolution*, Detroit Free Press, February, 2, 2014.
- *Detroit Emerges From Nation's Largest Municipal Bankruptcy*, Los Angeles Times, November 10, 2014.

Background and Education

- United States District Judge, Eastern District of Michigan (Detroit), 1990-2017
  - Chief Judge, 2009-2015
  - Judge by Designation, United States Court of Appeals for the Sixth Circuit, Repeated Appointments
- Senior Partner, Miller, Canfield, Paddock and Stone, specializing in commercial, employment, real property, and constitutional litigation, 1979-1990
- J.D., George Washington University Law School, 1979
- Legislative Assistant, United States Senate, Sen. Robert P. Griffin (R-MI), 1974-1979
- B.A., Senior Fellow, Political Science Kalamazoo College, 1973

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EXHIBIT D

AFFIDAVIT OF GERALD E. ROSEN

Gerald E. Rosen, being duly sworn, deposes and says

1. That I make this affidavit based upon personal knowledge.
2. That I served as a United States District Judge for the Eastern District of Michigan from March 14, 1990 through January 31, 2017.
3. That I have been asked by United States District Judge Mark L. Wolf about my availability and ability to serve as the Special Master in a matter involving the application for attorney fees and costs to the Court in the case of *Arkansas Teacher Retirement System on behalf of itself and all others similarly situated v. State Street Bank and Trust Company,* C.A. No. 11-10230 – MLW.
4. That the law firms submitting applications for fees and costs in this matter are: Labaton Sucharow LLP, The Thornton Law Firm LLP, Leiff Cabraser Heimann & Bernstein LLP, Keller Rohrback LLP, McTigue Law LLP, Zuckerman Spaeder LLP, Richardson Patrick Westbrook & Brickman LLC, Beins Axelrod PC, and Feinberg Campbell & Zack PC.
5. That pursuant to FRCivP 53(b)(3)(A) and 28 USC §455, a potential Special Master must disclose any possible conflicts or other grounds for disqualification.
6. That I do not believe there are any grounds for my disqualification to serve as a Special Master under 28 USC §455(b) and that no reasonable person would have grounds to question my impartiality under 28 USC §455(a).
7. That although there are no grounds for disqualification, I do wish to disclose a relationship with one of the named partners of one of the involved law firms, Leiff Cabraser Heimann & Bernstein.
8. That I have known Elizabeth Cabraser of that firm for approximately four years and first met her when she was recommended to me as a potential new co-author of a then-existing book on which I am a co-author, *Federal Employment Litigation*, published by The Rutter Group, a subsidiary of Thomson Reuters.
9. That after I met with Ms. Cabraser and discussed the book, I asked her to join as a co-author. She agreed, and joined the book in 2013. The other current co-authors include Judge Amy St. Eve (ND IL), Judge Marvin Aspen (ND IL), and attorney Thomas Schuck of the Taft Stettinius & Hollister law firm.
10. That each of the five co-authors share an approximate 16% royalty from the publisher, paid semi-annually. The royalty income of one co-author is independent of that of the other co-authors.
11. That the co-authors update the book annually and divide the update work by allocating chapters with each co-author updating two or three chapters. The updates are submitted independently to the publisher, who edits the updates for incorporation into the book.
12. That beyond this, over the past four years I have attended continuing legal education programs with Ms. Cabraser and have spoken with her on two or three panels unrelated to our book.
13. That I have no other relationship with Ms. Cabraser or any other member of her firm.

14. That I have no relationships with any of the other law firms or lawyers in the case. However, it bears mention that one firm, Keller Rohrback LLP, concluded by settlement an antitrust class action before me in 2015-2016, and one of the partners of that firm, Lynn Sarko, was one of the lead lawyers on that case. Other than this, lawyers from the other firms may have appeared before me in cases over my judicial career, but I have no specific recollection of such lawyers.
15. That this affidavit is made under pain and penalty of perjury.

Further affiant sayeth not.

Gerald E. Rosen

3 February 2017

EX. 181

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

MCTIGUE LAW LLP'S RESPONSE TO THE
COURT'S FEBURARY 6, 2017 MEMORANDUM AND ORDER

McTigue Law LLP ("McTigue Law") is a firm representing plaintiffs who brought claims in this action pursuant to ERISA, 29 U.S.C. §1001 *et seq*. McTigue Law respectfully files this response to the Court's February 6, 2017 Memorandum and Order (Dkt. No. 117; "Order").[1]

McTigue Law does not object to the appointment of a special master, as discussed in the Court's Order. However, McTigue Law does request three modifications of the proposal in the Order.

I. The Proposed Scope of the Special Master's Investigation is Too Broad

The Order proposes that the special master investigate "the accuracy and reliability of the representations that were made in connection with the request for an award of attorneys' fees and expenses, the reasonableness of the award of $74,541,250 in attorneys' fees and $1,257,697.94 in expenses, and any related issues that may emerge in the special master's investigation." (Order at 8).

McTigue Law believes the scope of the proposed investigation is too broad. All of the allegations of irregularities referenced in the Court's Order pertain exclusively to the three firms that served as co-counsel for non-ERISA Plaintiff Arkansas Teachers Retirement System: Labaton Sucharow LLP, Lieff Cabraser Heimann & Bernstein LLP, and the Thorton Law Firm LLP.[2] There have been no allegations of irregularities with respect to the fee petition of McTigue Law. McTigue Law had no co-counsel agreement with any of the three firms at issue, represented distinct clients in independently filed actions, did not employ any contract attorneys,

[1] Docket numbers refer to those in the captioned Arkansas Teacher Retirement System v. State Street Bank and Trust Company, No. 11-cv-10230 MLW.

[2] While the law firm of Labaton Sucharow LLP identified itself as Plaintiffs' Lead Counsel for the settlement, McTigue Law does not believe that position applies in these post settlement proceedings, especially where the firms involved clearly now have different interests.

included none in its lodestar report, did not engage in make-work document review, and had no knowledge of the alleged irregularities of the three firms at issue until after they became public. Moreover, McTigue Law's multiplier in the case is 0.90, likely far below the multipliers of the three firms at issue, and reflects that McTigue Law provided its services at a discount to the class in this case. McTigue Law thus requests that the terms of the special master's appointment be limited to an investigation of the accuracy and merit of the fee and expense petitions of the three firms at issue. Requiring McTigue Law to expend time and expenses to resolve irregularities in which it had no part, and of which it no knowledge, unnecessarily and unfairly burdens it.

II. McTigue Law Objects to Judge Rosen and Suggests Judge Rosenbaum as an Alternative

McTigue Law objects to the appointment of Judge Rosen (ret.) as a special master in this case. McTigue Law believes the relationship between Judge Rosen and a partner, Ms. Elizabeth Cabraser, of one of the firms at issue, is of a nature that the special master's "impartiality might be reasonably questioned." See 28 U.S.C. § 455(a). Disqualification under §455(a) is appropriate where "the facts provide what an objective, knowledgeable member of the public would find to be a *reasonable* basis for doubting the judge's impartiality." *United States v. Salemme,* 164 F. Supp. 2d 49, 52 (D. Mass. 1998), quoting *In re Allied-Signal, Inc.*, 891 F.2d 967, 970 (1st Cir. 1989) (emphasis in the original, citations omitted). "[A] reasonable person may question impartiality without the presence of any evidence that a judge is subjectively biased." *In re Bulger*, 710 F.3d 42, 46 (1st Cir. Mass. 2013) (reasonable to question the impartiality of a judge who had supervised prosecutorial actions in the same district and during some of the time of the events of the immediate criminal case, despite the court's belief in the judge's "sincerity"). The disqualification decision is balancing act that "must reflect not only the need to secure public confidence through proceedings that appear impartial, but also the need to

prevent parties from too easily obtaining the disqualification of a judge. . . ."). *Salemme,* 164 F. Supp. 2d at 52, quoting *In re Allied-Signal,* 891 F.2d at 970 (emphasis omitted).

Ms. Cabraser worked on this case. (Dkt. #104-17, Exh A). Her firm's fee petition would be reviewed by the special master. (Dkt. #117, at 8, 11). Ms. Cabraser and the proposed special master are co-authors of a book which produces royalties semi-annually, and requires continuing collaboration. They have served on panels together at various legal events. (Dkt. #117, at Exh. D). Given these relationships, McTigue Law believes that an "objective, knowledgeable member of the public" would be justifiably concerned about the special master's ability to fairly assess the conduct of Ms. Cabraser's firm under these circumstances, despite no evidence of Judge Rosen's subjective bias. *Salemme,* 164 F. Supp. 2d at 52; *In re Bulger*, 710 F.3d at 46.

McTigue Law proposes Judge James M. Rosenbaum (ret.) be appointed as special master. See Judge Rosenbaum's biography, McTigue Declaration, Exhibit 1 ("Exh. 1"). Judge Rosenbaum is a retired federal district court judge for the District of Minnesota and a former U.S. Attorney for Minnesota. Judge Rosenbaum is a member of JAMS. McTigue Law has no personal, financial or contractual relationship with Judge Rosenbaum. (*Id.*) McTigue Law does not believe Judge Rosenbaum has any real or apparent conflicts in serving as the special master. McTigue Law believes that Judge Rosenbaum represents an unquestionable, alternate choice for special master.

III. The Burden of Paying the Special Master's Compensation Should be Placed Solely on the Firms Whose Fee Petitions and Practices Gave Rise to the Investigation

The Order seeking comment states that the "court may order that up to $2 million [of the fee award to Plaintiffs' counsel] be returned to the Clerk of the District Court" for purposes of compensating the special master. McTigue Law respectfully requests that any such order specify that only the three firms whose fee petitions have required the investigation be liable and

responsible for returning these funds. As noted above, McTigue Law had no prior knowledge of or involvement with the alleged irregularities.

McTigue Law brings the following to the Court's attention. On November 21, 2016, two weeks after the Court issued its Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards (Dkt. #111), but before distribution, Lead Counsel Labaton Sucharow sent an email to McTigue Law and other Plaintiffs' firms. The email contained a draft agreement that purported to give Lead Settlement Counsel the right to claw back the attorney's fees, expenses and service awards previously awarded by the Court if the Court later reduced the award. It further stated that Lead Counsel would not distribute fees, expenses or service awards to any firm unless the agreement was signed by the recipient firm. McTigue Law LLP delayed and signed on December 7th when it was the only firm that had not signed. (See "Clawback Agreement", McTigue Decl., Exhibit 2.) The next day Lead Counsel distributed the funds.

McTigue Law is concerned that Lead Settlement Counsel, one of the three firms at issue, may attempt to utilize the Clawback Agreement as a means to force firms not involved in any irregularities to pay for fee reductions (or special master compensation) that result from the alleged irregularities in the fee petitions of the three firms at issue. Any attempt to do so would of course result in further litigation that would likely come before this Court. This is another reason why McTigue Law requests that the Court clarify that only the alleged defending firms will be responsible to pay the special master's compensation. McTigue Law also requests the same regarding any resulting reduction in attorney's fees that may ultimately be ordered.

Dated: February 20, 2017

Respectfully submitted,

McTIGUE LAW LLP

/s/ J. Brian McTigue
J. Brian McTigue
4530 Wisconsin Avenue, N.W.
Suite 300
Washington, DC 20036
Telephone: (202) 364-6900
Facsimile: (202) 364-9960
bmctigue@mctiguelaw.com

Counsel for Arnold Henriquez, William Taylor, Michael Cohn, and Richard Sutherland

CERTIFICATE OF SERVICE

I hereby certify that the forgoing document was filed through the ECF System on February 20, 2017 and accordingly will be served electronically upon all attorneys of record.

/s/ J. Brian McTigue

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

DECLARATION OF J. BRIAN MCTIGUE IN SUPPORT OF MCTIGUE LAW LLP'S RESPONSE TO THE COURT'S FEBRUARY 6, 2017 MEMORANDUM AND ORDER.

I, Brian McTigue, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I submit this declaration in support of *McTigue Law LLP's Response To The Court's February 6, 2017 Memorandum And Order*.

2. I am the founder and managing partner of McTigue Law LLP ("McTigue Law" or "Firm"). McTigue Law is a law firm that focuses its practice on the representation of private pension plans qualified under the Employee Retirement Income Security Act of 1974 ("ERISA"), their trustees, participants, and beneficiaries in class actions.

3. Attached as **EXHIBIT 1** is a true and correct copy of a biography of Honorable James M. Rosenbaum (Ret.) which was downloaded today from the website of JAMS, the private alternative dispute resolution provider, at this link: https://www.jamsadr.com/rosenbaum/

4. My firm and I have no personal, financial nor contractual relationship with Judge Rosenbaum (Ret.)

5. Attached as **EXHIBIT 2** is a true and correct copy of an agreement dated November 28, 2016 and signed by myself on December 7, 2016, as entered between seven plaintiff counsel firms on behalf of the Arkansas Teacher Retirement System, the Henriquez clients, and the Andover clients, as captioned above.

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

Executed this 20th day of February, 2017 in Washington, DC.

J. Brian McTigue

Exhibit 1

T: 612-332-8225
F: 612-332-9887

Case Manager
Debra Lewis
JAMS
333 So. Seventh St.
Ste. 2550
Minneapolis, MN
612-332-8225 Phone
612-332-9887 Fax
Email:
dlewis@jamsadr.com

Recognized as a Best Lawyer, Alternative Dispute Resolution Category, Best Lawyers in America, 2014

"Minnesota Lawyer's Attorney of the Year Award for Outstanding Service to the Profession," Minnesota Attorney of the Year Award Video Testimonial, Minnesota Lawyer, 2012

"Retiring the Gavel," Minnesota Public Radio audio interview, July 6, 2010

Designated one of "The 100 Most Influential Minnesota Lawyers of All Time," Minnesota Law & Politics, 2007

Hon. James M. Rosenbaum (Ret.)

Hon. James M. Rosenbaum (Ret.) served 25 years on the federal bench as a United States District Court Judge for the District of Minnesota and for the four years prior, as Minnesota's United States Attorney. While on the bench, he presided over the construction of the Minneapolis federal courthouse, the most technologically advanced courthouse in its time. He served as Chief Judge of the District, represented the Eighth Circuit at the Judicial Conference for eight years, and served on the Conference's Executive Committee.

Judge Rosenbaum has taught seminars for judges and lawyers in 20 countries worldwide on comparative law, intellectual property rights, patent litigation and enforcement, counterfeit goods and products, and United States trial practice. He has written several articles raising issues at the intersection of law, privacy, and technology. He is co-author of the U.S. Courts Design Guide and author of the recently published How Lawyers Benefit from Early Neutral Evaluation.

ADR Experience and Qualifications

- Presided over cases including:
  - o Arbitration, domestic and international
  - o Bankruptcy
  - o Business and commercial law
  - o Civil rights
  - o Class actions and Multi-District Litigations (MDL)
  - o Employment
  - o Environmental law
  - o Insurance coverage
  - o Intellectual property, patent, and trade secrets
  - o International terrorism
  - o Medical devices and pharmaceuticals
  - o Mass tort/product liability
  - o Securities
  - o White collar crime

Representative Matters

- Civil Rights: Presided over many cases involving claims against federal agencies, states, and municipalities including Hollman Consent Decree; Beaulieu v. Ludeman, Civ. No. 06-4045 (JMR); Holly v. Konieska, Civ. No. 04-1489; Schaub v. County of Olmsted, 656 F. Supp. 2d 990 (D. Minn. 2009)
- Class Action/Mass Tort MultiDistrict Litigation:
  - o In re Medtronic, Inc., Implantable Defibrillators Products Liability Litigation, MDL No. 05-1726, presided over a 2005 action involving a group of plaintiffs implanted with faulty Medtronic defibrillators; most cases settled and the MDL was dissolved in December 2008
  - o In re Mirapex Product Liability Litigation, MDL No. 07-1836, presided over bellwether trials in the Mirapex cases involving patients prescribed the drug Mirapex who developed pathological gambling and other compulsive behaviors as a side effect; majority of cases settled
- Employment:
  - o Jenson v. Eveleth Mines, certified the first hostile work environment dispute in the nation, on behalf of female miners in the Iron Range; this landmark case was the basis for the book "Class Action" and later the major motion picture "North

Country" starring Oscar Award winner Charlize Theron
    - Holden v. Burlington Northern, Inc., 665 F. Supp. 1398 (D. Minn. 1987), presided over a long-running sexual harassment class action by female employees of the Burlington Northern railroad; approved payment of $2.5 million to the class
- Environmental:
    - Atlantic Research Corp. v. United States, 459 F.3d 827 (8th Cir. 2006), affd., United States v. Atlantic Research Corp., 551 U.S. 128 (2007), sat by designation on the Eighth Circuit panel which heard the claim of a government contractor which sought to share with the United States the burden of voluntarily cleaning up its property. The Court found the contractor was able to pursue a claim under CERCLA § 107, a decision later affirmed by the Supreme Court
    - As a trial judge, Judge Rosenbaum oversaw many environmental cases, including a decade-long environmental litigation claim between the buyer and seller of a contaminated industrial property, Kennedy Building Associates v. CBS Corp.
- Insurance
    - Suits against federal crop as well as private insurers are a regular part of a Federal Judge's caseload in Minnesota. The Red River of the North flows between Minnesota and North Dakota. The River lies in a notorious flood plain, and "seriously" floods on frequently. In doing so, it floods residential, agricultural, and business properties. Suits against private and federal insurers are a regular result of this flooding
    - In the early 2000's the Twin Cities experienced a "500 year" rain. Rainfall measured between 71/2 and 8 inches in a matter of hours. This event generated a number of flood and rain claims against both private and government insurers
- Intellectual Property:
    - Patent: presided over cases involving various medical devices including:
        - Medtronic, Inc. v. Advanced Cardiovascular Systems, Inc., 182 F. Supp. 2d 810 (D.Minn. 2000) involving coronary stents
        - Arthrex Inc. v. Depuy Mitek, Inc. (Middle District of Florida, 2010) plaintiff sought, and the Judge granted, summary judgment of infringement of a patent relating to a surgical method for loading tendons into the knee
    - Trademark Infringement
        - American Dairy Queen Corp. v. New Line Productions, Inc. 35 F. Supp. 2d 727 (D. Minn. 1998), granted a preliminary injunction to the owner of the "Dairy Queen" trademark against a film studio which had planned to release a movie entitled "Dairy Queens," satirizing contestants in a Minnesota beauty pageant. The movie was subsequently released under the title "Drop Dead Gorgeous"
- Securities: In re UnitedHealth Group Incorporated PSLRA Litigation, presided over simultaneous class action and shareholder derivative suits arising out of stock options backdating. The Judge ultimately approved settlements in both cases. As part of the PSLRA settlement, UnitedHealth paid $895 million, and its ex-CEO paid $30 million and forfeited 3.6 million shares stock options
- Special Master: Lectured extensively throughout the United States on electronic discovery, served on the Sedona Conference since 2006, and is a regular participant at TechShow and other conferences dedicated to exploring the intersection of law and technology
- Tribal (Native American): Minnesota is a state with Federal Indian Reservations. As such, Judge Rosenbaum has extensive experience in matters involving sovereignty, land patent, and jurisdictional issues, as well as tribal compact/state tax questions, in "Indian Country"

Honors, Memberships, and Professional Activities

- Member, Academy of Court Appointed Masters
- Recognized as Best Lawyer, Alternative Dispute Resolution Category, Best Lawyers in America, 2014
- Author, How Lawyers Benefit from Early Neutral Evaluation, Law360, April 2013
- Honoree, Power 100 Advocate, On Being a Black Lawyer (OBABL), 2013
- Recipient, Minnesota Lawyer's Attorney of the Year Award for Outstanding Service to the Profession, Minnesota Lawyer, 2012
- Designated one of "The 100 Most Influential Minnesota Lawyers of All Time, Minnesota

Law & Politics, August 2007
- Recipient, Hennepin County Judicial Professionalism Award, 2007
- Recipient, Honorary Doctor of Law, Western New England College, 2007
- Member, Federal Bar Association, Minnesota chapter, 1981-present (President, 1992-1993)
- Board of Advisors, The Green Bag, 2008-present
- Board of Directors, Hennepin Theater Trust, 2008-2013
- University of Minnesota:
  - Alumnus of Notable Achievement, 2010
  - Alumni Association and Board of Advisors, 2009-present (Chairman 2012-2013)
  - English Department Advisory Committee, 2008-present
  - Law School Board of Visitors, 1991-1997
- Judicial Board of Advisors, The Sedona Conference (a legal community think tank that examines forward-looking principles, best practices, and guidelines in specific areas of the law), 2004-present (taught programs on Antitrust, E-Discovery, Patent Law, Co-Author "Cooperation Proclamation")
- Founding member ["Master"], Minnesota's first Patent Law Inn of Court, 2014
- Frequent speaker and teacher, including:
  - Faculty Member, National Judicial College, Reno, Nevada, 1998-2006 (taught courses in complex litigation, legal technology)
  - Teacher at "Baby Judges School" (training and orientation for newly appointed federal judges), prosecutor and defender school, and Attorney General's Advocacy Institute, 1990-present
  - Inaugural James M. Rosenbaum National Security Symposium: Trans-Atlantic Approaches to Counterterrorism, William Mitchell College of Law, April 2010
- Select publications:
  - "Negotiating the Shoals of Mediation," 18 The Green Bag 2D 305 (2015)
  - "In Defense of Rule 808, Federal Rules of Evidence," 12 Green Bag 2D 165 (2009)
  - "The Death of E-Discovery," The Federal Lawyer 26, July 2007
  - "Rohwer v. Federal Cartridge Co.," The Green Bag Almanac & Reader 316, 2006
  - "In Defense of the Sugar Bowl," 9 Green Bag 2D, Autumn 2005
  - "In Defense of the Hard Drive," 4 Green Bag 2D 169, 2001
  - "In Defense of the Delete Key," 3 Green Bag 2D 393, 2000
  - "Retiring the Gavel," Minnesota Public Radio Audio Interview, July 6, 2010

Background and Education
- Judge, U.S. District Court for the District of Minnesota, 1985-2010
- U.S. Attorney, District of Minnesota, 1981-1985
- Partner, Gainsley, Squier & Korsh, 1979-1981
- Partner, Rosenbaum & Rosenbaum, 1977-1979
- Associate, Katz, Tuabe, Lange & Frommelt, 1973-1977
- Staff Attorney, Leadership Council for Metropolitan Communities, 1970-1972
- Staff Attorney, VISTA, Chicago, Illinois, 1969-1970
- J.D., University of Minnesota Law School, Minneapolis, MN, 1969
- B.A., University of Minnesota, Minneapolis, MN, 1966

Disclaimer

Exhibit 2

Labaton Sucharow

Lawrence A. Sucharow
Partner
212 907 0860 direct
212 883 7060 fax
lsucharow@labaton.com

November 28, 2016

By E-Mail

Michael P. Thornton, Esq.
Thornton Law Firm LLP
100 Summer Street, 30th Floor
Boston, Massachusetts 02110

Lynn Lincoln Sarko, Esq.
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, Washington 98101

Daniel P. Chiplock, Esq.
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, New York 10013

Carl S. Kravitz, Esq.
Zuckerman Spaeder LLP
1800 M Street, N.W.
Washington, D.C. 20036

Robert L. Lieff, Esq.
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, California 94111

J. Brian McTigue, Esq.
McTigue Law LLP
4530 Wisconsin Ave, N.W., Suite 300
Washington, D.C. 20016

Re: Arkansas Teacher Retirement System v. State Street Bank & Trust Co.,
No. 11-CV-10230 MLW (D. Mass.)
Henriquez v. State Street Bank & Trust Co.,
No. 11-CV-12049 MLW (D. Mass.)
The Andover Companies Employee Savings
& Profit Sharing Plan v. State Street Bank & Trust Co.,
No. 12-CV-11698 MLW (D. Mass.)

Dear Counsel:

As you are aware, on November 8, 2016, after Judge Wolf issued the Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs (the "Fee Order," ECF No. 111), counsel in the Arkansas action received an inquiry from the Boston Globe concerning certain of the individual firm lodestar reports supporting our motion for attorneys' fees.

In response, as you are also aware, we filed a detailed letter with the Court on November 10, 2016 ("Letter," ECF No. 116). The Letter disclosed certain inadvertent errors in these submissions, and provided a corrected combined time spent, corrected combined lodestar, and the resulting corrected multiplier. Because the fee was determined based on the percentage-of-fund method, and the overstatement of the lodestar resulted only in a modest increase in the multiplier cross-check, we

Labaton Sucharow

argued that the fee was fully supportable under the Court's stated rationale and that no changes were required.

Further, the Letter offered our apology for the errors, and indicated that we were available to respond to any questions or concerns the Court may have.

The Fee Order and the Court's Order and Final Judgment (the "Judgment," ECF No. 110) become Final on December 2, 2016, and the Settlement will become Effective shortly thereafter, on December 7, 2016.[1] Because there were no objections to the Settlement or requested fees, no Class member has standing to appeal the Fee Order or Judgment.

As of today, the Court has not acted in response to the Letter. If the Court remains silent as of close of business on December 7, 2016, we will begin the process of withdrawing the approved fees, expenses, and service awards from the Lead Counsel Escrow Account for prompt distribution to your respective firms pursuant to our agreements.

It is possible, however, that the Court, on or after December 8, 2016, will respond adversely to the Letter and ultimately reduce the fee award. This could occur after the fees, expenses and service awards have been distributed to your respective firms (and to the other ERISA counsel).

Accordingly, before we distribute your share of the fees, expenses, and service awards, we will require an undertaking, evidenced by your signature below, confirming your agreement to refund to us within five (5) business days, for redeposit into the Lead Counsel Escrow Account, your pro rata share of any Court-ordered reduction of fees, expenses, and/ or service awards.

Please sign below and return an executed copy to us. Thank you for your cooperation. Please let me know if you have any questions.

Very truly yours,

Lawrence A. Sucharow

[1] The time to appeal the Judgment and Fee Order expires on December 2, 2016 (a Friday), 30 days after entry. See Settlement Agmt. ¶ 1(z)(iii). After that, however, State Street has two (2) business days to make its formal settlement offer to the SEC before the Effective Date is reached. That brings the Effective Date to December 7.

Labaton Sucharow

All Counsel in State Street FX Cases
November 28, 2016
Page 3

LAS/idi

ACCEPTED AND AGREED:

Michael P. Thornton

Thornton Law Firm LLP
Name: Michael P. Thornton
Dated: 11/28/16, 2016

Lieff Cabraser Heimann & Bernstein, LLP
Name: _____
Dated: _____, 2016

Robert L. Lieff, Esq.
Name: _____
Dated: _____, 2016

Keller Rohrback L.L.P.
Name: _____
Dated: _____, 2016

Zuckerman Spaeder LLP
Name: _____
Dated: _____, 2016

McTigue Law LLP
Name: _____
Dated: _____, 2016

Labaton Sucharow

LAS/idi

ACCEPTED AND AGREED:

Thornton Law Firm LLP
Name: _____
Dated: _____, 2016

Lieff Cabraser Heimann & Bernstein, LLP
Name: Daniel P. Chiplock
Dated: 11-28, 2016

Robert L. Lieff, Esq.
Name: _____
Dated: _____, 2016

Keller Rohrback L.L.P.
Name: _____
Dated: _____, 2016

Zuckerman Spaeder LLP
Name: _____
Dated: _____, 2016

McTigue Law LLP
Name: _____
Dated: _____, 2016

Labaton Sucharow

LAS/idi

ACCEPTED AND AGREED:

Thornton Law Firm LLP
Name: _____
Dated: _____, 2016

Lieff Cabraser Heimann & Bernstein, LLP
Name: _____
Dated: _____, 2016

Robert L. Lieff, Esq.
Name: Robert L. Lieff
Dated: 11/28, 2016

Keller Rohrback L.L.P.
Name: _____
Dated: _____, 2016

Zuckerman Spaeder LLP
Name: _____
Dated: _____, 2016

McTigue Law LLP
Name: _____
Dated: _____, 2016

Labaton Sucharow

LAS/idi

ACCEPTED AND AGREED:

Thornton Law Firm LLP
Name: _____
Dated: _____, 2016

Lieff Cabraser Heimann & Bernstein, LLP
Name: _____
Dated: _____, 2016

Robert L. Lieff, Esq.
Name: _____
Dated: _____, 2016

Keller Rohrback L.L.P.
Name: Lynn L. Sarko
Dated: November 29, 2016

Zuckerman Spaeder LLP
Name: _____
Dated: _____, 2016

McTigue Law LLP
Name: _____
Dated: _____, 2016

Labaton Sucharow

LAS/idi

ACCEPTED AND AGREED:

Thornton Law Firm LLP
Name: _____
Dated: _____, 2016

Lieff Cabraser Heimann & Bernstein, LLP
Name: _____
Dated: _____, 2016

Robert L. Lieff, Esq.
Name: _____
Dated: _____, 2016

Keller Rohrback L.L.P.
Name: _____
Dated: _____, 2016

Zuckerman Spaeder LLP
Name: Cavis. Krawitz
Dated: Nov 28, 2016

McTigue Law LLP
Name: _____
Dated: _____, 2016

Labaton Sucharow

LAS/idi

ACCEPTED AND AGREED:

Thornton Law Firm LLP
Name: _____
Dated: _____, 2016

Lieff Cabraser Heimann & Bernstein, LLP
Name: _____
Dated: _____, 2016

Robert L. Lieff, Esq.
Name: _____
Dated: _____, 2016

Keller Rohrback L.L.P.
Name: _____
Dated: _____, 2016

Zuckerman Spaeder LLP
Name: _____
Dated: _____, 2016

McTigue Law LLP
Name: J. Brian McTigue
Dated: December 7, 2016

EX. 182

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, 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, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	)	No. 12-cv-11698 MLW

SPECIAL MASTER'S ORDER REGARDING THE LAW FIRMS' OBJECTION TO RETENTION OF JOHN W. TOOTHMAN AS ADVISOR TO COUNSEL TO THE SPECIAL MASTER

I. INTRODUCTION

This matter is before the Special Master on Labaton Sucharow LLP's, Lieff Cabraser Heimann & Bernstein, LLP's, and Thornton Law Firm LLP's (collectively the "Law Firms") Objection to the retention of the firm of TFL Consulting and John W. Toothman ("Mr. Toothman") by the Special Master's counsel.

The Law Firms received more than $75,000,000 in attorneys' fees and expenses awarded in connection with their representation of Plaintiffs in in the *Arkansas Teacher Retirement System, et. al. v. State Street Bank and Trust Co.*, No. 12-cv-10230-MLW ("State Street Litigation") class action matter, which concluded with a settlement of $300,000,000. Relying upon Fed. R. Evid. 706, the Law Firms object to the retention of Mr. Toothman by counsel for the Special Master and move to strike Mr. Toothman from participating in the Special Master's investigation. The basis of their objection is, the Law Firms argue, that Mr. Toothman's historical declarations in other cases concerning fee petitions evince a predisposition to reach a view adverse to the Law Firms on the award of attorneys' fees, one of the primary topics the Special Master is charged with investigating in this matter.

On February 6, 2017, Senior United States District Court Judge Mark Wolf issued a Memorandum and Order ("February 6, 2017 Order") proposing the appointment of the Special Master to investigate and submit a Report and Recommendation addressing concerns that had very recently emerged through media reports regarding the more than $75,000,000 award to the Law Firms as part of the settlement entered in the State Street Litigation. The Law Firms, filing individual pleadings with the Court in response to the February 6, 2017 Order, each consented to the appointment of the Special Master as well as to the Special Master's authority, as set forth in the Court's Order. (*See* Docket Nos. 128, 129, 131.) In their responses and at a March 7, 2017

hearing on the appointment of a Special Master, the Law Firms—and all of the other plaintiffs' law firms in the case—each consented both to the appointment of a Special Master generally and to the appointment of the undersigned Special Master in particular. The Special Master was appointed by the Court on March 8, 2017 pursuant to the Court's Order of Appointment ("Order of Appointment").

On March 9, 2017, the Special Master appointed William F. Sinnott, Esq., of Donoghue, Barrett & Singal, P.C., as Counsel to the Special Master to assist the Special Master in discharging his responsibilities under the Order of Appointment. The Special Master informed counsel for the Law Firms of this appointment by email dated that same day.

In that same March 9 email, the Special Master notified counsel for the Law Firms that he was actively considering obtaining further technical support from a forensic accounting firm and/or an expert on legal billing practices whom he would appoint "solely in [his] discretion," as part of his investigation. The Special Master provided counsel with the names and affiliations of four individuals whom he was considering, including Mr. Toothman. The Special Master received no objections from the Law Firms to any of the named individuals.

On March 23, 2017, during a conversation with Attorney Lukey, who was participating on behalf of the Law Firms, the Special Master confirmed that his Counsel had recently retained Mr. Toothman to advise them on legal billing practices and other issues arising under his Order of Appointment. In a March 24, 2017 email, and as reiterated in a subsequent conversation, Attorney Lukey advised the Special Master and the Special Master's counsel that the Law Firms' reaction to the Toothman retention was "immediate, angry, and distraught." In that same email, Attorney Lukey indicated that "it would be difficult to imagine an 'expert' who would enter the fray with greater bias against plaintiffs' commercial class action law firms." On March 28, 2017,

the Law Firms filed a formal Objection to the retention of Mr. Toothman, challenging his appointment as a court-appointed expert under Fed. R. Evid. 706.

For the reasons that follow, the Special Master finds no basis to reconsider or withdraw Mr. Toothman's retention, or otherwise disqualify him from serving as technical advisor to the Special Master in this matter, and dismisses the Law Firms' Objection.

II. ANALYSIS

Procedurally, the Law Firms ground their Objection on the premise that the only avenue for retaining a third-party with specialized knowledge to assist in a court-appointed Special Master investigation is through the procedural framework of Fed. R. Evid. 706. This view is incorrect. Fed. R. Civ. P. 53, as cited in the Order of Appointment, grants considerable discretion to a Special Master to "take all necessary measures to perform the assigned duties fairly and efficiently." Fed. R. Civ. P. 53(c)(1)(B). Here, the Special Master has exercised his discretion to retain legal counsel. That counsel has retained a third-party with expertise in legal billing practices, the central topic at issue in the pending investigation.

Significantly, the Law Firms do not question Mr. Toothman's experience or expertise in the area. Rather, they allege he is biased and not objective, and therefore, cannot serve as an independent court-appointed expert under Fed. R. Evid. 706. That absence of criticism about Mr. Toothman's qualifications is likely because Mr. Toothman is objectively qualified to provide guidance on legal billing practices. After receiving a Juris Doctor *cum laude* from Harvard Law School in 1981, Mr. Toothman spent twelve years as a trial attorney handling complex commercial litigation in the both the private and public sectors, including as a trial lawyer with the Department of Justice. During that time, Mr. Toothman performed extensive work representing plaintiffs in contingent fee cases and participated in over fifty civil trials, as well as

appeals in both the federal and state courts. Throughout his career, Mr. Toothman has also served as a court-appointed receiver, including in one instance on behalf of the U.S. Small Business Administration, and as counsel to bankrupt companies during bankruptcy proceedings. Mr. Toothman has consulted on the topic of legal fees with major corporations and various federal entities and agencies, including the General Accountability Office, the U.S. Department of Justice, and the U.S. Departments of Energy, Transportation, and Labor, and has served a six-year term as an Arbitrator for the Virginia State Bar's Fee Dispute Resolution Program. In his work as a consultant, Mr. Toothman has testified in federal and state courts across the country on more than fifty occasions, both in support of and against the award of fees, and has published numerous articles and co-authored a book, *Legal Fees: Law and Management*, focusing on legal billing practices. He has also served as an arbitrator of legal fee disputes.

Consistent with the broad discretion afforded to the Special Master under Fed. R. Civ. P. 53, the Order of Appointment specifically allows the Special Master to "retain any firm, organization, or individual he deems necessary to assist him in the performance of his duties." 3/8/17 Order of Appointment at 2. This wide degree of latitude is especially necessary in this case, where the Court has appointed the Special Master to conduct a thorough and fact-intensive investigation into the billing practices of the Law Firms in connection with a complex, multi-year class action case. More specifically, the Court, through its Order of Appointment, has mandated the Special Master to investigate and prepare a Report and Recommendation "concerning *all* issues relating to attorneys' fees, expenses, and services awards previously awarded in this case" (emphasis added). *Id.* The Court, moreover, did not in any way limit this review to a straightforward mathematical calculation of hourly fees. Rather, under the Order of Appointment, the Special Master must also opine as to the accuracy and reliability of the

representations made by the Law Firms with respect to a number of legally unsettled billing issues, including but not limited to the reasonableness of fees incurred by temporary or "staff" attorneys, the reasonableness of related expenses, and whether reductions should be made. *See id.*, 2-3. To address these nuanced—and, in some respects, novel—billing issues, the Special Master has discretion to obtain advice from a qualified individual with specialized knowledge such as Mr. Toothman to assist and guide his inquiry and investigation.

Mr. Toothman's appointment in this case falls squarely within the authority delegated to the Special Master by the Court in its March 8, 2017 Order of Appointment as well as within the Special Master's discretion under Fed. R. Civ. P. 53. As conceded by the Law Firms in their Objection, the Order of Appointment makes no reference to the appointment of an expert under Fed. R. Evid. 706. Rather, the Order authorizes the Special Master to retain *any* person who has specialized knowledge, including experts recognized in their field, who would inform the investigation.

Perhaps the Law Firms' Objection to Mr. Toothman arises, at least in part, out of some confusion as to what Mr. Toothman's role is in this case. For the sake of clarity at this juncture, it is important to delineate precisely what Mr. Toothman's role will be going forward. Mr. Toothman will be generally responsible for providing consulting services to assist the Special Master and his counsel in fulfilling the duties set forth in both the February 6, 2017 Order and the March 8, 2017 Order of Appointment. The Special Master expects these services to include, among other things, assisting in the preparation and review of discovery and assisting in the investigation and analysis of billing and related data. Mr. Toothman will further assist in the Special Master investigation by guiding the Special Master's inquiry into other relevant topics, including but not limited to Lodestar calculations in contingent fee cases, determination of

regional billing rates, and best practices for recording and absorbing litigation-based expenses. Finally, Mr. Toothman will also serve as a resource to the Special Master and his counsel throughout their drafting and writing of the Report and Recommendations.

In juxtaposition to the duties described above, the Law Firms' argument appears to be two-fold. First, that by appointing Mr. Toothman—a recognized expert in the field of legal billing practices—the Special Master improperly bypassed the procedural requirements of Fed. R. Evid. 706; and second, that the Special Master must strike Mr. Toothman's appointment because he is not an independent or neutral expert.

Both arguments—which appear to be an attempt to bootstrap Mr. Toothman's retention by the Special Master's counsel under the Special Master's Order of Appointment into the paradigm created by Fed. R. Evid. 706— are without merit. First, Fed. R. Evid. 706, by its terms, expressly governs only the appointment of court-appointed "expert witnesses." As explained above, neither the Special Master nor his counsel has retained Mr. Toothman as an "expert witness" under Fed R. Evid. 706. Furthermore, neither the March 8, 2017 Order nor Fed. R. Evid. 53 limit the Special Master to availing himself of only that single avenue for seeking third-party assistance. To the contrary, as noted, Mr. Toothman has not been retained to render a formal expert opinion or to make factual findings in this case. Rather, under the Order, the responsibility for rendering such factual and legal opinions remains solely that of the Special Master, as informed by his counsel. *See* Fed. R. Civ. P. 53(c)(1)(B). Mr. Toothman's role, as noted, is confined to assisting the Special Master and his counsel in understanding the technical terms, concepts, and contexts that underlie legal billing practices in the area of commercial class actions based upon his specialized knowledge in this area, and how these relate to the specific billing practices in this case.

Federal courts, beginning with the First Circuit, have recognized the importance of technical advisors in assisting the Court where, as here, it is faced with "complex issues well beyond the regular questions of fact and law with which judges routinely grapple." *Reilly v. U.S.*, 863 F.2d 149, 156-157 (1st Cir. 1988). S*ee also Ass'n of Mexican-Am. Educators v. State of California*, 231 F.3d 572, 590–91 (9th Cir. 2000) (Court's decision not to require technical expert to prepare a report or be subject to cross-examination was not error where technical advisor did not serve as a court-appointed expert witness under Fed. R. Evid. 706); *TechSearch, L.L.C. v. Intel Corp.*, 286 F.3d 1360, 1377 (Fed. Cir. 2002) (approving the use of technical advisors for understanding complex scientific and technical factual issues); *In re Diet Drugs (Phentermine/Fenfluramine/ Dexfenfluramine) Prod. Liab. Litig.*, No. 2:16 MD 1203, 2007 WL 2579620, at *2, n.11 (E.D. Pa. Aug. 27, 2007) (approving the use of a technical expert to reconcile conflicting expert opinions and to help educate the judge on the technical theories at issue); *In re Joint E. & S. Districts Asbestos Litig.*, 830 F. Supp. 686, 694 (E.D.N.Y. 1993) (distinguishing the roles of court-appointed experts under Fed. R. Evid. 706 from that of a technical advisor).

Technical advisors of this nature are particularly helpful where, as here, the record evidence before the Court, as it now exists on the issue of attorneys' fees, is understandably not the product of the adversary testing process, but is instead based solely on the submission of one side's application for fees—the Law Firms'. Moreover, the Court and the Special Master recognize that that there is no single, accepted method for calculating the fees of hundreds of attorneys in a large contingency case such as this. For that reason, among others, the Court clearly expects the Special Master to fully understand the different theories put forth by the Law Firms, as well as to inquire into other possible methods. *See Reilly*, 863 F.2d at 157.

The Special Master is well within his discretion in obtaining assistance from Mr. Toothman, whose role is akin to that of a judicial technical expert retained to educate and guide the Special Master and his counsel in this area in their work under the Order of Appointment. *See, e.g., Sibley v. Sprint Nextel Corp.*, 298 F.R.D. 683, 684 (D. Kan. 2014) (Court authorized Special Master to enlist technical advisor to report to the Court on technical issues of commission reconciliation raised in the litigation); *In re: Diet Drugs (Phentermine/Fenfluramine/ Dexfenfluramine) Prod. Liab. Litig.*, No. 1203, 2016 WL 1381776, at *4 (E.D. Pa. Apr. 6, 2016) (Special Master had authority under Audit Rules to appoint a technical advisor to review claims made for payment from class fund).

Finally, there are no mechanisms for a party to disqualify a judicial technical expert. *See Trustees of Boston Univ. v. Everlight Elecs. Co.*, No. CIV. 12-11935-PBS, 2014 WL 345241, at *2 (D. Mass. Jan. 17, 2014). But even if there were a method to challenge Mr. Toothman's retention, the Law Firms cannot point to any evidence that Mr. Toothman is inherently biased or otherwise unqualified to render technical expertise in the area of commercial legal billing practices. In support of their claim of partisanship, the Law Firms rely exclusively on statements made by Mr. Toothman as part of several past representations in cases involving reviews of fee petitions. There is no dispute that Mr. Toothman has previously served as an expert on the issue of reasonableness of legal fees.[1] But rather than show partisanship, these cases more aptly

[1] The Special Master further recognizes that the concepts of "plaintiff" and "defendant" are not easily applied to challenges to fee-shifting or post-settlement award of attorney's fees. Thus, one cannot easily characterize Mr. Toothman's past representations as pro-plaintiff or pro-defendant. The more accurate way to delineate Mr. Toothman's prior representations is by whether he testified in support of, or against, a given fee award. To that end, the Special Master notes that Mr. Toothman has testified both in support of fees and against awarding fees, including testifying in support of fees in several public matters. *See, e.g., Lewis & Trattner v. Krikorian* (American Association of Arbitration); *Alcan Aluminum Corp. v. Prudential Assurance Co., et al.* (C.D. Cal.); *U.S. Fire v. Aetna* (E.D. Pa.).

In fact, the Special Master is confident that even if Mr. Toothman were appointed pursuant to Fed. R. Evid. 706, by virtue of his experience and expertise he would no doubt qualify to serve in that role.

demonstrate Mr. Toothman's extensive experience in reviewing complex fee cases.[2] Furthermore, the Court is not relying on Mr. Toothman to render the final legal opinion as to whether the fees awarded to the Law Firms were reasonable or not. As described above, Mr. Toothman's assignment is—based on his expertise— to educate and guide the Special Master and his counsel about the pertinent billing practices, theories, processes, and factors that bear on the ultimate calculation of attorneys' fees, a task that Mr. Toothman is eminently qualified to perform.

Although not required to, if Mr. Toothman does issue a report to the Special Master, it will be disclosed to the Law Firms and they will be given the opportunity to comment on it before the Special Master issues his Report and Recommendation.

III. CONCLUSION

For these reasons, Plaintiffs' Law Firms' Objection to the Appointment of Mr. Toothman is DENIED.

Hon. Gerald E. Rosen (Ret.)
Special Master

[2] At least one of the cases cited by the Plaintiffs' Law Firms, *M.H. Fox et. al., v. Tyson Foods, Inc.*, No. 99-cv-1612 (M.D. Ala), involved a case where attorneys for the petitioning law firm recorded more than 24 hours by a single timekeeper for a single day. *See* Exhibit G, ¶ 9 (d). Mr. Toothman's opinion that the fees charged were "unreasonable," therefore, is hardly evidence of bias.

EX. 183

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, 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, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

OBJECTING PLAINTIFFS' LAW FIRMS' OBJECTION TO SPECIAL MASTER'S ORDER REGARDING RETENTION OF JOHN W. TOOTHMAN

Pursuant to Federal Rule of Civil Procedure 53(f) and Paragraph 9 of the Court's March 8, 2017 Memorandum and Order (ECF No. 173, the "Order of Appointment"), Labaton Sucharow LLP ("Labaton Sucharow"), Lieff Cabraser Heimann & Bernstein, LLP and the

Thornton Law Firm LLP (the "Objecting Plaintiffs' Law Firms"), respectfully submit this objection to the order of the Special Master regarding the retention of John W. Toothman (ECF No. 193) ("Toothman Order").[1] As explained more fully below, Mr. Toothman is a partisan, with a long history of pre-existing opinions on the key issues involved in these proceedings, who has been retained in the past by Mr. Theodore Frank of the Competitive Enterprise Institute. According to the Toothman Order, the Special Master and his counsel, William F. Sinnott ("Mr. Sinnott"), have retained Mr. Toothman as a technical advisor "to assist and guide" the Special Master's "inquiry and investigation," and perhaps to issue a report to the Special Master. Toothman Order at 6, 10. The Objecting Plaintiffs' Law Firms object to this retention, on the grounds that (a) it is inappropriate for the Special Master and his attorney to retain a partisan to provide opinions and assistance to the Special Master in this manner, and (b) such retention outside the scope of Fed. R. Evid. 706 ("FRE 706") deprives Objecting Plaintiffs' Law Firms of the protections to which they would be entitled under FRE 706.

BACKGROUND

On March 8, 2017, this Court issued a Memorandum and Order appointing retired United States District Judge Gerald Rosen as a Special Master to investigate and submit a Report and Recommendation concerning issues that emerged regarding the Court's award of attorneys' fees, expenses, and service awards in this class action. *See* Order of Appointment. The following day, the Special Master advised undersigned liaison counsel by email that he had retained the services of Mr. Sinnott to attend all interviews, propound written discovery, and take any necessary depositions for the proceedings before the Special Master. The Special Master also

[1] The complete name of the Toothman Order is "Special Master's Order Regarding the Law Firms' Objection to Retention of John W. Toothman as Advisor to Counsel to the Special Master."

indicated that he was considering "seek[ing] the assistance of a forensic accounting firm and/or an expert on legal billing practices," and that he had "received several unsolicited offers to assist" him and was also "interviewing recommended firms." The Special Master added that any appointment he might make, either of a forensic accounting firm or a legal billing practices expert, would be "solely [in] his discretion," but that he would "consider any thoughts on any such appointments." The Special Master then identified four individuals, including Mr. Toothman of The Devil's Advocate, the subject of this objection.

On March 23, 2016, the Special Master disclosed in a telephone conversation with undersigned liaison counsel that either he or his counsel had retained Mr. Toothman, who represents himself to be an expert on legal billing practices. Because they believe Mr. Toothman to be partisan, with a long history of pre-existing opinions on the key issues involved in these proceedings, and because of his past business relationship with Theodore Frank of the Competitive Enterprise Institute, the Objecting Plaintiff's Law Firms voiced serious concerns about the appointment and the impact of Mr. Toothman's appointment on their due process right to a fair and impartial proceeding. Undersigned liaison counsel asked the Special Master to reconsider his decision to appoint Mr. Toothman. The Special Master, in communications between March 23 and March 28, declined to reconsider.

On March 28, the Objecting Plaintiffs' Law Firms transmitted a formal objection to the Special Master regarding the appointment of Mr. Toothman, asking that he be stricken as a FRE 706 expert[2] on the grounds of lack of independence, partisanship, and pre-conceived

[2] As explained in the objection, the Special Master had stated that Mr. Toothman was appointed not pursuant to Rule 706, but pursuant to authority granted by this Court in the Order of Appointment. Order of Appointment at 6. As explained below, the Objecting Plaintiffs' Law Firms do not understand the Order of Appointment to provide standalone, independent authority to appoint an expert; thus, the objection was made pursuant to FRE 706.

determinations on key issues in this proceeding.[3] On March 31, 2017, the Special Master issued the Toothman Order, denying the objection. The Special Master cited his Order of Appointment, which allows him to "retain any firm, organization, or individual he deems necessary to assist him in the performance of his duties." Toothman Order at 5. The Special Master went on to explain that he and Mr. Sinnott had appointed Mr. Toothman as a technical advisor, not a Rule 706 expert, and conclude that there is "no basis to reconsider or withdraw Mr. Toothman's retention, or otherwise disqualify him from serving as technical advisor to the Special Master in this matter." *Id.* at 4, 7-8.

The Toothman Order states that Mr. Toothman's role will not be "to render a formal expert opinion or to make factual findings in this case," but rather to "assist[] the Special Master and his counsel in understanding the technical terms, concepts, and contexts that underlie legal billing practices in the area of commercial class actions based upon his specialized knowledge in this area, and how these relate to the specific billing practices in this case." *Id.* at 7. More specifically, the Toothman Order describes Mr. Toothman's services and duties to include:

> assisting in the preparation and review of discovery and assisting in the investigation and analysis of billing and related data. Mr. Toothman will further assist in the Special Master investigation by guiding the Special Master's inquiry into other relevant topics, including but not limited to Lodestar calculations in contingent fee cases, determination of regional billing rates, and best practices for recording and absorbing litigation-related expenses.

Toothman Order at 6-7. Notwithstanding the foregoing, the order concludes by leaving open the possibility that Mr. Toothman may issue a report to the Special Master, in which case,

[3] The objection was not initially filed on the docket, based on liaison counsel's understanding of the Court's instruction, as set forth in the Order of Appointment, regarding filings before the Special Master. On March 31, 2017, however, the Court issued a Memorandum and Order (ECF No. 192) directing, among other things, that all submissions to the Special Master be filed on the docket. Accordingly, on April 1, 2017, counsel filed the objection, which at that point the Special Master already had overruled, on the docket. *See* ECF No. 194.

"[a]lthough not required," the report "will be disclosed to the Law Firms and they will be given the opportunity to comment on it." *Id.* at 10. The "opportunity to comment" on any report falls well short of the parties' right to depose, call as a witness, and cross-examine an expert when the expert is appointed pursuant to FRE 706,[4] the only rule that authorizes an Article III court to appoint its own expert witness.

ARGUMENT

Objecting Plaintiffs' Law Firms object to the Toothman Order and the decision of the Special Master to retain Mr. Toothman, pursuant to Federal Rule of Civil Procedure 53(f) and Paragraph 9 of the Order of Appointment. This Court reviews the procedural decision to retain Mr. Toothman for abuse of discretion. Fed. R. Civ. P. 53(f)(5). This Court reviews the Special Master's statements of law regarding the appropriate use of a technical advisor, pursuant to which the Special Master concludes that this appointment was appropriate, *de novo*. Fed. R. Civ. P. 53(f)(4).

Objecting Plaintiffs' Law Firms respectfully submit that under either and/or both standards, the retention of Mr. Toothman is not appropriate in connection with the investigation and report and recommendation being undertaken by the Special Master at the Court's direction.

I. Mr. Toothman is a Partisan, Whose Business is to Opine that Courts should Reduce Amounts Sought Via Fee Requests.

Mr. Toothman is the President of a consulting company called "The Devil's Advocate," which provides "legal fee management and litigation consulting." On the Frequently Asked

[4] Under FRE 706, the Objecting Plaintiffs' Law Firms would have had the opportunity to show cause why Mr. Toothman should not be appointed (FRE 706(a)); had the right to a disclosure of the expert's duties in writing or orally at a conference in which the parties have an opportunity to participate (FRE 706(b)); been advised of any findings the expert makes (FRE 706(b)(1)); had the opportunity to depose the expert (FRE 706(b)(2)); had the right to call the expert to testify in any evidentiary proceedings (FRE 706(b)(3)); and had the right to cross examine the expert (FRE 706(b)(4)).

Questions page of Mr. Toothman's website, under the question "Is The Devil's Advocate 'anti-lawyer'?" Mr. Toothman's website states: "Even when we 'support' a legal fee, we rarely find that 100% of the requested fee is reasonable by all standards. Just as few things are perfect, so it is with legal bills." http://www.devilsadvocate.com/faq.htm, last visited April 4, 2017 (internal quotation marks in original). Consistent with this criticism, which assumes that no lawyer or law firm is capable of rendering bills that are "reasonable by all standards," The Devil's Advocate website viewed as a whole conveys Mr. Toothman's consistent opinion that fee requests are never (or virtually never) reasonable "by all standards" and should therefore be reduced, and that clients should retain his services to achieve a reduction in attorneys' fees, not for the purpose of seeking objective, expert advice on the "technical terms, concepts, and contexts that underlie legal billing practices." Toothman Order at 7.

Indeed, although not discussed in the Toothman Order,[5] Mr. Toothman has been retained to argue in favor of reducing fee awards by Mr. Frank, who has already made his objection to the fee award in this case known and who, similarly, strongly holds the opinion that attorneys' fees should be reduced. In the case in which Mr. Toothman worked with Mr. Frank, *In re Citigroup Inc. Securities Litigation*, No. 07-civ-9901 (S.D.N.Y.), Mr. Toothman opined on many of the issues that will be decided in this proceeding, concluding (predictably) that the fees charged for project or contract attorneys were unreasonable, based largely in Mr. Toothman's view of how law firms ought to bill for document review and deposition preparation. *See, generally,* ECF No. 194-1 ("Declaration of John W. Toothman" in *In re. Citigroup Inc. Securities Litigation*).

For example, Mr. Toothman opined that document review should be done entirely electronically "by converting all the data into searchable databases (as with Google and so

[5] The Special Master disclosed this relationship in a conversation with Liaison Counsel but indicated that the relationship was not on-going.

forth)" rather than using attorneys. Mr. Toothman referred to this non-judgment based electronic review (generally known as predictive coding) as "normal." *Id.* at ¶ 42.[6] Predictive coding, the efficacy of which is largely limited to an initial responsiveness review, was not used by any of Objecting Plaintiffs' Law Firms in the State Street case, where attorney judgment was required in the document review and analysis process.

In addition, Mr. Toothman opined that document review is low-skilled, non-attorney work, and that "no fee-paying client" would pay for document review by personnel with law licenses. *Id.* at ¶ 43. He further belittled the work of document review attorneys with a demeaning metaphor, stating that a "lawyer cannot charge Michelangelo rates for painting a barn" and opining that "[c]lass counsel's contract lawyers were barn painters." *Id.* at ¶ 47. The Objecting Plaintiffs' Law Firms, like many sophisticated law firms in complex commercial litigation, employ fully licensed, but off-partnership track, attorneys to exercise legal judgment in the document review process, in such tasks as identifying and flagging so-called "hot" documents for use in depositions, in the settlement process, and, if necessary, at trial. "Fee-paying clients" not only pay for such review at non-contingent commercial law firms; they would resist the suggestion that the review be undertaken by a software program or low-skilled non-attorneys. Mr. Toothman is already committed to a different view.

[6] Objecting Plaintiffs' Law Firms disagree with these conclusions, as well as the others reached by Mr. Toothman in the referenced declaration. If Mr. Toothman is to serve any role in these proceedings (which he should not), due process dictates that any "advice" or opinions he provides to the Special Master should be disclosed, and that the Objecting Plaintiffs' Law Firms should have the full ability to challenge his assertions as provided in FRE 706. *See* Section II.B, *infra*.

Broadening his complaints, Mr. Toothman also opined that size and "prestige" of a law firm, and whether it is "highly respected"[7] should not be factors in the reasonableness of an attorney's hourly rate. *Id.* at ¶ 53. Objecting Plaintiffs' Law Firms contend that these statements, while facially supporting Mr. Toothman's opinion that the fees he was reviewing were "unreasonable," are contrary, not simply to the way billing is done in the legal profession, but also to the case law addressing lodestar factors,[8] and simply not credible.

Tellingly, the Objecting Plaintiffs' Law Firms could not find any publicly-docketed affidavits, testimony, or reports from Mr. Toothman in which he opined and concluded that requested fees were reasonable.[9] In the cases Objecting Plaintiffs' Law Firms were able to find, Mr. Toothman uniformly argued, consistent with his position on The Devil's Advocate website, that the attorneys' fees were unreasonable and should be reduced. These are but a few examples:

- *In re Natural Gas Royalties Qui Tam Litigation*, MDL Docket No. 99-MD-01293 (D. Wyo., submitted March 23, 2012) (ECF No. 194-3). Mr. Toothman was retained by the relator to review legal fees and expenses submitted by defendants, as a predicate for setting an amount to be found by the Court as a sanction. Mr.

[7] It is unclear whether Mr. Toothman rejects the 12 lodestar adjustment factors adopted by the United States Court of Appeals for the Fifth Circuit in a civil rights context in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974) and cited with approval by the United States Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 430 n.8 (1983), and by the United States Court of Appeals for the First Circuit in *Diaz v. Jiten Hotel Management, Inc.*, 741 F.3d 170, 177 and n.7, (1st Cir. 2013). Those factors include "the experience, reputation, and ability of the attorneys." *Id.*

[8] *See* n.7, *supra*.

[9] The Toothman Order cites three cases in which Mr. Toothman purportedly testified in support of an attorneys' fee award. Toothman Opinion, at 9 n.1. One is a case before the American Arbitration Association, that is not available to the Objecting Plaintiffs' Law Firms. The other two are federal cases from 1995. There is nothing available on the electronic dockets of these cases regarding Mr. Toothman, and to date, Objecting Plaintiffs' Law Firms have been unable to obtain any information regarding the opinions he apparently offered in them.

Toothman offers numerous criticisms regarding the fees and expenses claimed, identifying several categories that he opines should not be included. His comments are not confined to a review of the papers before him, however; he attempts to support his opinions with sweeping, inappropriate generalizations about the profession as well. *See, e.g.*, ¶ 34 ("One of the paradoxes of hourly rates is that lawyers who claim to be worth more per hour because of their experience and skill typically also travel in larger packs, requiring larger pyramids of comparatively expensive lawyers and others to support them."); ¶ 38 n.10 ("bet the company language is what law firms use to make small cases into huge ones by detaching clients' cost-effectiveness from reality").

- *FKI PCL and FKI Engineering, Ltd. v. Composite Technology Corp. et al.*, No. 09-cv-05975 (C.D. Cal., submitted November 19, 2009) (ECF No. 194-4). Mr. Toothman was retained by defendants to review a fee petition submitted by plaintiffs and their counsel in connection with a motion for sanctions. In support of his ultimate opinion that the requested fee should be reduced considerably, Mr. Toothman opines that billing for a first-year associate's work is "an example of a firm attempting to bill a junior lawyer's on the job training" because "if this is a matter for which a first year associate's expertise is sufficient, [plaintiffs' counsel] cannot suggest that this was in any way complex or novel." *Id.* ¶ 15(e). Mr. Toothman also makes a disparaging analogy between law firms and fast food chains, opining that Mayer Brown LLP's comparison of its rates to other national law firms does not make its rates reasonable because "[t]he reasonable price of a

hamburger is not determined by polling Morton's, the Palm, and other 'leading' restaurants – Carl's Jr. is closer to the standard for the locale." *Id.* ¶ 16(a).

- *Feesers, Inc. v. Michael Foods, Inc. et al.*, No. 04-cv-00576 (M.D. Penn., submitted June 26, 2009) (ECF No. 194-5). Mr. Toothman was retained by one of the defendants to review Plaintiffs' motion for attorneys' fees and costs. Mr. Toothman offers his gratuitous opinion that "[c]alling the case 'complex,' 'hotly disputed,' or blaming the opposition is, unfortunately, what almost everyone says in every case," and ultimately concludes that he cannot present a final opinion or estimate a reasonable amount, but that he can opine "that the requested fees and expenses are unreasonable and excessive to a significant degree." *Id.* ¶¶ 16(a), 33.
- *Kubbany et al. v. Trans Union LLC, et al.*, No. 08-cv-00320 (N.D. Cal., submitted February 5, 2009) (ECF No. 194-6). Mr. Toothman was retained by defendant to review plaintiffs' motion for attorneys' fees and expenses. Among other challenges, he opines that the rates charged are high, again belittling any suggestion by plaintiffs' counsel that the work performed was "complex":

> While there are, indeed, some inherently complex cases, when it comes time to justify their fees, every lawyer claims his or her case was "complex," which they also blame on the court, its rules, their opponents, and so on, just as here. Typically, what makes cases "complex" is the inefficiency and denial of the labeling lawyer. Setting fees at many times the value of the case sends the wrong signal.

Id. ¶ 15(b) n.2.

As each of these examples shows, Mr. Toothman has a clear agenda that he expresses time and time again when he is hired, by Mr. Frank and others, to hunt for ways to opine that

fees are unreasonable. Mr. Toothman's description of his services and expertise on his public website, his work on other cases, and his work with Mr. Frank, who has already opposed the fee award in this case, make clear that Mr. Toothman is a partisan, who is uniquely inappropriate to advise the Special Master or his counsel in an objective, neutral and fair manner.

II. Objecting Plaintiffs' Law Firms' Objection Should Be Sustained Because the Retention[10] of the Partisan Mr. Toothman is Improper.

As explained above, Objecting Plaintiffs' Law Firms objected to the retention of Mr. Toothman as inappropriate under FRE 706. In the Toothman Order, the Special Master says that Mr. Toothman is not being appointed pursuant to Rule 706, but pursuant to the Order of Appointment and the body of case law recognizing that a Court may retain a "technical advisor" to assist the Court when facing complex issues. Toothman Order at 5-6, 8-10. Respectfully, the different procedure now cited does not eliminate the unfairness or resolve the issue. The Objecting Plaintiffs' Law Firms submit that it makes Mr. Toothman's appointment even more inappropriate.

A. Mr. Toothman Cannot Properly be Appointed as a Technical Advisor.

Federal Rule of Civil Procedure 53 allows the Court to delegate its judicial duties to a master, subject to the requirements and procedural safeguards set forth in the rule. "The use of masters is to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause, and not to displace the court." *La Buy v. Howes*, 352 U.S. 249, 256 (1957) (internal citation and quotation marks omitted). Thus, without displacing the district court, the master may exercise certain of the Court's duties, subject to its later review. *See* Fed. R. Civ. P.

[10] The Toothman Order says at one point that Mr. Sinnott has retained Mr. Toothman (*id.* at 3) but otherwise provides that the Special Master is responsible for the retention (*e.g., id.* at 6). Since it is clear that Mr. Toothman would be providing advice directly to the Special Master, the specifics of whether the Special Master or Mr. Sinnott retained him appear to be immaterial.

53(a)(1) and (f). Necessarily, the Special Master's authority to perform these duties is circumscribed by the district court's own authority and the tools at the district court's disposal. *See* Fed. R. Civ. P. 53. Accordingly, when the Order of Appointment allows the Special Master to retain persons to assist him, he must do so in a way that is consistent with the authority that the Court would have in these circumstances.

The Toothman Order disclaims FRE 706 as the basis for the appointment at issue here, and instead points to cases recognizing a court's inherent authority to appoint a technical advisor. *See, e.g., Reilly v. United States*, 863 F.2d 149 (1st Cir. 1988). An appointment of such an advisor, however, is "a near-to-last resort," that is only appropriate where the court "is faced with problems of unusual difficulty, sophistication and complexity." *Reilly*, 863 F.3d at 156-57 (noting that appropriate instances for appointing a technical advisor are "hen's-teeth rare"). Moreover, Courts have recognized the need to be "extremely sensitive" to the risk that "the judicial decision-making function will be delegated to the technical advisor." *TechSearch L.L.C. v. Intel Corp.*, 286 F.3d 1360, 1379 (Fed. Cir. 2002). Accordingly, in those rare cases where such an advisor is appropriate, the court must "establish[] safeguards to prevent the technical advisor from introducing new evidence and to assure that the technical advisor does not influence the district court's review of the factual disputes." *Id.*; *see also Reilly*, 863 F.2d at 156 (recognizing that such an appointment is "reserved for truly extraordinary cases where the introduction of outside skills and expertise, not possessed by the judge, will hasten the just adjudication of a dispute without dislodging the delicate balance of the juristic role").

These proceedings involve the review of legal billings. The Objecting Plaintiffs' Law Firms respectfully suggest that such a topic does not require the kind of technical expertise found in the "hen's-teeth rare" cases in which Courts have concluded that a technical advisor is

appropriate. *Reilly*, 863 F.3d at 156-57. For example, in *Reilly*, the First Circuit held that a technical advisor was appropriate because the case involved "esoterica: complex economic theories, convoluted by their nature, fraught with puzzlement in their application, leading to a surpassingly difficult computation of damages" and the court needed a technical advisor "to help the court understand the theories which were bruited about." 863 F.2d at 157; *see also Amgen, Inc. v. F. Hoffmann La Roche Ltd.*, 581 F. Supp. 2d 160, 217 n.14 (D. Mass. 2008) (appointing Massachusetts Institute of Technology applied economics professor to serve as technical advisor on the economics of the Medicare reimbursement system in complex patent litigation); *Amgen, Inc. v. Hoescht Marion Rousel, Inc.*, 126 F. Supp. 2d 69, 78 n.3 (D. Mass 2001) (appointing Massachusetts Institute of Technology professor to serve as technical advisor on recombinant DNA technology in complex patent litigation), *vacated in part on other grounds*, 314 F.3d 1313 (Fed. Cir. 2003); *MediaCom Corp. v. Rates Tech.*, 4 F. Supp. 2d 17, 29 (D. Mass. 1998) (asking parties to agree on technical advisor in complex patent litigation involving telephone and network circuitry where Court acknowledged it was "without an adequate basis in skill or knowledge of the relevant art" and the patent "presents questions that are sufficiently complex and technical that the Court would be remiss to impose its lay understanding . . . without the benefit of expert guidance"); *Biogen, Inc. v. Amgen Inc.*, No. 95-10496-RGS, 1996 U.S. Dist. LEXIS 22617 (D. Mass. Dec. 10, 1996) (appointing Massachusetts General Hospital medical researcher to serve as technical advisor on production of human proteins in non-human host cells using recombinant DNA in complex patent litigation). Here, there is neither esoterica nor complex or convoluted theories. Moreover, courts – including the Special Master when serving as a district judge – routinely review and adjudicate fee petitions in class action and other cases. Review of the submissions in support of the fee award in this case does not require an

understanding of complicated economic theories or models outside the comprehension of the Special Master.

Moreover, even if a technical advisor were appropriate in this proceeding, the Special Master's appointment of Mr. Toothman would not be. A technical advisor must be neutral and non-partisan, as his role is to be a technical guide to the court, not to support one side or the other with evidence or opinions. *See, e.g., Reilly*, 863 F.3d at 158 (affirming district court's appointment of an economics professor from Brown University to provide "neutral technical advice"); *TechSearch L.L.C.*, 286 F.3d at 1379 (the court must use a "fair and open procedure" to appoint "a neutral technical advisor"); *MediaCom Corp.*, 4 F. Supp. 2d at 30 (ordering parties to select technical advisors "who reflect the generally accepted range of views" about technology); *Reilly v. United States*, 682 F. Supp. 150, 152 (D.R.I. 1988) (appointing "a neutral specialist"); *Biogen, Inc.*, 1996 U.S. Dist. LEXIS 22617, at *4 (requiring technical advisor to affirm "that he is a neutral third party in regard to this action" and "that he has no ideological, financial, or professional interest" in the litigation outcome).[11] For the reasons explained above, Mr. Toothman is neither neutral nor non-partisan.

The Toothman Order also suggests that Mr. Toothman's responsibilities will not be limited to those of a technical expert who explains concepts, and that he will serve an evidentiary role. For example, the Special Master explains that Mr. Toothman will "guid[e] the Special Master's inquiry into other relevant topics, including but not limited to Lodestar calculations in contingent fee cases, determination of regional billing rates, and best practices for recording and absorbing litigation-based expenses." Toothman Order at 6-7. Unless this evidence is already in

[11] The Toothman Order states that "[t]here are no mechanisms for a party to disqualify a judicial technical expert." However, in *Reilly*, the First Circuit advised that the parties should be notified of the technical advisor's identity before the court makes the appointment and "be given an opportunity to object on grounds such as bias or inexperience." 863 F.2d at 159.

the record, this type of "guidance" is inappropriate for a neutral technical advisor who has no evidentiary function and who may not influence the Special Master's opinion. *See TechSearch*, 286 F.3d at 1381 (the court must exercise due care to avoid improper influence by its technical advisor).

The appointment of Mr. Toothman is also inappropriate because the appointment does not appear to include adequate procedural safeguards to protect the Objecting Plaintiffs' Law Firms from impermissible fact- or evidence-gathering. These safeguards are especially important here where Mr. Toothman's partisanship is not reasonably subject to dispute. In *Reilly*, the First Circuit held that, *at a minimum*, the parties must be given the opportunity to object to the proposed technical advisor on bias, inexperience, or other grounds, the Court should issue a written "job description" or issue "comprehensive verbal instructions to the advisor, on the record, in the presence of all counsel," and the advisor must submit an affidavit at the conclusion of the engagement attesting to his compliance with the job description. 863 F.2d at 159-60.

Consistent with these requirements, in *Biogen, Inc. v. Amgen, Inc.*, the Court ordered the technical advisor to submit an "Affidavit of Engagement" at the beginning of his engagement in which he affirmed under penalty of perjury that he: (1) was a neutral party, with no ideological, financial, or professional interest in the litigation outcome; (2) would assist the Court "in a manner consistent with generally accepted knowledge in the relevant area"; and (3) would not engage in any independent investigation of the litigation or provide evidence to the Court. 1996 U.S. Dist. LEXIS 22617, at *9-12.[12] The Court also ordered that it would identify for the parties

[12] The technical advisor also affirmed in the Affidavit of Engagement that he had no financial, business, or personal interest in either party or any disclosed witness; that he would not acquire stock in either party until final resolution of the action; that he would not seek to benefit from

any materials used by the technical advisor in providing advice to the Court outside of the evidence in the record, or materials on which a person versed in the relevant technical field would reasonably be expected to rely. *Id.* at *5.

At the conclusion of the technical advisor's appointment, the Court required that the technical advisor affirm under penalty of perjury that he had "acted neutrally without ideological, financial or professional interest in the outcome of this case" and had "consistent with the court's instructions, refrained from offering an opinion as to the ultimate issues of law raised by this case, and, in fact, have no such opinions." *Biogen, Inc. v. Amgen Inc.*, No. 95-10496-RGS, 2000 U.S. Dist. LEXIS 16877, at *3 (D. Mass. Sept. 28, 2000). Especially here, where Mr. Toothman has such strong and clear views about the unreasonableness of most attorneys' fee awards, and where Mr. Toothman primarily serves as an advocate to reduce attorneys' fees, the lack of procedural protections is problematic.

B. If Mr. Toothman is to Provide a Report, the Parties Must Be Permitted the Full Right to Cross-Examine and Challenge His Opinions

At a minimum, if Mr. Toothman's appointment as a "technical expert" over objection stands, he must not be permitted to exceed the bounds of that role. The Special Master notes in the Toothman Order that "Mr. Toothman has not been retained to render a formal expert opinion or to make factual findings in this case." Toothman Order at 7. However, the Special Master adds that "if Mr. Toothman does issue a report to the Special Master, it will be disclosed to the Law Firms and they will be given the opportunity to comment on it before the Special Master issues his Report and Recommendation." *Id* at 10. This latter statement suggests that Mr. Toothman is being considered for a role that would be improper, unless (at a minimum) the

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confidential information he learned during the action; that he would inform the Court immediately of any conflict or potential conflict; and that he would inform the Court immediately if either party or any person sought to contact him about the litigation. *Id.*

Objecting Plaintiffs' Law Firms are given a full opportunity to examine him and otherwise refute his testimony.

As a technical advisor, Mr. Toothman is not a witness and may not contribute evidence. *Reilly*, 863 F.2d at 157. Mr. Toothman may do no independent fact-finding, and the Special Master may not rely on any evidence supplied to him by Mr. Toothman or unduly defer to Mr. Toothman in finding facts or arriving at conclusions of law. *Id.*; *see also TechSearch*, 286 F.3d at 1379. If Mr. Toothman becomes an evidentiary source by submitting a formal expert report, the Plaintiffs' Law Firms are entitled to cross-examine him. *Reilly*, 863 F.2d at 159. Moreover, if Mr. Toothman submits a formal expert report, he becomes a Federal Rule of Evidence 706 expert and not a technical advisor. *See FRE 706; see also Reilly*, 863 F.2d at 159-60 and n.8 ("the advisor is not permitted to bring new evidence into the case"). Objecting Plaintiffs' Law Firms respectfully submit that Mr. Toothman cannot be a Rule 706 expert because of his bias and clear partisanship. However, if Mr. Toothman submits a formal report, the parties are entitled not merely to comment on Mr. Toothman's report, as the Special Master suggest in the Toothman Order, but to depose Mr. Toothman, cross-examine Mr. Toothman, and call him as a witness under Rule 706(b).

CONCLUSION

For all of the foregoing reasons, Objecting Plaintiffs' Law Firms respectfully request that the Court sustain their objection to the retention of Mr. Toothman, and rule that Mr. Toothman may not serve as an expert or consultant in the proceedings before the Special Master.

Dated: April 6, 2017

Respectfully submitted,

/s/ Joan A. Lukey

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Certificate of Service

I certify that on April 6, 2017, I caused the foregoing document to be filed through the ECF system in above-captioned action No. 11-cv-10230, and accordingly to be served electronically upon all registered participants identified on the Notices of Electronic Filing.

/s/ Joan A. Lukey
Joan A. Lukey

EX. 184

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

MEMORANDUM AND ORDER

WOLF, D.J. May 2, 2017

I. SUMMARY

On March 8, 2017, pursuant to Federal Rule of Civil Procedure 53, the court appointed Retired United States District Judge Gerald

Rosen as a Special Master. See Docket No. 173. The Special Master was directed to investigate, among other things, the accuracy and reliability of the representations made by counsel for the class in this case ("Plaintiffs' Counsel") in their successful request for an award of more than $75,000,000 in attorneys' fees and expenses, the reasonableness of that award in view of information and issues that have emerged since it was made by the court in November 2016, and whether the award should be reduced. Id., ¶2. The Special Master was ordered to proceed with all reasonable diligence and to submit, by October 10, 2017 if possible, a report and recommendation to the court. Id., §3. The court authorized the Special Master to retain other individuals and organizations to assist him. Id., ¶1.

The Special Master retained William Sinnott, Esq. as his counsel. After the Special Master spoke and corresponded with the attorney for Plaintiffs' Counsel, Mr. Sinnott engaged John Toothman, Esq. to assist the Special Master and him in the performance of their duties because of Mr. Toothman's experience in matters concerning the reasonableness of attorneys' fees in class actions and other cases. Three of the eight firms that represent class members -- Labaton Sucharow LLP ("Labaton"), Thornton Law Firm LLP ("Thornton"), and Lieff Cabraser Heiman & Bernstein LLP ("Lieff") (collectively "Objecting Counsel") -- objected to the retention of Mr. Toothman. See Docket No. 194.

The Special Master denied their objection. See Docket No. 193. Objecting Counsel have appealed that decision to the court. See Docket No. 199.

For the reasons explained in this Memorandum, the court finds that the Special Master did not make an error of fact or law in allowing his counsel to retain Mr. Toothman. Nor did the Special Master abuse his discretion in doing so. Therefore, Objecting Counsel's appeal is being denied.

II. PROCEDURAL HISTORY

As indicated earlier, after providing Plaintiffs' Counsel notice and an opportunity to be heard, the court appointed Retired Judge Rosen to serve as Special Master in this case. Among other things, Plaintiffs' Counsel agreed that Judge Rosen was not disqualified from serving under the standards established by 28 U.S.C. §455. See Fed. R. Civ. P. 53(a)(2); Docket No. 129 at 2. Plaintiffs' Counsel have not since modified that view. The Special Master was directed to investigate issues relating to the earlier award to Plaintiffs' Counsel of more than $75,000,000 in attorneys' fees and expenses, and to submit a report and recommendation to the court. See Docket No. 173.

The Special Master was given the full power provided by Federal Rule of Civil Procedure 53(c)(1), which includes the authority to "take all appropriate measures to perform the assigned duties fairly and efficiently." Fed. R. Civ. P. 53(c)(2); Docket

No. 173, ¶4. The Special Master was specifically authorized to "retain any firm, organization, or individual he deems necessary to assist him in the performance of his duties." Docket No. 173, ¶1 (emphasis added).

In this case, the Special Master has a hybrid role, functioning in part like an investigator and in part like a judicial officer. In recognition of this dual role, as permitted by Federal Rule of Civil Procedure 53(b)(2)(B), the court authorized the Special Master to communicate with any party ex parte. See Docket No. 173, ¶5. It would be impermissible for a judge to have such communications. See, e.g., Guide to Judiciary Policy, Vol. 2A, Ch. 2, Code of Conduct for United States Judges, Cannon 3, subpart (A)(4) (precluding a judge from "initiat[ing], permit[ing], or consider[ing] ex parte communications" except where authorized by law or, when circumstances require it, "for scheduling, administrative, or emergency purposes."); Haller v. Robbins, 409 F.2d 857, 859 (1st Cir. 1969). Submissions to the court indicate that the attorney for Plaintiffs' Counsel and the Special Master have had, orally and in writing, direct, ex parte communications. See, e.g., Docket Nos. 193 at 3; 199 at 2, 3.

Among other things, the Special Master told the attorney for Plaintiffs' Counsel that he was considering retaining Mr. Toothman. See, e.g., Docket Nos. 193 at 3; 199 at 2-3. After consulting her clients, she informed the Special Master that they

objected to Mr. Toothman being engaged. Nevertheless Mr. Toothman was retained.

Objecting Counsel subsequently filed with the Special Master a written objection to Mr. Toothman's employment. See Docket No. 194.[1] Objecting Counsel argued that: (1) Mr. Toothman could only be retained as a court-appointed expert pursuant to Federal Rule of Evidence 706; (2) Mr. Toothman's positions in other cases involving attorneys' fees demonstrate that he is biased against attorneys who represent plaintiffs in class actions; and, therefore, (3) Mr. Toothman is not eligible for appointment under Rule 706. See Docket No. 194. More specifically, Objecting Counsel asserted that Mr. Toothman had been previously retained as an expert in another class action by Theodore Frank, Esq., who objected to the reasonableness of the requested attorneys' fees in that case and has attempted to intervene in this case to do so as well. Id. at 5-6.

The Special Master denied the objection. See Docket No. 193. The Special Master explained that Mr. Toothman had not been appointed as an expert witness under Rule 706. Id. at 4-5, 7-8. Rather, Mr. Toothman was engaged as an exercise of the Special

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[1] The other five firms that represented class members have not objected to Mr. Toothman's employment.

Master's authority to retain anyone he deemed necessary to perform his assigned duties. Id. at 4-5.

The Special Master stated that:

> Mr. Toothman will be generally responsible for providing consulting services to assist the Special Master and his counsel in fulfilling the duties set forth in the . . . Order of Appointment. The Special Master expects these services to include, among other things, assisting in the preparation and review of discovery and assisting in the analysis of billing and related data.

Id. at 6 (emphasis added). He also wrote that Mr. Toothman's role would be:

> confined to assisting the Special Master and his counsel in understanding the technical terms, concepts, and contexts that underlie legal billing practices in the area of commercial class actions based on his specialized knowledge in the area, and how these relate to the specific billing practices in this case.

Id. at 7. The Special Master characterized Mr. Toothman's "role [as] akin to that of a judicial technical expert retained to educate and guide the Special Master and his counsel in this area of their work under the Order of Appointment." Id. at 9 (emphasis added).

The Special Master stated that Plaintiffs' Counsel "cannot point to any evidence that Mr. Toothman is inherently biased or otherwise unqualified to render technical expertise in the area of commercial legal billing practices." Id. The Special Master noted that in support of their claim of bias, Plaintiffs' Counsel relied exclusively on statements Mr. Toothman made in past cases involving

the reasonableness of fee petitions. He found, however, that rather than demonstrate bias, "these cases more aptly demonstrate Mr. Toothman's extensive experience in reviewing complex fee cases." Id. at 9-10.[2]

In support of his conclusion that Mr. Toothman is not biased, the Special Master added:

> Mr. Toothman is objectively qualified to provide guidance on legal billing practices. After receiving a Juris Doctor cum laude from Harvard Law School in 1981, Mr. Toothman spent twelve years as a trial attorney handling complex commercial litigation in both the private and public sectors, including as a trial lawyer with the Department of Justice. During that time, Mr. Toothman performed extensive work representing plaintiffs in contingent fee cases and participated in over fifty civil trials, as well as appeals in both the federal and state courts. Throughout his career, Mr. Toothman has also served as a court-appointed receiver, including in one instance on behalf of the U.S. Small Business Administration, and as counsel to bankrupt companies during bankruptcy proceedings. Mr. Toothman has consulted on the topic of legal fees with major corporations and various federal entities and agencies, including the General Accountability Office, the U.S. Department of Justice, and the U.S. Department of Energy, Transportation, and Labor, and has served a six-year term as an Arbitrator for the Virginia State Bar's Fee Dispute Resolution Program. In his work as a consultant, Mr. Toothman has testified in federal and state courts across the country on more than fifty occasions, both in support of and against the award of fees, and has published numerous articles and co-authored a book, Legal Fees: Law and Management,

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[2] For example, the Special Master noted that in one case Objecting Counsel cited as evidence of alleged bias Mr. Toothman discovered that the petitioning law firm recorded more than 24 hours for a single timekeeper for a single day. See Docket No. 193 at 10, n.2.

> focusing on legal billing practices. He has also served as an arbitrator of legal fee disputes.

Id. at 4-5 (emphasis added); see also id. at 9, n.1 ("Mr. Toothman has testified both in support of fees and against awarding fees, including testifying in support of fees in several public matters." (citing cases)).

Objecting Counsel appealed the Special Master's denial of their objection concerning Mr. Toothman to the court. See Docket No. 199. They argue, in essence, that Mr. Toothman is a partisan, whose business is to opine that courts should reduce requests for fee awards, and, therefore, his appointment as what they characterize as "a technical advisor" is not permissible or appropriate. Id. at 5-16. The question of the propriety of the appointment of Mr. Toothman as a purported technical advisor was not raised by Objecting Counsel's objection to the Special Master. See Docket No. 194. The court is addressing it nevertheless.

III. DISCUSSION

The Order appointing the Special Master provides that any objection to an order he issues will be decided by the court in the manner described in Federal Rule of Civil Procedure 53(f). See Docket No. 173, ¶9. As Objecting Counsel recognize, "[t]his court reviews the procedural decision to retain Mr. Toothman for abuse of discretion [pursuant to] Fed. R. Civ. P. 53(f)(5)." Docket No. 199 at 5. The court must decide de novo any conclusions

of law and findings of fact made or recommended by the Special Master. See Fed. R. Civ. P. 53(f)(3)&(4).

To the extent that Objecting Counsel continue to object to the employment of Mr. Toothman based on Federal Rule of Evidence 706, concerning court-appointed expert witnesses, the Special Master did not make an error of law in concluding that the Rule is inapplicable. See Docket No. 193 at 7. The Federal Rules of Evidence apply to "proceedings" before United States District Courts and other courts. See Fed. R. Evid. 1101(a). It is doubtful that the investigation being conducted by the Special Master constitutes such a "proceeding." In any event, as the First Circuit has held, "Rule 706 is confined to court-appointed expert witnesses; the rule does not embrace expert advisers or consultants." Reilly v. United States, 863 F.2d 149, 155 (1st Cir. 1988). Neither the Special Master nor the court has appointed Mr. Toothman to testify as an expert witness. Therefore, Rule 706 does not apply.

As indicated earlier, the Special Master wrote that "Mr. Toothman will be generally responsible for providing consulting services to assist the Special Master and his counsel in fulfilling [their] duties." Docket No. 193 at 6. He also characterized Mr. Toothman's services as "akin to that of a technical advisor retained to educate and guide the Special Master and his counsel." Id. at 9.

As explained earlier, the court gave the Special Master the discretion to "retain any firm, organization, or individual he deems necessary to assist him in the performance of his duties." Docket No. 173, ¶1. The court finds that the Special Master did not abuse his discretion in deciding that employing Mr. Toothman would help his counsel and him "perform [their] assigned duties fairly and efficiently." See Fed. R. Civ. P. 53(c)(1)(B). More specifically, the court finds that the Special Master properly concluded that Mr. Toothman is eligible to perform his defined and limited functions because his prior experience and the opinions he expressed as an expert witness do not manifest a disqualifying bias.

As the First Circuit has written, the "use of [special] masters [is] permitted where desirable to 'bring[ ] to the court skills and experience which courts frequently lack.'" Reilly, 863 F.2d at 156 (quoting Reed v. Cleveland Bd. of Ed., 607 F.2d 737, 747 (6th Cir. 1979)). The corollary of this is that special masters may retain consultants with relevant experience and expertise.

Objecting Counsel's contention that Mr. Toothman should be disqualified from serving as a consultant to the Special Master by virtue of his prior work is inconsistent with their earlier proposal that Retired United States District Judge Layne Phillips be appointed to serve as Co-Special Master with Judge Rosen. See

Docket No. 129 at 2-4. Objecting Counsel represented that Judge Phillips -- who is paid up to $43,000 a day -- has been previously retained by them and counsel for other parties to mediate class actions, including disputes concerning attorneys' fees. See Docket No. 129 at 3; 129-1 at 3; 129-2, ¶10. Moreover, at the time of his proposed appointment, Judge Phillips was being compensated by Labaton and Lieff, among others, as a mediator in another class action. Nevertheless, Objecting Counsel asserted that there were no grounds for his disqualification. See Docket No. 129 at 4.

In any event, the court finds that Judge Rosen did not err in concluding that Mr. Toothman's prior work does not disqualify him from assisting the Special Master and his counsel in the intended manner. The Special Master found that, like Judge Phillips, Mr. Toothman has been hired to arbitrate fee disputes, and had also testified in support of and against requested fee awards. See Docket No. 193 at 4-5, 9, n.1.

As indicated earlier, Mr. Toothman has been engaged to provide guidance to the Special Master and his counsel in conducting their investigation, reviewing discovery, and understanding concepts concerning legal billing in commercial class actions. See Docket No. 193 at 6. There are many issues, and some controversy, regarding how to determine reasonable compensation for plaintiffs' counsel in class actions. Compare, e.g., Lester Brickman, Lawyer

Barons: What Their Contingency Fees Really Cost America, 311-33 (2011) with Myriam Gilles & Gary B. Friedman, Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers, 155 U. Pa. L. Rev. 103 (2006).

As the court and the Special Master each noted, with regard to the award of attorneys' fees in this and many other class actions, the adversary system does not operate. See Nov. 6, 2016 Tr. at 12, 14; Docket No. 193 at 8. The Special Master reasonably concluded an individual with experience and specialized knowledge would be valuable in organizing the investigation and analyzing voluminous evidence, and, therefore, would contribute to the informed and efficient discharge of the Special Master's duties. The Special Master correctly concluded that Mr. Toothman is qualified to serve in that capacity and not disqualified because of bias.

As explained earlier, the Special Master has a hybrid role in this case, serving in part as an investigator and in part as the counterpart of a magistrate judge making a report and recommendation. The Special Master's investigative role justifies his authority to communicate with the parties ex parte. Similarly, as discussed below, that dimension of his role justifies the retention of Mr. Toothman as a consultant, "akin to" a technical advisor, when such employment by a judge making factual findings

based on a record generated by the adversary process might not be necessary or appropriate.

The Special Master's decision denying the objection to Mr. Toothman's retention reflects a sensitivity to issues that could emerge when a judge, not also acting as an investigator, appoints a technical advisor. See Reilly, 863 F.3d at 157-59. Technical advisors "are not witnesses, and may not contribute evidence." Id. at 157. However, the Special Master does not intend to ask or allow Mr. Toothman to provide any evidence for him to consider. See Docket No. 193 at 10. In any event, any such evidence would be included in the record accompanying the Special Master's Report and Recommendation to the court. See Fed. R. Civ. P. 53(b)(2)(C)&(D); Docket No. 173, ¶11 ("The Master shall make and preserve a complete record of the evidence concerning his recommended findings of fact and any conclusions of law. Such record shall be filed with the Master's Report and Recommendation."). Therefore, the Objecting Plaintiffs would have an opportunity to challenge the credibility of any evidence provided by Mr. Toothman, and the weight, if any, that should be given to it.

The Special Master also does not expect to receive from Mr. Toothman any report of opinions on which the Special Master might rely. See Docket No. 193 at 10. If the Special Master does

receive such a report, he intends to give Plaintiffs' Counsel notice and an opportunity to be heard concerning it. Id.[3]

Technical advisors are also "not judges, so they may not be allowed to usurp the judicial function." Id. The Special Master recognized this principle, stating that he "is not relying on Mr. Toothman to render the final legal opinion as to whether the fees awarded to [Plaintiffs' Counsel] were reasonable or not." Docket No. 193 at 10. As a former Federal Judge, the Special Master is experienced in receiving arguments from lawyers and advice from law clerks, and making independent judgments concerning both. The court is confident that he is capable of doing so in this case.

In addition -- and significantly -- the court will review de novo any recommended findings of fact and conclusions of law as to which Plaintiffs' Counsel object. See Fed. R. Civ. P. 53(f)(3)&(4); Docket No. 173 at 12. Mr. Toothman will not be serving as a consultant, "akin to" a technical advisor, to this court or as a court-appointed expert under Federal Rule of Evidence 706. While the Special Master may benefit from Mr. Toothman's advice in discharging his duties, Plaintiffs' Counsel will receive

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[3] Objecting Counsel assert that they should be allowed to examine Mr. Toothman if he submits an expert report. See Docket No. 199 at 17. If and when such a report is submitted, Objecting Counsel should address their request to examine Mr. Toothman to the Special Master.

full and fair de novo consideration concerning any matters in the Special Master's Report and Recommendation to which they object.

In summary, the court concludes that the Special Master did not make any error of law or fact in finding that Mr. Toothman is eligible to perform the functions for which he has been employed. Nor did the Special Master abuse his discretion in allowing his counsel to retain Mr. Toothman. Therefore, the objection seeking his disqualification is not meritorious.

IV. ORDER

In view of the foregoing, it is hereby ORDERED that Objecting Plaintiffs' Law Firms' Objection to Special Master's Order Regarding Retention of John W. Toothman (Docket No. 199) is DENIED.

UNITED STATES DISTRICT JUDGE

EX. 185

[Excel Spreadsheet is submitted in Native File Format]

EX. 186

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	No. 12-MD-2335 (LAK) (JLC)
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3066 (LAK) (JLC)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3067 (LAK) (JLC)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3470 (LAK) (JLC)
Carver, et al. v. The Bank of New York Mellon, et al.	No. 12-CV-9248 (LAK) (JLC)
Fletcher v. The Bank of New York Mellon, et al.	No. 14-CV-5496 (LAK) (JLC)

DECLARATION OF DANIEL P. CHIPLOCK IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

I, Daniel P. Chiplock, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner of the law firm of Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser," "LCHB," or the "Firm"). I submit this declaration in support of Lead Settlement Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would testify competently thereto. The facts supporting LCHB's fee request are more fully set forth in the Joint Declaration of Sharan Nirmul and Daniel

P. Chiplock in Support of (1) Lead Plaintiffs' Motion for Final Approval of the Settlement and the Proposed Plan of Allocation, as well as Certification of the Settlement Class, and (2) Lead Settlement Counsel's Application for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards ("Joint Declaration").

2. Lieff Cabraser has offices in New York, NY, San Francisco, CA, and Nashville, TN. The Firm has litigated class actions in the Southern District of New York and in other courts around the country. A copy of the Firm's resume, as well as a brief biography of all Firm attorneys and support staff that billed time in this Action, is attached hereto as Exhibit A.

3. I personally rendered legal services and was responsible, along with my partners, Elizabeth J. Cabraser, Daniel E. Seltz, Nicholas Diamand, and Michael J. Miarmi, along with the founder of the Firm (and current Of Counsel) Robert L. Lieff, for coordinating and supervising the activity carried out by attorneys and professional staff at Lieff Cabraser in this Action. In its capacity as one of the three members of the MDL Plaintiffs' Executive Committee, as interim Co-Lead Customer Class Counsel, and as counsel for the Ohio Police & Fire Pension Fund ("OP&F"), the School Employees Retirement System of Ohio ("SERS"), and the International Union of Operating Engineeers, Stationary Engineers Local 39 Pension Trust Fund ("IUOE Local 39"), and as fully set forth in the Joint Declaration, Lieff Cabraser was one of the principal contributors to the results achieved in this Action for the benefit of the Class.

4. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by attorneys and paraprofessionals at Lieff Cabraser in this Action ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit B hereto. This chart (i) identifies the names and positions (*i.e.*, titles) of the firm's Timekeepers who undertook litigation activities in connection

with the Action and who expended 10 hours or more on the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through August 12, 2015; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of the work by each Timekeeper and the entire firm.[1] For Timekeepers who are no longer employed by the Firm, the hourly rate used is the billing rate in his or her final year of employment by the Firm. The Firm's billing records, which are regularly prepared from contemporaneous daily time records, are available at the request of the Court. Time expended in preparing any papers for this motion for fees and reimbursement of expenses has not been included in this request. Additionally, time expended in preparing any papers for prior motions for reimbursement of expenses has not been included in this request.

5. The hourly rates charged by the Timekeepers are the Firm's regular rates for contingent cases and those generally charged to clients for their services in non-contingent/hourly matters.[2] Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in their respective cities by attorneys and paraprofessionals of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements.

6. The total number of hours expended by Lieff Cabraser on this Action, from investigation through August 12, 2015, is 42,549.3 hours. The total lodestar for the Firm is $20,256,579.50, consisting of $19,078,859.00 for attorney time and $1,177,720.50 for professional support staff time.

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[1] The information concerning each Timekeeper's hours and hourly rate is not based on my personal knowledge, but on the information reported by each such Timekeeper or the files and records of Lieff Cabraser, as well as my familiarity with the work undertaken by Lieff Cabraser in the Action.

[2] On occasion and for a specific type of representation, the Firm may offer a discount on its hourly rates to longstanding clients.

7. In my judgment, the number of hours expended and the services performed by the attorneys and paraprofessionals at Lieff Cabraser were reasonable and expended for the benefit of the Settlement Class in this Action.

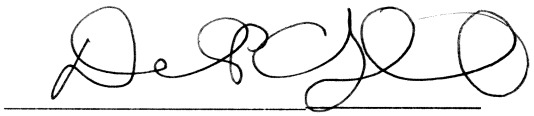
8. Lieff Cabraser's lodestar figures are based on the Firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the Firm's billing rates.

9. As set forth in Exhibit C, Lieff Cabraser has incurred a total of $1,296,448.27 in unreimbursed expenses in connection with this Action from inception to August 12, 2015. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.

10. These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of Lieff Cabraser's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

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

Executed this 17th day of August, 2015 in New York, New York.



Daniel P. Chiplock

EXHIBIT A

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FIRM PROFILE:

Lieff Cabraser Heimann & Bernstein, LLP, is a sixty-plus attorney, AV-rated law firm founded in 1972 with offices in San Francisco, New York and Nashville. We have a diversified practice, successfully representing plaintiffs in the fields of personal injury and mass torts, securities and financial fraud, employment discrimination and unlawful employment practices, product defect, consumer protection, antitrust and intellectual property, environmental and toxic exposures, False Claims Act, digital privacy and data security, and human rights. Our clients include individuals, classes or groups of persons, businesses, and public and private entities.

Lieff Cabraser has served as Court-appointed Plaintiffs' Lead or Class Counsel in state and federal coordinated, multi-district, and complex litigation throughout the United States. With co-counsel, we have represented clients across the globe in cases filed in American courts.

Lieff Cabraser is among the largest firms in the United States that only represent plaintiffs. Described by *The American Lawyer* as "one of the nation's premier plaintiffs' firms," Lieff Cabraser enjoys a national reputation for professional integrity and the successful prosecution of our clients' claims. We possess sophisticated legal skills and the financial resources necessary for the handling of large, complex cases, and for litigating against some of the nation's largest corporations. We take great pride in the leadership roles our firm plays in

many of this country's major cases, including those resulting in landmark decisions and precedent-setting rulings.

Lieff Cabraser has litigated and resolved thousands of individual lawsuits and hundreds of class and group actions, including some of the most important civil cases in the United States over the past three decades. We have assisted our clients recover over $91 billion in verdicts and settlements. Twenty-two cases were resolved for over $1 billion; another 37 cases resulted in verdicts or settlements at or in excess of $100 million.

The National Law Journal has recognized Lieff Cabraser as one of the nation's top plaintiffs' law firms for twelve years, including for 2015, and we are a member of its Plaintiffs' Hot List Hall of Fame. In compiling the list, *The National Law Journal* examines recent verdicts and settlements and looked for firms "representing the best qualities of the plaintiffs' bar and that demonstrated unusual dedication and creativity." In 2014, *The National Law Journal* recognized Lieff Cabraser as one of the 50 Leading Plaintiffs Firms in America and named the firm to its Midsize Hot List.

U.S. News and *Best Lawyers* have selected Lieff Cabraser as a national "Law Firm of the Year" each year the publications have given this award to law firms. For 2011, 2012, and 2014, we were recognized in the category of Mass Torts Litigation/Class Actions – Plaintiffs. For 2013, the publications selected our firm as the nation's premier plaintiffs' law firm in the category of Employment Law – Individuals. For 2015, we have again been recognized in the category of Mass Torts Litigation/Class Actions – Plaintiffs. Only one law firm in each practice area receives the "Law Firm of the Year" designation.

CASE PROFILES:

I. Personal Injury and Products Liability Litigation

A. Current Cases

1. ***In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation***, MDL No. 2151 (C.D. Cal.). Lieff Cabraser serves as Co-Lead Counsel for the plaintiffs in the Toyota injury cases in federal court representing individuals injured, and families of loved ones who died, in Toyota unintended acceleration accidents. The complaints charge that Toyota took no action despite years of complaints that its vehicles accelerated suddenly and could not be stopped by proper application of the brake pedal. The complaints further allege that Toyota breached its duty to manufacture and sell safe automobiles by failing to incorporate a brake override system and other readily available safeguards that could have prevented unintended acceleration.

   In December 2013, Toyota announced its intention to begin to settle the cases. In 2014, Lieff Cabraser played a key role in turning Toyota's intention into a reality through assisting in the creation of an innovative

resolution process that has settled scores of cases in streamlined, individual conferences. The settlements are confidential. Before Toyota agreed to settle the litigation, plaintiffs' counsel overcame significant hurdles in the challenging litigation. In addition to defeating Toyota's motion to dismiss the litigation, Lieff Cabraser and co-counsel demonstrated that the highly-publicized government studies that denied unintended acceleration, or attributed it to mechanical flaws and driver error, were flawed and erroneous.

2. ***Individual General Motors Ignition Switch Defect Injury Lawsuits***. Lieff Cabraser represents over 100 persons injured nationwide, and families of loved ones who died, in accidents involving GM vehicles sold with a defective ignition switch. Without warning, the defect can cause the car's engine and electrical system to shut off, disabling the air bags. For over a decade GM was aware of this defect and failed to inform government safety regulators and public. The defect has been has been implicated in the deaths of over 300 people in crashes where the front air bags did not deploy. On August 15, 2014, U.S. District Court Judge Jesse M. Furman appointed Elizabeth J. Cabraser as Co-Lead Plaintiffs' Counsel in the GM ignition switch litigation in federal court.

3. ***Injury and Death Lawsuits Involving Wrongful Driver Conduct and Defective Tires, Transmissions, Cars and/or Vehicle Parts (Seat Belts, Roof Crush, Defective seats, and Other Defects).*** Lieff Cabraser has an active practice prosecuting claims for clients injured, or the families of loved ones who have died, by wrongful driver conduct and by unsafe and defective vehicles, tires, restraint systems, seats, and other automotive equipment. We also represent clients in actions involving fatalities and serious injuries from tire and transmission failures as well as rollover accidents (and defective roofs, belts, seat back and other parts) as well as defective transmissions and/or shifter gates that cause vehicles to self-shift from park or false park into reverse. Our attorneys have received awards and recognition from California Lawyer magazine (Lawyer of the Year Award), the Consumer Attorneys of California, and the San Francisco Trial Lawyers Association for their dedication to their clients and outstanding success in vehicle injury cases.

4. ***In re Engle Cases***, No. 3:09-cv-10000-J-32 JBT (M.D. Fl.). Lieff Cabraser represents over Florida smokers, and the spouses and families of loved ones who died, in litigation against the tobacco companies for their 50-year conspiracy to conceal the hazards of smoking and the addictive nature of cigarettes. On February 25th, 2015, Lieff Cabraser announced the settlement of more than 400 Florida smoker lawsuits against the major cigarette companies Philip Morris USA Inc., R.J. Reynolds Tobacco Company, and Lorillard Tobacco Company. As a part of the settlement,

the companies will collectively pay $100 million to injured smokers or their families.

Lieff Cabraser attorneys tried over 20 cases in Florida federal court against the tobacco industry on behalf of individual smokers or their estates, and with co-counsel obtained over $105 million in judgments for our clients. Two of the jury verdicts Lieff Cabraser attorneys obtained in the litigation were ranked by *The National Law Journal* as among the Top 100 Verdicts of 2014.

In September 2013, in *RJR v. Walker*, 728 F.3d 1297 (11th Cir.), the Court of Appeals affirmed two plaintiffs' trial verdicts against defendant's due process challenges. This was the first federal appellate decision to hold that the trial structure used in the Florida state and federal courts to make individual Engle plaintiffs damages trials feasible meets due process standards. On June 9, 2014, the U.S. Supreme Court denied RJR's petition for writ of certiorari.

5. ***In re Takata Airbag Litigation***, MDL No. 2599 (S.D. Fl.). Lieff Cabraser serves on the Plaintiffs' Steering Committee in the national litigation against Takata Corporation. Nearly 34 million vehicles, mostly manufactured prior to 2009, have been recalled worldwide due to defective and dangerous airbags manufactured by Japanese-based Takata Corporation. This is the largest automotive recall in U.S. history. At least six deaths and more than 100 injuries have been linked to the airbag defect. The recalled Takata airbags contain a propellant that may cause the airbag to explode upon impact in an accident, shooting out metal debris from the casing towards drivers and passengers. The complaints charge that the company knew of defects in its airbags a decade ago, after conducting secret tests of the products that showed dangerous flaws. Rather than alert federal safety regulators to these risks, Takata allegedly ordered its engineers to delete the test data.

6. ***Stryker Metal Hip Implant Litigation***. Lieff Cabraser represents over 60 hip replacement patients nationwide who received the recalled Stryker Rejuvenate and ABG II modular hip implant systems. Wendy Fleishman serves on the Plaintiffs' Lead Counsel Committee of the multidistrict litigation cases. These patients have suffered tissue damage and have high metal particle levels in their blood stream. For many patients, the Stryker hip implant failed necessitating painful revision surgery to extract and replace the artificial hip. On November 3, 2014, a settlement was announced in the litigation against Stryker Corporation for the recall of its Rejuvenate and ABG II artificial hip implants. Under the settlement, Stryker will provide a base payment of $300,000 to patients that received the Rejuvenate or ABG II hip systems and underwent revision surgery by November 3, 2014, to remove and replace

the devices. Stryker's liability is not capped. It is expected that the total amount of payments under the settlement will far exceed $1 billion dollars.

7. ***Actos Litigation***. Lieff Cabraser represents patients who have developed bladder cancer after exposure to the prescription drug pioglitazone, sold as Actos by Japan-based Takeda Pharmaceutical Company and prescribed for patients with Type 2 Diabetes. On April 7, 2014, a federal jury in Louisiana found Takeda failed to adequately warn about bladder cancer risks. Jurors also found that executives of Takeda acted with wanton and reckless disregard for patient safety and awarded a total of $9 billion in punitive damages. Lieff Cabraser attorney Donald C. Arbitblit served as a member of the trial team working closely with lead trial counsel Mark Lanier. The trial judge reduced the punitive damage award but upheld the jury's findings and ruled that a multiplier of 25 to 1 for punitive damages was justified. The verdict is currently on appeal. On April 28, 2015, U.S. District Court Judge Rebecca F. Doherty, the judge overseeing the Actos injury cases in federal court nationwide, issued an order recognizing that Takeda, the manufacturer of Actos, agreed to pay over $2 billion to settle all bladder cancer claims brought against the company by Actos users who satisfy certain conditions.

8. ***Fen-Phen ("Diet Drugs") Litigation***. Since the recall was announced in 1997, Lieff Cabraser has represented individuals who suffered injuries from the "Fen-Phen" diet drugs fenfluramine (sold as Pondimin) and/or dexfenfluramine (sold as Redux). We served as counsel for the plaintiff who filed the first nationwide class action lawsuit against the diet drug manufacturers alleging that they had failed to adequately warn physicians and consumers of the risks associated with the drugs. In *In re Diet Drugs (Phentermine / Fenfluramine / Dexfenfluramine) Products Liability Litigation*, MDL No. 1203 (E.D. Pa.), the Court appointed Elizabeth J. Cabraser to the Plaintiffs' Management Committee which organized and directed the Fen-Phen diet drugs litigation in federal court. In August 2000, the Court approved a $4.75 billion settlement offering both medical monitoring relief for persons exposed to the drug and compensation for persons with qualifying damage. We represented over 2,000 persons that suffered valvular heart disease, pulmonary hypertension or other problems (such as needing echocardiogram screening for damage) due to and/or following exposure to Fen-Phen and obtained more than $350 million in total for clients in individual cases and/or claims. We continue to represent persons who suffered valvular heart disease due to Fen-Phen and received compensation under the Diet Drugs Settlement who now require heart value surgery. These persons may be eligible to submit a new claim and receive additional compensation under the settlement.

9. ***DePuy Metal Hip Implants Litigation***. Lieff Cabraser represents nearly 200 patients nationwide who received the ASR XL Acetabular and ASR Hip Resurfacing systems manufactured by DePuy Orthopedics, a unit of Johnson & Johnson. In 2010, DePuy Orthopedics announced the recall of its all-metal ASR hip implants, which were implanted in approximately 40,000 U.S. patients from 2006 through August 2010. The complaints allege that DePuy Orthopedics was aware its ASR hip implants were failing at a high rate, yet continued to manufacture and sell the device. In January 2011, in *In re DePuy Orthopaedics, Inc.* ASR Hip Implant Products, MDL No. 2197, the Court overseeing all DePuy recall lawsuits in federal court appointed Lieff Cabraser attorney Wendy R. Fleishman to the Plaintiffs' Steering Committee for the organization and coordination of the litigation. In July 2011, in the coordinated proceedings in California state court, the Court appointed Lieff Cabraser attorney Robert J. Nelson to serve on the Plaintiffs' Steering Committee. In 2013, Johnson & Johnson announced its agreement to pay at least $2.5 billion to resolve thousands of defective DePuy ASR hip implant lawsuits. Under the settlement, J&J offers to pay a base award of $250,000 to U.S. citizens and residents who are more than 180 days from their hip replacement surgery, and prior to August 31, 2013, had to undergo revision surgery to remove and replace their faulty DePuy hip ASR XL or ASR resurfacing hip. The $250,000 base award payment will be adjusted upward or downward depending on medical factors specific to each patient. We also represent nearly 100 patients whose DePuy Pinnacle artificial hip with the metal insert, called the Ultamet metal liner, has prematurely failed.

10. ***Mirena Litigation***. A widely-used, plastic intrauterine device (IUD) that releases a hormone into the uterus to prevent pregnancy, Mirena is manufactured by Bayer Healthcare Pharmaceuticals. Lieff Cabraser represents patients who have suffered serious injuries linked to the IUD. These injuries include uterine perforation (the IUD tears through the cervix or the wall of the uterus), ectopic pregnancy (when the embryo implants outside the uterine cavity), pelvic infections and pelvic inflammatory disease, and thrombosis (blood clots).

11. ***Birth Defects Litigation***. Lieff Cabraser represents children and their parents who have suffered birth defects as a result of problematic pregnancies and improper medical care, improper prenatal genetic screening, ingestion by the mother of prescription drugs during pregnancy which had devastating effects on their babies. These birth defects range from heart defects, physical malformations, and severe brain damage associated with complex emotional and developmental delays. Taking of antidepressants during pregnancy has been linked to multiple types of birth defects, neonatal abstinence syndrome from

experiencing withdrawal of the drug, and persistent pulmonary hypertension of the newborn (PPHN).

12. ***Vaginal Mesh Litigation***. Vaginal mesh is a polypropylene material implanted as a treatment for pelvic organ prolapse or stress urinary incontinence. Gynecare Transvaginal products, manufactured and sold by Johnson & Johnson, as well as mesh products made by Boston Scientific, AMS, Bard, Caldera, and Coloplast, have been linked to serious side effects including erosion into the vaginal wall or other organs, infection, internal organ damage, and urinary problems.

13. ***Xarelto Litigation*:** We represent patients prescribed Xarelto sold in the U.S. by Janssen Pharmaceuticals, a subsidiary of Johnson & Johnson. The complaints charge that Xarelto, approved to prevent blood clots, is a dangerous and defective drug because it triggers in certain patients uncontrolled bleeding and other life-threatening complications. Unlike Coumadin, an anti-clotting drug approved over 50 years ago, the concentration of Xarelto in a patient's blood cannot be reversed in the case of overdose or other serious complications. If a Xarelto patient has an emergency bleeding event -- such as from a severe injury or major brain or GI tract bleeding -- the results can be fatal.

14. ***Benicar Litigation***: We represent patients prescribed the high blood pressure medication Benicar who have experienced chronic diarrhea with substantial weight loss, severe gastrointestinal problems, and the life-threatening conditions of sprue-like enteropathy and villous atrophy in litigation against Japanese-based Daiichi Sankyo, Benicar's manufacturer, and Forest Laboratories, which marketed Benicar in the U.S. The complaints allege that Benicar was insufficiently tested and not accompanied by adequate instructions and warnings to apprise consumers of the full risks and side effects associated with its use.

15. ***Risperdal Litigation***: In 2013, Johnson & Johnson and its subsidiary Janssen Pharmaceuticals, the manufacture of the antipsychotic prescription drugs Risperdal and Invega, entered into a $2.2 billion settlement with the U.S. Department of Justice for over promoting the drugs. The government alleged that J&J and Janssen knew Risperdal triggered the production of prolactin, a hormone that stimulates breast development and milk production. We represent parents whose sons developed abnormally large breasts while prescribed Risperdal and Invega.

16. ***Power Morcellators Litigation***: We represent women who underwent a hysterectomy (the removal of the uterus) or myomectomy (the removal of uterine fibroids) in which a laparoscopic power morcellator was used. In November 2014, the FDA warned surgeons that they should avoid the use of laparoscopic power morcellators for

removing uterine tissue in the vast majority of cases due to the risk of the devices spreading unsuspected cancer. Based on current data, the FDA estimates that 1 in 350 women undergoing hysterectomy or myomectomy for the treatment of fibroids have an unsuspected uterine sarcoma, a type of uterine cancer that includes leiomyosarcoma.

17. ***Yaz and Yasmin Litigation***. Lieff Cabraser represents women prescribed Yasmin and Yaz oral contraceptives who suffered blood clots, deep vein thrombosis, strokes, and heart attacks, as well as the families of loved ones who died suddenly while taking these medications. The complaints allege that Bayer, the manufacturer of Yaz and Yasmin, failed to adequately warn patients and physicians of the increased risk of serious adverse effects from Yasmin and Yaz. The complaints also charge that these oral contraceptives posed a greater risk of serious side effects than other widely available birth control drugs.

B. Successes

1. ***Multi-State Tobacco Litigation***. Lieff Cabraser represented the Attorneys General of Massachusetts, Louisiana and Illinois, several additional states, and 21 cities and counties in California, in litigation against Philip Morris, R.J. Reynolds and other cigarette manufacturers. The suits were part of the landmark $206 billion settlement announced in November 1998 between the tobacco industry and the states' attorneys general. The states, cities and counties sought both to recover the public costs of treating smoking-related diseases and require the tobacco industry to undertake extensive modifications of its marketing and promotion activities in order to reduce teenage smoking. In California alone, Lieff Cabraser's clients were awarded an estimated $12.5 billion to be paid through 2025.

2. ***In re Vioxx Products Liability Litigation***, MDL No. 1657 (E.D. La.). Lieff Cabraser represented patients who suffered heart attacks or strokes, and the families of loved ones who died, after having been prescribed the arthritis and pain medication Vioxx. In individual personal injury lawsuits against Merck, the manufacturer of Vioxx, our clients allege that Merck falsely promoted the safety of Vioxx and failed to disclose the full range of the drug's dangerous side effects. In April 2005, in the federal multidistrict litigation, the Court appointed Elizabeth J. Cabraser to the Plaintiffs' Steering Committee, which has the responsibility of conducting all pretrial discovery of Vioxx cases in federal court and pursuing all settlement options with Merck. In August 2006, Lieff Cabraser was co-counsel in *Barnett v. Merck*, which was tried in the federal court in New Orleans. Lieff Cabraser attorneys Don Arbitblit and Jennifer Gross participated in the trial, working closely with attorneys Mark Robinson and Andy Birchfield. The jury reached a verdict in favor of Mr. Barnett,

finding that Vioxx caused his heart attack, and that Merck's conduct justified an award of punitive damages. In November 2007, Merck announced it had entered into an agreement with the executive committee of the Plaintiffs' Steering Committee as well as representatives of plaintiffs' counsel in state coordinated proceedings. Merck paid $4.85 billion into a settlement fund for qualifying claims.

3. ***In re Silicone Gel Breast Implants Products Liability Litigation***, MDL No. 926 (N.D. Ala.). Lieff Cabraser served on the Plaintiffs' Steering Committee and was one of five members of the negotiating committee which achieved a $4.25 billion global settlement with certain defendants of the action. This was renegotiated in 1995, and is referred to as the Revised Settlement Program ("RSP"). Over 100,000 recipients have received initial payments, reimbursement for the explanation expenses and/or long term benefits.

4. ***Sulzer Hip and Knee Prosthesis Liability Litigation***. In December 2000, Sulzer Orthopedics, Inc., announced the recall of approximately 30,000 units of its Inter-Op Acetabular Shell Hip Implant, followed in May 2001 with a notification of failures of its Natural Knee II Tibial Baseplate Knee Implant. In coordinated litigation in California state court, *In re Hip Replacement Cases*, JCCP 4165, Lieff Cabraser served as Court-appointed Plaintiffs' Liaison Counsel and Co-Lead Counsel. In the federal litigation, *In re Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation*, MDL No. 1410, Lieff Cabraser played a significant role in negotiating a revised global settlement of the litigation valued at more than $1 billion. The revised settlement, approved by the Court in May 2002, provided patients with defective implants almost twice the cash payment as under an initial settlement. On behalf of our clients, Lieff Cabraser objected to the initial settlement.

5. ***In re Bextra/Celebrex Marketing Sales Practices and Products Liability Litigation***, MDL No. 1699 (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Liaison Counsel and Elizabeth J. Cabraser chaired the Plaintiffs' Steering Committee (PSC) charged with overseeing all personal injury and consumer litigation in federal courts nationwide arising out of the sale and marketing of the COX-2 inhibitors Bextra and Celebrex, manufactured by Pfizer, Inc. and its predecessor companies Pharmacia Corporation and G.D. Searle, Inc.

   Under the global resolution of the multidistrict tort and consumer litigation announced in October 2008, Pfizer paid over $800 million to claimants, including over $750 million to resolve death and injury claims.

   In a report adopted by the Court on common benefit work performed by the PSC, the Special Master stated:

> [L]eading counsel from both sides, and the attorneys from the PSC who actively participated in this litigation, demonstrated the utmost skill and professionalism in dealing with numerous complex legal and factual issues. The briefing presented to the Special Master, and also to the Court, and the development of evidence by both sides was exemplary. The Special Master particularly wishes to recognize that leading counsel for both sides worked extremely hard to minimize disputes, and when they arose, to make sure that they were raised with a minimum of rancor and a maximum of candor before the Special Master and Court.

6. ***In re Guidant Implantable Defibrillators Products Liability Litigation***, MDL No. 1708. Lieff Cabraser serves on the Plaintiffs' Lead Counsel Committee in litigation in federal court arising out of the recall of Guidant cardiac defibrillators implanted in patients because of potential malfunctions in the devices. At the time of the recall, Guidant admitted it was aware of 43 reports of device failures, and two patient deaths. Guidant subsequently acknowledged that the actual rate of failure may be higher than the reported rate and that the number of associated deaths may be underreported since implantable cardio-defibrillators are not routinely evaluated after death. In January 2008, the parties reached a global settlement of the action. Guidant's settlements of defibrillator-related claims will total $240 million.

7. ***In re Copley Pharmaceutical, Inc., "Albuterol" Products Liability Litigation***, MDL No. 1013 (D. Wyo.). Lieff Cabraser served on the Plaintiffs' Steering Committee in a class action lawsuit against Copley Pharmaceutical, which manufactured Albuterol, a bronchodilator prescription pharmaceutical. Albuterol was the subject of a nationwide recall in January 1994 after a microorganism was found to have contaminated the solution, allegedly causing numerous injuries including bronchial infections, pneumonia, respiratory distress and, in some cases, death. In October 1994, the District Court certified a nationwide class on liability issues. *In re Copley Pharmaceutical*, 161 F.R.D. 456 (D. Wyo. 1995). In November 1995, the District Court approved a $150 million settlement of the litigation.

8. ***In re Telectronics Pacing Systems Inc., Accufix Atrial "J" Leads Products Liability Litigation***, MDL No. 1057 (S.D. Ohio). Lieff Cabraser served on the Court-appointed Plaintiffs' Steering Committee in a nationwide products liability action alleging that defendants placed into the stream of commerce defective pacemaker leads. In April 1997, the District Court re-certified a nationwide class of "J" Lead implantees with subclasses for the claims of medical monitoring,

negligence and strict product liability. A summary jury trial, utilizing jury instructions and interrogatories designed by Lieff Cabraser, occurred in February 1998. A partial settlement was approved thereafter by the District Court but reversed by the Court of Appeals. In March 2001, the District Court approved a renewed settlement that included a $58 million fund to satisfy all past, present and future claims by patients for their medical care, injuries, or damages arising from the lead.

9. ***Mraz v. DaimlerChrysler***, No. BC 332487 (Cal. Supr. Ct.). In March 2007, the jury returned a $54.4 million verdict, including $50 million in punitive damages, against DaimlerChrysler for intentionally failing to cure a known defect in millions of its vehicles that led to the death of Richard Mraz, a young father. Mr. Mraz suffered fatal head injuries when the 1992 Dodge Dakota pickup truck he had been driving at his work site ran him over after he exited the vehicle believing it was in park. The jury found that a defect in the Dodge Dakota's automatic transmission, called a park-to-reverse defect, played a substantial factor in Mr. Mraz's death and that DaimlerChrysler was negligent in the design of the vehicle for failing to warn of the defect and then for failing to adequately recall or retrofit the vehicle.

   For their outstanding service to their clients in Mraz and advancing the rights of all persons injured by defective products, Lieff Cabraser partners Robert J. Nelson, the lead trial counsel, received the 2008 California Lawyer of the Year (CLAY) Award in the field of personal injury law, and were also selected as finalists for attorney of the year by the Consumer Attorneys of California and the San Francisco Trial Lawyers Association.

   In March 2008, a Louisiana-state jury found DaimlerChrysler liable for the death of infant Collin Guillot and injuries to his parents Juli and August Guillot and their then 3-year-old daughter, Madison. The jury returned a unanimous verdict of $5,080,000 in compensatory damages. The jury found that a defect in the Jeep Grand Cherokee's transmission, called a park-to-reverse defect, played a substantial factor in Collin Guillot's death and the severe injuries suffered by Mr. and Mrs. Guillot and their daughter. Lieff Cabraser served as co-counsel in the trial.

10. ***Craft v. Vanderbilt University***, Civ. No. 3-94-0090 (M.D. Tenn.). Lieff Cabraser served as Lead Counsel of a certified class of over 800 pregnant women and their children who were intentionally fed radioactive iron isotopes without consent while receiving prenatal care at the Vanderbilt University hospital as part of a study on iron absorption during pregnancy. The women were not informed of the nature and risks of the study. Instead, they were told that the solution they were fed was a "vitamin cocktail." In the 1960's, Vanderbilt conducted a follow-up study to determine the health effects of the plaintiffs' prior radiation exposure.

Throughout the follow-up study, Vanderbilt concealed from plaintiffs the fact that they had been involuntarily exposed to radiation, and that the purpose of the follow-up study was to determine whether there had been an increased rate of childhood cancers among those exposed *in utero*. Vanderbilt also did not inform plaintiffs of the results of the follow-up study, which revealed a disproportionately high incidence of cancers among the children born to the women fed the radioactive iron.

The facts surrounding the administration of radioactive iron to the pregnant women and their children in utero only came to light as a result of U.S. Energy Secretary Hazel O'Leary's 1993 disclosures of government-sponsored human radiation experimentation during the Cold War. Defendants' attempts to dismiss the claims and decertify the class were unsuccessful. 18 F. Supp.2d 786 (M.D. Tenn. 1998). The case was settled in July 1998 for a total of $10.3 million and a formal apology from Vanderbilt.

11. ***Simply Thick Litigation***. Lieff Cabraser represented parents whose infants died or suffered gave injuries linked to Simply Thick, a thickening agent for adults that was promoted to parents, caregivers, and health professional for use by infants to assist with swallowing. The individual lawsuits alleged that Simply Thick when fed to infants caused necrotizing enterocolitis (NEC), a life-threatening condition characterized by the inflammation and death of intestinal tissue. In 2014, the litigation was resolved on confidential terms.

12. ***Medtronic Infuse Litigation***. Lieff Cabraser represented patients who suffered serious injuries from the off-label use of the Infuse bone graft, manufactured by Medtronic Inc. The FDA approved Infuse for only one type of spine surgery, the anterior lumbar fusion. Many patients, however, received an off-label use of Infuse and were never informed of the off-label nature of the surgery. Serious complications associated with Infuse included uncontrolled bone growth and chronic pain from nerve injuries. In 2014, the litigation was settled on confidential terms.

13. ***Wright Medical Hip Litigation***. The Profemur-Z system manufactured by Wright Medical Technology consisted of three separate components: a femoral head, a modular neck, and a femoral stem. Prior to 2009, Profemur-Z hip system included a titanium modular neck adapter and stem which was implanted in 10,000 patients. Lieff Cabraser represented patients whose Profemur-Z hip implant fractured, requiring a revision surgery. In 2013 and 2014, the litigation was resolved on confidential terms.

14. ***In re Zimmer Durom Cup Product Liability Litigation***, MDL No. 2158. Lieff Cabraser served as Co-Liaison Counsel for patients nationwide injured by the defective Durom Cup manufactured by Zimmer

Holdings. First sold in the U.S. in 2006, Zimmer marketed its 'metal-on-metal' Durom Cup implant as providing a greater range of motion and less wear than traditional hip replacement components. In July 2008, Zimmer announced the suspension of Durom sales. The complaints charged that the Durom cup was defective and led to the premature failure of the implant. In 2011 and 2012, the patients represented by Lieff Cabraser settled their cases with Zimmer on favorable, confidential terms.

15. ***Luisi v. Medtronic***, No. 07 CV 4250 (D. Minn.). Lieff Cabraser represented over seven hundred heart patients nationwide who were implanted with recalled Sprint Fidelis defibrillator leads manufactured by Medtronic Inc. Plaintiffs charge that Medtronic has misrepresented the safety of the Sprint Fidelis leads and a defect in the device triggered their receiving massive, unnecessary electrical shocks. A settlement of the litigation was announced in October 2010.

16. ***Blood Factor VIII And Factor IX Litigation***. Working with counsel in Asia, Europe, Central and South America and the Middle East, Lieff Cabraser represented over 1,500 hemophiliacs worldwide, or their survivors and estates, who contracted HIV and/or Hepatitis C (HCV), and Americans with hemophilia who contracted HCV, from contaminated and defective blood factor products produced by American pharmaceutical companies. In 2004, Lieff Cabraser was appointed Plaintiffs' Lead Counsel of the "second generation" Blood Factor MDL litigation presided over by Judge Grady in the Northern District of Illinois. The case was resolved through a global settlement signed in 2009.

17. ***In Re Yamaha Motor Corp. Rhino ATV Products Liability Litigation***, MDL No. 2016 (W.D. Ky.) Lieff Cabraser served as Plaintiffs' Lead Counsel in the litigation in federal court and Co-Lead Counsel in coordinated California state court litigation arising out of serious injuries and deaths in rollover accidents involving the Yamaha Rhino. The complaints charged that the Yamaha Rhino contained numerous design flaws, including the failure to equip the vehicles with side doors, which resulted in repeated broken or crushed legs, ankles or feet for riders. Plaintiffs alleged also that the Yamaha Rhino was unstable due to a narrow track width and high center of gravity leading to rollover accidents that killed and/or injured scores of persons across the nation. On behalf of victims and families of victims and along with the Center for Auto Safety, and the San Francisco Trauma Foundation, Lieff Cabraser advocated for numerous safety changes to the Rhino in reports submitted to the U.S. Consumer Product Safety Commission (CPSC). On March 31, 2009, the CPSC, in cooperation with Yamaha Motor Corp. U.S.A., announced a free repair program for all Rhino 450, 660, and 700 models to improve safety, including the addition of spacers and removal of a rear only anti-sway bar.

18. ***Advanced Medical Optics Complete MoisturePlus Litigation***. Lieff Cabraser represented consumers nationwide in personal injury lawsuits filed against Advanced Medical Optics arising out of the May 2007 recall of AMO's Complete MoisturePlus Multi-Purpose Contact Lens Solution. The product was recalled due to reports of a link between a rare, but serious eye infection, *Acanthamoeba keratitis*, caused by a parasite and use of AMO's contact lens solution. Though AMO promoted Complete MoisturePlus Multi-Purpose as "effective against the introduction of common ocular microorganisms," the complaints charged that AMO's lens solution was ineffective and vastly inferior to other multipurpose solutions on the market. In many cases, patients were forced to undergo painful corneal transplant surgery to save their vision and some have lost all or part of their vision permanently. The patients represented by Lieff Cabraser resolved their cases with AMO on favorable, confidential terms.

19. ***Gol Airlines Flight 1907 Amazon Crash***. Lieff Cabraser served as Plaintiffs' Liaison Counsel and represents over twenty families whose loved ones died in the Gol Airlines Flight 1907 crash. On September 29, 2006, a brand-new Boeing 737-800 operated by Brazilian air carrier Gol plunged into the Amazon jungle after colliding with a smaller plane owned by the American company ExcelAire Service, Inc. None of the 149 passengers and six crew members on board the Gol flight survived the accident.

The complaint charged that the pilots of the ExcelAire jet were flying at an incorrect altitude at the time of the collision, failed to operate the jet's transponder and radio equipment properly, and failed to maintain communication with Brazilian air traffic control in violation of international civil aviation standards. If the pilots of the ExcelAire aircraft had followed these standards, the complaint charged that the collision would not have occurred.

At the time of the collision, the ExcelAire aircraft's transponder, manufactured by Honeywell, was not functioning. A transponder transmits a plane's altitude and operates its automatic anti-collision system. The complaint charged that Honeywell shares responsibility for the tragedy because it defectively designed the transponder on the ExcelAire jet, and failed to warn of dangers resulting from foreseeable uses of the transponder. The cases settled after they were sent to Brazil for prosecution.

20. ***Comair CRJ-100 Commuter Flight Crash in Lexington, Kentucky***. A Bombardier CRJ-100 commuter plane operated by Comair, Inc., a subsidiary of Delta Air Lines, crashed on August 27, 2006 shortly after takeoff at Blue Grass Airport in Lexington, Kentucky, killing

47 passengers and two crew members. The aircraft attempted to take off from the wrong runway. The families represented by Lieff Cabraser obtained substantial economic recoveries in a settlement of the case.

21. ***In re ReNu With MoistureLoc Contact Lens Solution Products Liability Litigation***, MDL No. 1785 (D. S.C.). Lieff Cabraser served on the Plaintiffs' Executive Committee in federal court litigation arising out of Bausch & Lomb's 2006 recall of its ReNu with MoistureLoc contact lens solution. Consumers who developed *Fusarium keratitis*, a rare and dangerous fungal eye infection, as well as other serious eye infections, alleged the lens solution was defective. Some consumers were forced to undergo painful corneal transplant surgery to save their vision; others lost all or part of their vision permanently. The litigation was resolved under favorable, confidential settlements with Bausch & Lomb.

22. ***Helios Airways Flight 522 Athens, Greece Crash***. On August 14, 2005, a Boeing 737 operating as Helios Airways flight 522 crashed north of Athens, Greece, resulting in the deaths of all passengers and crew. The aircraft was heading from Larnaca, Cyprus to Athens International Airport when ground controllers lost contact with the pilots, who had radioed in to report problems with the air conditioning system. Press reports about the official investigation indicate that a single switch for the pressurization system on the plane was not properly set by the pilots, and eventually both were rendered unconscious, along with most of the passengers and cabin crew.

Lieff Cabraser represented the families of several victims, and filed complaints alleging that a series of design defects in the Boeing 737-300 contributed to the pilots' failure to understand the nature of the problems they were facing. Foremost among those defects was a confusing pressurization warning "horn" which uses the same sound that alerts pilots to improper takeoff and landing configurations. The families represented by Lieff Cabraser obtained substantial economic recoveries in a settlement of the case.

23. ***Legend Single Engine "Turbine Legend" Kit Plane Crash***. On November 19, 2005, a single engine "Turbine Legend" kit plane operated by its owner crashed shortly after takeoff from a private airstrip in Tucson, Arizona, killing both the owner/pilot and a passenger. Witnesses report that the aircraft left the narrow runway during the takeoff roll and although the pilot managed to get the plane airborne, it rolled to the left and crashed.

Lieff Cabraser investigated the liability of the pilot and others, including the manufacturer of the kit and the operator of the airport from which the plane took off. The runway was 16 feet narrower than the minimum width recommended by the Federal Aviation Administration. Lieff Cabraser

represented the widow of the passenger, and the case was settled on favorable, confidential terms.

24. ***Manhattan Tourist Helicopter Crash***. On June 14, 2005, a Bell 206 helicopter operated by Helicopter Flight Services, Inc. fell into the East River shortly after taking off for a tourist flight over New York City. The pilot and six passengers were immersed upside-down in the water as the helicopter overturned. Lieff Cabraser represented a passenger on the helicopter and the case was settled on favorable, confidential terms.

25. ***U.S. Army Blackhawk Helicopter Tower Collision***. Lieff Cabraser represented the family of a pilot who died in the November 29, 2004 crash of a U.S. Army Black Hawk Helicopter. The Black Hawk was flying during the early morning hours at an altitude of approximately 500 feet when it hit cables supporting a 1,700 foot-tall television tower, and subsequently crashed 30 miles south of Waco, Texas, killing both pilots and five passengers, all in active Army service. The tower warning lights required by government regulations were inoperative. The case was resolved through a successful, confidential settlement.

26. ***Air Algerie Boeing 737 Crash***. Together with French co-counsel, Lieff Cabraser represented the families of several passengers who died in the March 6, 2003 crash of a Boeing 737 airplane operated by Air Algerie. The aircraft crashed soon after takeoff from the Algerian city of Tamanrasset, after one of the engines failed. All but one of the 97 passengers were killed, along with six crew members. The families represented by Lieff Cabraser obtained economic recoveries in a settlement of the case.

27. ***In re Baycol Products Litigation***, MDL No. 1431 (D. Minn.). Baycol was one of a group of drugs called statins, intended to reduce cholesterol. In August 2001, Bayer A.G. and Bayer Corporation, the manufacturers of Baycol, withdrew the drug from the worldwide market based upon reports that Baycol was associated with serious side effects and linked to the deaths of over 100 patients worldwide. In the federal multidistrict litigation, Lieff Cabraser served as a member of the Plaintiffs' Steering Committee (PSC) and the Executive Committee of the PSC. In addition, Lieff Cabraser represented approximately 200 Baycol patients who have suffered injuries or family members of patients who died allegedly as a result of ingesting Baycol. In these cases, our clients reached confidential favorable settlements with Bayer.

28. ***United Airlines Boeing 747 Disaster***. Lieff Cabraser served as Plaintiffs' Liaison Counsel on behalf of the passengers and families of passengers injured and killed in the United Airlines Boeing 747 cargo door catastrophe near Honolulu, Hawaii on February 24, 1989. Lieff Cabraser organized the litigation of the case, which included claims brought against United Airlines and The Boeing Company.

Among our work, we developed a statistical system for settling the passengers' and families' damages claims with certain defendants, and coordinated the prosecution of successful individual damages trials for wrongful death against the non-settling defendants.

29. ***Aeroflot-Russian International Airlines Airbus Disaster***. Lieff Cabraser represented the families of passengers who were on Aeroflot-Russian International Airlines Flight SU593 that crashed in Siberia on March 23, 1994. The plane was en route from Moscow to Hong Kong. All passengers on board died.

According to a transcript of the cockpit voice recorder, the pilot's two children entered the cockpit during the flight and took turns flying the plane. The autopilot apparently was inadvertently turned off during this time, and the pilot was unable to remove his son from the captain's seat in time to avert the plane's fatal dive.

Lieff Cabraser, alongside French co-counsel, filed suit in France, where Airbus, the plane's manufacturer, was headquartered. The families Lieff Cabraser represented obtained substantial economic recoveries in settlement of the action.

30. ***Lockheed F-104 Fighter Crashes***. In the late 1960s and extending into the early 1970s, the United States sold F-104 Star Fighter jets to the German Air Force that were manufactured by Lockheed Aircraft Corporation in California. Although the F-104 Star Fighter was designed for high-altitude fighter combat, it was used in Germany and other European countries for low-level bombing and attack training missions.

Consequently, the aircraft had an extremely high crash rate, with over 300 pilots killed. Commencing in 1971, the law firm of Belli Ashe Ellison Choulos & Lieff filed hundreds of lawsuits for wrongful death and other claims on behalf of the widows and surviving children of the pilots.

Robert Lieff continued to prosecute the cases after the formation of our firm. In 1974, the lawsuits were settled with Lockheed on terms favorable to the plaintiffs. This litigation helped establish the principle that citizens of foreign countries could assert claims in United States courts and obtain substantial recoveries against an American manufacturer, based upon airplane accidents or crashes occurring outside the United States.

II. Securities and Financial Fraud

A. Current Cases

1. ***The Charles Schwab Corp. v. BNP Paribas Sec. Corp.***, No. CGC-10-501610 (Cal. Super. Ct.); ***The Charles Schwab Corp. v. J.P.***

Morgan Sec., Inc., No. CGC-10-503206 (Cal. Super. Ct.); ***The Charles Schwab Corp. v. J.P. Morgan Sec., Inc.***, No. CGC-10-503207 (Cal. Super. Ct.); and ***The Charles Schwab Corp. v. Banc of America Sec. LLC***, No. CGC-10-501151 (Cal. Super. Ct.). Lieff Cabraser, along with co-counsel, represents The Charles Schwab Corporation in four separate individual securities actions against certain issuers and sellers of mortgage-backed securities for materially misrepresenting the quality of the loans underlying the securities in violation of California state law. Charles Schwab Bank, N.A., a subsidiary of The Charles Schwab Corporation, suffered significant damages by purchasing the securities in reliance on defendants' misstatements. The Court largely overruled defendants' demurrers in January 2012. Narrowed discovery regarding the defendants' loan files and documents from Charles Schwab pertaining to a potential statute of limitations defense commenced thereafter. Subsequently, the Court opened discovery as to all issues. A bellwether trial is scheduled to commence in August 2015.

In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litigation, Case No. MD-12-2335-LAK (S.D.N.Y.). Lieff Cabraser is one of three firms serving on the Plaintiffs' Executive Committee in consolidated litigation against The Bank of New York Mellon Corporation ("BNY Mellon") and its predecessors and subsidiaries, in which plaintiffs allege that defendants deceptively overcharged custodial customers on foreign currency exchanges (FX) made necessary by the purchase or sale of foreign securities. The actions allege that for more than a decade, defendants consistently charged their clients hidden and excessive mark-ups on FX rates for trades done pursuant to "standing instructions," using "range of the day" pricing, rather than the FX rates readily available when the trades were actually executed. In addition to serving on Plaintiffs' Executive Committee, Lieff Cabraser is also co-lead class counsel for a proposed nationwide class of affected custodial customers of BNY Mellon, including public pension funds, ERISA funds, and other public and private institutions. Prior to the cases being transferred and consolidated in the Southern District of New York, Lieff Cabraser defeated, in its entirety, BNY Mellon's motion to dismiss claims brought on behalf of ERISA and other funds under California's and New York's consumer protection laws. The firm's clients and proposed class representatives in the consolidated litigation include the Ohio Police & Fire Pension Fund, the School Employees Retirement System of Ohio, and the International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund. In March 2015, a global resolution of the private and governmental enforcement actions against BNY Mellon was announced, in which $504 million will be paid back to BNY Mellon customers ($335 million of which is directly attributable to the class litigation). In April 2015, the settlement class was

provisionally certified. A final approval hearing is scheduled for September 2015.

2. ***The Regents of the University of California v. American International Group***, No. 3:13-03653-MEJ (N.D. Cal.). Lieff Cabraser represents The Regents of the University of California in an individual action against American International Group, Inc. ("AIG") and certain of its officers and directors for misrepresenting and omitting material information about AIG's financial condition and the extent of its exposure to the subprime mortgage market. The complaint charges defendants with violations of the Exchange Act, as well as common law fraud and unjust enrichment.

3. ***Arkansas Teacher Retirement System v. State Street Corp.***, No. 11cv10230 (MLW) (D. Mass.). Lieff Cabraser is co-counsel for a proposed nationwide class of institutional clients of State Street, including public pension funds, who allege that defendants charged class members fictitious FX rates in connection with the purchase and sale of foreign securities. The complaint charges that for the past decade, defendants consistently incorporated hidden and excessive mark-ups or mark-downs relative to the actual FX rates applicable at the times of the trades conducted for defendants' custodial FX clients. Defendants allegedly kept for themselves, as an unlawful profit, the difference between the false and actual price for each FX transaction. Plaintiffs seek recovery under Massachusetts' Consumer Protection Law and common law tort and contract theories. The Court denied defendants' motions to dismiss in all substantive respects. The parties are now engaged in discovery. Lieff Cabraser is also actively involved in counseling other state pension and ERISA funds with respect to their potential exposure to FX manipulation by custodial service providers.

4. ***In re Facebook, Inc. IPO Securities And Derivative Litigation***, MDL No. 12-2389 (RWS) (S.D.N.Y.). Lieff Cabraser serves as counsel for named plaintiffs alleging violations of the Securities Act of 1933 based on Facebook's initial public offering in May 2012. In January 2014, the Court denied defendants' motions to dismiss plaintiffs' consolidated class action complaint.

B. Successes

1. ***In re First Capital Holdings Corp. Financial Products Securities Litigation***, MDL No. 901 (C.D. Cal.). Lieff Cabraser served as Co-Lead Counsel in a class action brought to recover damages sustained by policyholders of First Capital Life Insurance Company and Fidelity Bankers Life Insurance Company policyholders resulting from the insurance companies' allegedly fraudulent or reckless investment and financial practices, and the manipulation of the companies' financial

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statements. This policyholder settlement generated over $1 billion in restored life insurance policies. The settlement was approved by both federal and state courts in parallel proceedings and then affirmed by the Ninth Circuit on appeal.

2. ***In re Broadcom Corporation Derivative Litigation***, No. CV 06-3252-R (C.D. Cal.). Lieff Cabraser served as Court-appointed Lead Counsel in a shareholders derivative action arising out of stock options backdating in Broadcom securities. The complaint alleged that defendants intentionally manipulated their stock option grant dates between 1998 and 2003 at the expense of Broadcom and Broadcom shareholders. By making it seem as if stock option grants occurred on dates when Broadcom stock was trading at a comparatively low per share price, stock option grant recipients were able to exercise their stock option grants at exercise prices that were lower than the fair market value of Broadcom stock on the day the options were actually granted. In December 2009, U.S. District Judge Manuel L. Real granted final approval to a partial settlement in which Broadcom Corporation's insurance carriers paid $118 million to Broadcom. The settlement released certain individual director and officer defendants covered by Broadcom's directors' and officers' policy.

   Plaintiffs' counsel continued to pursue claims against William J. Ruehle, Broadcom's former Chief Financial Officer, Henry T. Nicholas, III, Broadcom's co-founder and former Chief Executive Officer, and Henry Samueli, Broadcom's co-founder and former Chief Technology Officer. In May 2011, the Court approved a settlement with these defendants. The settlement provided substantial consideration to Broadcom, consisting of the receipt of cash and cancelled options from Dr. Nicholas and Dr. Samueli totaling $53 million in value, plus the release of a claim by Mr. Ruehle, which sought damages in excess of $26 million.

   Coupled with the earlier $118 million partial settlement, the total recovery in the derivative action was $197 million, which constitutes the third-largest settlement ever in a derivative action involving stock options backdating.

3. ***In re Scorpion Technologies Securities Litigation I***, No. C-93-20333-EAI (N.D. Cal.); ***Dietrich v. Bauer***, No. C-95-7051-RWS (S.D.N.Y.); ***Claghorn v. Edsaco***, No. 98-3039-SI (N.D. Cal.). Lieff Cabraser served as Lead Counsel in class action suits arising out of an alleged fraudulent scheme by Scorpion Technologies, Inc., certain of its officers, accountants, underwriters and business affiliates to inflate the company's earnings through reporting fictitious sales. In Scorpion I, the Court found plaintiffs had presented sufficient evidence of liability under Federal securities acts against the accounting firm Grant Thornton for the

case to proceed to trial. In re Scorpion Techs., 1996 U.S. Dist. LEXIS 22294 (N.D. Cal. Mar. 27, 1996). In 1988, the Court approved a $5.5 million settlement with Grant Thornton. In 2000, the Court approved a $950,000 settlement with Credit Suisse First Boston Corporation. In April 2002, a federal jury in San Francisco, California returned a $170.7 million verdict against Edsaco Ltd. The jury found that Edsaco aided Scorpion in setting up phony European companies as part of a scheme in which Scorpion reported fictitious sales of its software to these companies, thereby inflating its earnings. Included in the jury verdict, one of the largest verdicts in the U.S. in 2002, was $165 million in punitive damages. Richard M. Heimann conducted the trial for plaintiffs.

On June 14, 2002, U.S. District Court Judge Susan Illston commented on Lieff Cabraser's representation: "[C]ounsel for the plaintiffs did a very good job in a very tough situation of achieving an excellent recovery for the class here. You were opposed by extremely capable lawyers. It was an uphill battle. There were some complicated questions, and then there was the tricky issue of actually collecting anything in the end. I think based on the efforts that were made here that it was an excellent result for the class. . . [T]he recovery that was achieved for the class in this second trial is remarkable, almost a hundred percent."

4. ***In re Diamond Foods, Inc., Securities Litigation***, No. 11-cv-05386-WHA (N.D. Cal.). Lieff Cabraser served as local counsel for Lead Plaintiff Public Employees' Retirement System of Mississippi ("MissPERS") and the class of investors it represented in this securities class action lawsuit arising under the PSLRA. The complaint charged Diamond Foods and certain senior executives of the company with violations of the Exchange Act for knowingly understating the cost of walnuts Diamond Foods purchased in order to inflate the price of Diamond Foods' common stock. In January 2014, the Court granted final approval of a settlement of the action requiring Diamond Foods to pay $11 million in cash and issue 4.45 million common shares worth $116.3 million on the date of final approval based on the stock's closing price on that date.

5. ***Merrill Lynch Fundamental Growth Fund and Merrill Lynch Global Value Fund v. McKesson HBOC***, No. 02-405792 (Cal. Supr. Ct.). Lieff Cabraser served as counsel for two Merrill Lynch sponsored mutual funds in a private lawsuit alleging that a massive accounting fraud occurred at HBOC & Company ("HBOC") before and following its 1999 acquisition by McKesson Corporation ("McKesson"). The funds charged that defendants, including the former CFO of McKesson HBOC, the name McKesson adopted after acquiring HBOC, artificially inflated the price of securities in McKesson HBOC, through misrepresentations and omissions concerning the financial condition of HBOC, resulting in approximately

$135 million in losses for plaintiffs. In a significant discovery ruling in 2004, the California Court of Appeal held that defendants waived the attorney-client and work product privileges in regard to an audit committee report and interview memoranda prepared in anticipation of shareholder lawsuits by disclosing the information to the U.S. Attorney and SEC. *McKesson HBOC, Inc. v. Supr. Court*, 115 Cal. App. 4th 1229 (2004). Lieff Cabraser's clients recovered approximately $145 million, representing nearly 104% of damages suffered by the funds. This amount was approximately $115-120 million more than the Merrill Lynch funds would have recovered had they participated in the federal class action settlement.

6. ***Informix/Illustra Securities Litigation***, No. C-97-1289-CRB (N.D. Cal.). Lieff Cabraser represented Richard H. Williams, the former Chief Executive Officer and President of Illustra Information Technologies, Inc. ("Illustra"), and a class of Illustra shareholders in a class action suit on behalf of all former Illustra securities holders who tendered their Illustra preferred or common stock, stock warrants or stock options in exchange for securities of Informix Corporation ("Informix") in connection with Informix's 1996 purchase of Illustra. Pursuant to that acquisition, Illustra stockholders received Informix securities representing approximately 10% of the value of the combined company. The complaint alleged claims for common law fraud and violations of Federal securities law arising out of the acquisition. In October 1999, U.S. District Judge Charles E. Breyer approved a global settlement of the litigation for $136 million, constituting one of the largest settlements ever involving a high technology company alleged to have committed securities fraud. Our clients, the Illustra shareholders, received approximately 30% of the net settlement fund.

7. ***In re Qwest Communications International Securities and "ERISA" Litigation (No. II)***, No. 06-cv-17880-REB-PAC (MDL No. 1788) (D. Colo.). Lieff Cabraser represented the New York State Common Retirement Fund, Fire and Police Pension Association of Colorado, Denver Employees' Retirement Plan, San Francisco Employees' Retirement System, and over thirty BlackRock managed mutual funds in individual securities fraud actions ("opt out" cases) against Qwest Communications International, Inc., Philip F. Anschutz, former co-chairman of the Qwest board of directors, and other senior executives at Qwest. In each action, the plaintiffs charged defendants with massively overstating Qwest's publicly-reported growth, revenues, earnings, and earnings per share from 1999 through 2002. The cases were filed in the wake of a $400 million settlement of a securities fraud class action against Qwest that was announced in early 2006. The cases brought by Lieff Cabraser's clients settled in October 2007 for recoveries totaling

more than $85 million, or more than 13 times what the clients would have received had they remained in the class.

8. ***In re AXA Rosenberg Investor Litigation***, No. CV 11-00536 JSW (N.D. Cal). Lieff Cabraser served as Co-Lead Counsel for a class of institutional investors, ERISA-covered plans, and other investors in quantitative funds managed by AXA Rosenberg Group, LLC and its affiliates ("AXA"). Plaintiffs alleged that AXA breached its fiduciary duties and violated ERISA by failing to discover a material computer error that existed in its system for years, and then failing to remedy it for months after its eventual discovery in 2009. By the time AXA disclosed the error in 2010, investors had suffered losses and paid substantial investment management fees to AXA. After briefing motions to dismiss and working with experts to analyze data obtained from AXA relating to the impact of the error, we reached a $65 million settlement with AXA that the Court approved in April 2012.

9. ***In re National Century Financial Enterprises, Inc. Investment Litigation***, MDL No. 1565 (S.D. Ohio). Lieff Cabraser served as outside counsel for the New York City Employees' Retirement System, Teachers' Retirement System for the City of New York, New York City Police Pension Fund, and New York City Fire Department Pension Fund in this multidistrict litigation arising from fraud in connection with NCFE's issuance of notes backed by healthcare receivables. The New York City Pension Funds recovered more than 70% of their $89 million in losses, primarily through settlements achieved in the federal litigation and another NCFE-matter brought on their behalf by Lieff Cabraser.

10. ***BlackRock Global Allocation Fund v. Tyco International Ltd., et al.***, No. 2:08-cv-519 (D. N.J.); ***Nuveen Balanced Municipal and Stock Fund v. Tyco International Ltd., et al.***, No. 2:08-cv-518 (D. N.J.). Lieff Cabraser represented multiple funds of the investment firms BlackRock Inc. and Nuveen Asset Management in separate, direct securities fraud actions against Tyco International Ltd., Tyco Electronics Ltd., Covidien Ltd, Covidien (U.S.), L. Dennis Kozlowski, Mark H. Swartz, and Frank E. Walsh, Jr. Plaintiffs alleged that defendants engaged in a massive criminal enterprise that combined the theft of corporate assets with fraudulent accounting entries that concealed Tyco's financial condition from investors. As a result, plaintiffs purchased Tyco common stock and other Tyco securities at artificially inflated prices and suffered losses upon disclosures revealing Tyco's true financial condition and defendants' misconduct. In 2009, the parties settled the claims against the corporate defendants (Tyco International Ltd., Tyco Electronics Ltd., Covidien Ltd., and Covidien (U.S.). The litigation concluded in 2010. The total settlement proceeds paid by all defendants were in excess of $57 million.

11. ***Kofuku Bank and Namihaya Bank v. Republic New York Securities Corp.***, No. 00 CIV 3298 (S.D.N.Y.); and Kita Hyogo Shinyo-Kumiai v. Republic New York Securities Corp., No. 00 CIV 4114 (S.D.N.Y.). Lieff Cabraser represented Kofuku Bank, Namihaya Bank and Kita Hyogo Shinyo-Kumiai (a credit union) in individual lawsuits against, among others, Martin A. Armstrong and HSBC, Inc., the successor-in-interest to Republic New York Corporation, Republic New York Bank and Republic New York Securities Corporation for alleged violations of federal securities and racketeering laws. Through a group of interconnected companies owned and controlled by Armstrong—the Princeton Companies—Armstrong and the Republic Companies promoted and sold promissory notes, known as the "Princeton Notes," to more than eighty of the largest companies and financial institutions in Japan. Lieff Cabraser's lawsuits, as well as the lawsuits of dozens of other Princeton Note investors, alleged that the Princeton and Republic Companies made fraudulent misrepresentations and non-disclosures in connection with the promotion and sale of Princeton Notes, and that investors' monies were commingled and misused to the benefit of Armstrong, the Princeton Companies and the Republic Companies. In December 2001, the claims of our clients and those of the other Princeton Note investors were settled. As part of the settlement, our clients recovered more than $50 million, which represented 100% of the value of their principal investments less money they received in interest or other payments.

12. ***Alaska State Department of Revenue v. America Online***, No. 1JU-04-503 (Alaska Supr. Ct.). In December 2006, a $50 million settlement was reached in a securities fraud action brought by the Alaska State Department of Revenue, Alaska State Pension Investment Board and Alaska Permanent Fund Corporation against defendants America Online, Inc. ("AOL"), Time Warner Inc. (formerly known as AOL Time Warner ("AOLTW")), Historic TW Inc. When the action was filed, the Alaska Attorney General estimated total losses at $70 million. The recovery on behalf of Alaska was approximately 50 times what the state would have received as a member of the class in the federal securities class action settlement. The lawsuit, filed in 2004 in Alaska State Court, alleged that defendants misrepresented advertising revenues and growth of AOL and AOLTW along with the number of AOL subscribers, which artificially inflated the stock price of AOL and AOLTW to the detriment of Alaska State funds.

The Alaska Department of Law retained Lieff Cabraser to lead the litigation efforts under its direction. "We appreciate the diligence and expertise of our counsel in achieving an outstanding resolution of the case," said Mark Morones, spokesperson for the Department of Law, following announcement of the settlement.

13. ***Allocco v. Gardner***, No. GIC 806450 (Cal. Supr. Ct.). Lieff Cabraser represented Lawrence L. Garlick, the co-founder and former Chief Executive Officer of Remedy Corporation and 24 other former senior executives and directors of Remedy Corporation in a private (non-class) securities fraud lawsuit against Stephen P. Gardner, the former Chief Executive Officer of Peregrine Systems, Inc., John J. Moores, Peregrine's former Chairman of the Board, Matthew C. Gless, Peregrine's former Chief Financial Officer, Peregrine's accounting firm Arthur Andersen and certain entities that entered into fraudulent transactions with Peregrine. The lawsuit, filed in California state court, arose out of Peregrine's August 2001 acquisition of Remedy. Plaintiffs charged that they were induced to exchange their Remedy stock for Peregrine stock on the basis of false and misleading representations made by defendants. Within months of the Remedy acquisition, Peregrine began to reveal to the public that it had grossly overstated its revenue during the years 2000-2002, and eventually restated more than $500 million in revenues.

After successfully defeating demurrers brought by defendants, including third parties who were customers of Peregrine who aided and abetted Peregrine's accounting fraud under California common law, plaintiffs reached a series of settlements. The settling defendants included Arthur Andersen, all of the director defendants, three officer defendants and the third party customer defendants KPMG, British Telecom, Fujitsu, Software Spectrum and Bindview. The total amount received in settlements was approximately $45 million.

14. ***In re Cablevision Systems Corp. Shareholder Derivative Litigation***, No. 06-cv-4130-DGT-AKT (E.D.N.Y.). Lieff Cabraser served as Co-Lead Counsel in a shareholders' derivative action against the board of directors and numerous officers of Cablevision. The suit alleged that defendants intentionally manipulated stock option grant dates to Cablevision employees between 1997 and 2002 in order to enrich certain officer and director defendants at the expense of Cablevision and Cablevision shareholders. According to the complaint, Defendants made it appear as if stock options were granted earlier than they actually were in order to maximize the value of the grants. In September 2008, the Court granted final approval to a $34.4 million settlement of the action. Over $24 million of the settlement was contributed directly by individual defendants who either received backdated options or participated in the backdating activity.

15. ***In re Media Vision Technology Securities Litigation***, No. CV-94-1015 (N.D. Cal.). Lieff Cabraser served as Co-Lead Counsel in a class action lawsuit which alleged that certain Media Vision's officers, outside directors, accountants and underwriters engaged in a fraudulent scheme to inflate the company's earnings and issued false and misleading public

statements about the company's finances, earnings and profits. By 1998, the Court had approved several partial settlements with many of Media Vision's officers and directors, accountants and underwriters which totaled $31 million. The settlement proceeds have been distributed to eligible class members. The evidence that Lieff Cabraser developed in the civil case led prosecutors to commence an investigation and ultimately file criminal charges against Media Vision's former Chief Executive Officer and Chief Financial Officer. The civil action against Media Vision's CEO and CFO was stayed pending the criminal proceedings against them. In the criminal proceedings, the CEO pled guilty on several counts, and the CFO was convicted at trial. In October 2003, the Court granted Plaintiffs' motions for summary judgment and entered a judgment in favor of the class against the two defendants in the amount of $188 million.

16. ***In re California Micro Devices Securities Litigation***, No. C-94-2817-VRW (N.D. Cal.). Lieff Cabraser served as Liaison Counsel for the Colorado Public Employees' Retirement Association and the California State Teachers' Retirement System, and the class they represented. Prior to 2001, the Court approved $19 million in settlements. In May 2001, the Court approved an additional settlement of $12 million, which, combined with the earlier settlements, provided class members an almost complete return on their losses. The settlement with the company included multi-million dollar contributions by the former Chairman of the Board and Chief Executive Officer.

Commenting in 2001 on Lieff Cabraser's work in Cal Micro Devices, U.S. District Court Judge Vaughn R. Walker stated, "It is highly unusual for a class action in the securities area to recover anywhere close to the percentage of loss that has been recovered here, and counsel and the lead plaintiffs have done an admirable job in bringing about this most satisfactory conclusion of the litigation." One year later, in a related proceeding and in response to the statement that the class had received nearly a 100% recovery, Judge Walker observed, "That's pretty remarkable. In these cases, 25 cents on the dollar is considered to be a magnificent recovery, and this is [almost] a hundred percent."

17. ***In re Network Associates, Inc. Securities Litigation***, No. C-99-1729-WHA (N.D. Cal.). Following a competitive bidding process, the Court appointed Lieff Cabraser as Lead Counsel for the Lead Plaintiff and the class of investors. The complaint alleged that Network Associates improperly accounted for acquisitions in order to inflate its stock price. In May 2001, the Court granted approval to a $30 million settlement.

In reviewing the *Network Associates* settlement, U.S. District Court Judge William H. Alsup observed, "[T]he class was well served at a good price by excellent counsel . . . We have class counsel who's one of the

foremost law firms in the country in both securities law and class actions. And they have a very excellent reputation for the conduct of these kinds of cases . . ."

18. ***In re FPI/Agretech Securities Litigation***, MDL No. 763 (D. Haw., Real, J.). We served as Lead Class Counsel for investors defrauded in a "Ponzi-like" limited partnership investment scheme. The Court approved $15 million in partial, pretrial settlements. At trial, the jury returned a $24 million verdict, which included $10 million in punitive damages, against non-settling defendant Arthur Young & Co. for its knowing complicity and active and substantial assistance in the marketing and sale of the worthless limited partnership offerings. The Appellate Court affirmed the compensatory damages award and remanded the case for a retrial on punitive damages. In 1994, the Court approved a $17 million settlement with Ernst & Young, the successor to Arthur Young & Co.

19. ***Nguyen v. FundAmerica***, No. C-90-2090 MHP (N.D. Cal., Patel, J.), 1990 Fed. Sec. L. Rep. (CCH) ¶¶ 95,497, 95,498 (N.D. Cal. 1990). Lieff Cabraser served as Plaintiffs' Class Counsel in this securities/RICO/tort action seeking an injunction against alleged unfair "pyramid" marketing practices and compensation to participants. The District Court certified a nationwide class for injunctive relief and damages on a mandatory basis and enjoined fraudulent overseas transfers of assets. The Bankruptcy Court permitted class proof of claims. Lieff Cabraser obtained dual District Court and Bankruptcy Court approval of settlements distributing over $13 million in FundAmerica assets to class members.

20. ***In re Brooks Automation, Inc. Securities Litigation***, No. 06 CA 11068 (D. Mass.). Lieff Cabraser served as Court-Appointed Lead Counsel for Lead Plaintiff the Los Angeles County Employees Retirement Association and co-plaintiff Sacramento County Employees' Retirement System in a class action lawsuit on behalf of purchasers of Brooks Automation securities. Plaintiffs charged that Brooks Automation, its senior corporate officers and directors violated federal securities laws by backdating company stock options over a six-year period, and failed to disclose the scheme in publicly filed financial statements. Subsequent to Lieff Cabraser's filing of a consolidated amended complaint in this action, both the Securities and Exchange Commission and the United States Department of Justice filed complaints against the Company's former C.E.O., Robert Therrien, related to the same alleged practices. In October 2008, the Court approved a $7.75 million settlement of the action.

21. ***In re A-Power Energy Generation Systems, Ltd. Securities Litigation***, No. 2:11-ml-2302-GW- (CWx) (C.D. Cal.). Lieff Cabraser served as Court-appointed Lead Counsel for Lead Plaintiff in this securities class action that charged defendants with materially

misrepresenting A-Power Energy Generation Systems, Ltd.'s financial results and business prospects in violation of the antifraud provisions of the Securities Exchange Act of 1934. The Court approved a $3.675 million settlement in August 2013.

22. ***Biotechnology Value Fund, L.P. v. Celera Corp.***, 3:13-cv-03248-WHA (N.D. Cal.). Lieff Cabraser represented a group of affiliated funds investing in biotechnology companies in this individual action arising from misconduct in connection with Quest Diagnostics Inc.'s 2011 acquisition of Celera Corporation. Celera, Celera's individual directors, and Credit Suisse were charged with violations of Sections 14(e) and 20(a) of the Exchange Act and breach of fiduciary duty. In February 2014, the Court denied in large part defendants' motion to dismiss the second amended complaint. In September 2014, the plaintiffs settled with Credit Suisse for a confidential amount. After the completion of fact and expert discovery, and prior to a ruling on defendants' motion for summary judgment, the plaintiffs settled with the Celera defendants in January 2015 for a confidential amount.

23. ***Bank of America-Merrill Lynch Merger Securities Cases***. In two cases -- *DiNapoli, et al. v. Bank of America Corp.*, No. 10 CV 5563 (S.D. N.Y.) and *Schwab S&P 500 Index Fund, et al. v. Bank of America Corp., et al.*, No. 11-cv- 07779 PKC (S.D. N.Y.). -- Lieff Cabraser sought recovery on a direct, non-class basis for losses that a number of public pension funds and mutual funds incurred as a result of Bank of America's alleged misrepresentations and concealment of material facts in connection with its acquisition of Merrill Lynch & Co., Inc. Lieff Cabraser represented the New York State Common Retirement Fund, the New York State Teachers' Retirement System, the Public Employees' Retirement Association of Colorado, and fourteen mutual funds managed by Charles Schwab Investment Management. Both cases settled in 2013 on confidential terms favorable for our clients.

24. ***Albert v. Alex. Brown Management Services; Baker v. Alex. Brown Management Services*** (Del. Ch. Ct.). In May 2004, on behalf of investors in two investment funds controlled, managed and operated by Deutsche Bank and advised by DC Investment Partners, Lieff Cabraser filed lawsuits for alleged fraudulent conduct that resulted in an aggregate loss of hundreds of millions of dollars. The suits named as defendants Deutsche Bank and its subsidiaries Alex. Brown Management Services and Deutsche Bank Securities, members of the funds' management committee, as well as DC Investments Partners and two of its principals. Among the plaintiff-investors were 70 high net worth individuals. In the fall of 2006, the cases settled by confidential agreement.

III. Employment Discrimination and Unfair Employment Practices

A. Current Cases

1. ***Chen-Oster v. Goldman Sachs***, No. 10-6950 (S.D.N.Y.). Lieff Cabraser serves as Co-Lead Counsel for plaintiffs in a gender discrimination class action lawsuit against Goldman Sachs. The complaint alleges that Goldman Sachs has engaged in systemic and pervasive discrimination against its female professional employees in violation of Title VII of the Civil Rights Act of 1964 and the New York City Human Rights Law. The complaint charges that, among other things, Goldman Sachs pays its female professionals less than similarly situated males, disproportionately promotes men over equally or more qualified women, and offers better business opportunities and professional support to its male professionals. In 2012, the Court denied defendant's motion to strike class allegations. On March 10, 2015, Magistrate Judge James C. Francis IV issued a recommendation against certifying the class. Review of the Magistrate Judge's recommendation to deny plaintiffs' motion for class certification is pending before U.S. District Court Judge Analisa Torres.

2. ***Benedict v. Hewlett-Packard Company***, No. C13-0119 (N.D. Cal.). Lieff Cabraser represents former Hewlett-Packard ("HP") technical support employees who filed a nationwide class action lawsuit charging that HP failed to pay them and other former and current technical support employees for all overtime hours worked in violation of the federal Fair Labor Standards Act ("FLSA") and state law. The complaint charges that HP has a common practice of misclassifying its technical support workers as exempt and refusing to pay them overtime. On February 13, 2014, the Court granted plaintiffs' motion for conditional certification of a FSLA overtime action.

3. ***Kassman v. KPMG, LLP***, Case No. 11-03743 (S.D.N.Y.). Lieff Cabraser serves as Co-Lead Counsel for plaintiffs in a gender discrimination class and collective action lawsuit alleging that KPMG has engaged in systemic and pervasive discrimination against its female Client Service and Support Professionals in pay and promotion, discrimination based on pregnancy, and chronic failure to properly investigate and resolve complaints of discrimination and harassment. The complaint alleges violations of the Equal Pay Act, Title VII of the Civil Rights Act of 1964, the New York Executive Law § 296, and the New York City Administrative Code § 8-107. For purposes of the Equal Pay Act claim, plaintiffs represent a conditionally-certified collective of over 1,300 female Client Service and Support Professionals who have opted in to the lawsuit. In addition to bringing the Title VII and New York statutory claims on their own behalf, plaintiffs seek to represent a class of current and former exempt female Client Service and Support Professionals, including

Associates, Senior Associates, Managers, Senior Managers, and Managing Directors in KPMG's Tax and Advisory functions.

4. ***Zaborowski v. MHN Government Services***, No. 12-CV-05109-SI (N.D. Cal.) Lieff Cabraser represents current and former Military and Family Life Consultants ("MFLCs") in a class action lawsuit against MHN Government Services, Inc., ("MHN") and Managed Health Network, Inc., seeking overtime pay under the federal Fair Labor Standards Act and state laws. The complaint charges that MHN has misclassified the MFLCs as independent contractors and as "exempt" from overtime and failed to pay them overtime pay for hours worked over 40 per week. In April 2013, the Court denied MHN's motion to compel arbitration and granted plaintiff's motion for conditional certification of a FLSA collective action. In December 2014, the U.S. Court of Appeals for the Ninth Circuit affirmed the Court's denial of MHN's motion to compel arbitration.

5. ***Lusardi v. McHugh, Secretary of the Army***, No. 0120133395 (U.S. EEOC). Lieff Cabraser and the Transgender Law Center represent Tamara Lusardi, a transgender civilian software specialist employed by the U.S. Army. In a groundbreaking decision in April 2015, the Equal Employment Opportunity Commission reversed a lower agency decision and held that the employer subjected Lusardi to disparate treatment and harassment based on sex in violation of Title VII of the Civil Rights Act of 1964 when (1) the employer restricted her from using the common female restroom (consistent with her gender identity) and (2) a team leader intentionally and repeatedly referred to her by male pronouns and made hostile remarks about her transition and gender.

6. ***Tatum v. R.J. Reynolds Tobacco Company***, No. 1:02-cv-00373-NCT (M.D. N.C.). Lieff Cabraser serves as Co-Lead Trial Counsel in this class action on behalf of over 3,500 employees of R.J. Reynolds Tobacco Company ("RJR") brought under the Employment Retirement Income Security Act. Plaintiffs allege that RJR breached its duty of prudence in administering the employee 401(k) retirement plan when it liquidated two funds held by the plan on an arbitrary timeline without conducting a thorough investigation, thereby causing a substantial loss to the plan. The 6-week bench trial occurred in January-February 2010 and December 2010, and post-trial briefing concluded in February 2011.

   In February 2013, the District Court issued a decision in favor of RJR. The District Court found that RJR breached its fiduciary duty of procedural prudence but concluded that a reasonable and prudent fiduciary could have made the same decision as RJR made. Plaintiffs appealed. In August 2014, the U.S. Court of Appeals for the Fourth Circuit affirmed the holding that RJR breached its duty of procedural prudence and therefore bore the burden of proof as to causation. The

Court of Appeals found that the District Court failed to apply the correct legal standard in assessing RJR's liability, reversed the judgment in favor of RJR, and remanded the case to the District Court for further proceedings.

RJR sought review by the U.S. Supreme Court of the appellate court's fiduciary duty standard. On June 29, 2015, the Court denied RJR's petition for a writ of certiorari. The case, originally filed in 2002, now returns to the District Court for a new liability verdict.

7. ***Strauch v. Computer Sciences Corporation***, No. 2:14-cv-00956 (D. Conn.). In 2005, Computer Sciences Corporation ("CSC") settled for $24 million a nationwide class and collective action lawsuit alleging that CSC misclassified thousands of its information technology support workers as exempt from overtime pay in violation of in violation of the federal Fair Labor Standards Act ("FLSA") and state law. Notwithstanding that settlement, a complaint filed on behalf of current and former CSC IT worker in 2014 by Lieff Cabraser and co-counsel alleges that CSC misclassifies many information technology support workers as exempt even though they perform primarily nonexempt work. Plaintiffs are current and former CSC System Administrators assigned the primary duty of the installation, maintenance, and/or support of computer software and/or hardware for CSC clients. On June 9, 2015, the Court granted plaintiffs' motion for conditional certification of a FLSA collective action.

8. ***Senne v. Major League Baseball***, No. 14-cv-00608 (N.D. Cal.). Lieff Cabraser represents current and former Minor League Baseball players employed under uniform player contracts in a class and collective action seeking unpaid overtime and minimum wages under the Fair Labor Standards Act and state laws. The complaint alleges that Major League Baseball ("MLB"), the MLB franchises, and other defendants paid minor league players a uniform monthly fixed salary that, in light of the hours worked, amounts to less than the minimum wage and an unlawful denial of overtime pay.

B. Successes

1. ***Butler v. Home Depot***, No. C94-4335 SI (N.D. Cal.). Lieff Cabraser and co-counsel represented a class of approximately 25,000 female employees and applicants for employment with Home Depot's West Coast Division who alleged gender discrimination in connection with hiring, promotions, pay, job assignment, and other terms and conditions of employment. The class was certified in January 1995. In January 1998, the Court approved a $87.5 million settlement of the action that included comprehensive injunctive relief over the term of a five-year Consent Decree. Under the terms of the settlement, Home Depot modified its hiring, promotion, and compensation practices to ensure that interested

and qualified women were hired for, and promoted to, sales and management positions.

On January 14, 1998, U.S. District Judge Susan Illston commented that the settlement provides "a very significant monetary payment to the class members for which I think they should be grateful to their counsel. . . . Even more significant is the injunctive relief that's provided for . . ." By 2003, the injunctive relief had created thousands of new job opportunities in sales and management positions at Home Depot, generating the equivalent of over approximately $100 million per year in wages for female employees.

In 2002, Judge Illston stated that the injunctive relief has been a "win/win . . . for everyone, because . . . the way the Decree has been implemented has been very successful and it is good for the company as well as the company's employees."

2. ***Rosenburg v. IBM***, No. C 06-0430 PJH (N.D. Cal.). In July 2007, the Court granted final approval to a $65 million settlement of a class action suit by current and former technical support workers for IBM seeking unpaid overtime. The settlement constitutes a record amount in litigation seeking overtime compensation for employees in the computer industry. Plaintiffs alleged that IBM illegally misclassified its employees who install or maintain computer hardware or software as "exempt" from the overtime pay requirements of federal and state labor laws.

3. ***Satchell v. FedEx Express***, No. C 03-2659 SI; C 03-2878 SI (N.D. Cal.). In 2007, the Court granted final approval to a $54.9 million settlement of the race discrimination class action lawsuit by African American and Latino employees of FedEx Express. The settlement requires FedEx to reform its promotion, discipline, and pay practices. Under the settlement, FedEx will implement multiple steps to promote equal employment opportunities, including making its performance evaluation process less discretionary, discarding use of the "Basic Skills Test" as a prerequisite to promotion into certain desirable positions, and changing employment policies to demonstrate that its revised practices do not continue to foster racial discrimination. The settlement, covering 20,000 hourly employees and operations managers who have worked in the western region of FedEx Express since October 1999, was approved by the Court in August 2007.

4. ***Gonzalez v. Abercrombie & Fitch Stores***, No. C03-2817 SI (N.D. Cal.). In April 2005, the Court approved a settlement, valued at approximately $50 million, which requires the retail clothing giant Abercrombie & Fitch to provide monetary benefits of $40 million to the class of Latino, African American, Asian American and female applicants and employees who charged the company with discrimination. The

settlement included a six-year period of injunctive relief requiring the company to institute a wide range of policies and programs to promote diversity among its workforce and to prevent discrimination based on race or gender. Lieff Cabraser served as Lead Class Counsel and prosecuted the case with a number of co-counsel firms, including the Mexican American Legal Defense and Education Fund, the Asian Pacific American Legal Center and the NAACP Legal Defense and Educational Fund, Inc.

5. ***Giles v. Allstate***, JCCP Nos. 2984 and 2985. Lieff Cabraser represented a class of Allstate insurance agents seeking reimbursement of out-of-pocket costs. The action settled for approximately $40 million.

6. ***Calibuso v. Bank of America Corporation, Merrill Lynch & Co.***, No. CV10-1413 (E.D. N.Y.). Lieff Cabraser served as Co-Lead Counsel for female Financial Advisors who alleged that Bank of America and Merrill Lynch engaged in a pattern and practice of gender discrimination with respect to business opportunities and compensation. The complaint charged that these violations were systemic, based upon company-wide policies and practices. In December 2013, the Court approved a $39 million settlement. The settlement included three years of programmatic relief, overseen by an independent monitor, regarding teaming and partnership agreements, business generation, account distributions, manager evaluations, promotions, training, and complaint processing and procedures, among other things. An independent consultant also conducted an internal study of the bank's Financial Advisors' teaming practices.

7. ***Frank v. United Airlines***, No. C-92-0692 MJJ (N.D. Cal.). Lieff Cabraser and co-counsel obtained a $36.5 million settlement in February 2004 for a class of female flight attendants who were required to weigh less than comparable male flight attendants. Former U.S. District Court Judge Charles B. Renfrew (ret.), who served as a mediator in the case, stated, "As a participant in the settlement negotiations, I am familiar with and know the reputation, experience and skills of lawyers involved. They are dedicated, hardworking and able counsel who have represented their clients very effectively." U.S. District Judge Martin J. Jenkins, in granting final approval to the settlement, found "that the results achieved here could be nothing less than described as exceptional," and that the settlement "was obtained through the efforts of outstanding counsel."

8. ***Barnett v. Wal-Mart***, No. 01-2-24553-SNKT (Wash.). The Court approved in July 2009 a settlement valued at up to $35 million on behalf of workers in Washington State who alleged they were deprived of meal and rest breaks and forced to work off-the-clock at Wal-Mart stores and Sam's Clubs. In addition to monetary relief, the settlement provided injunctive relief benefiting all employees. Wal-Mart was required to

undertake measures to prevent wage and hour violations at its 50 stores and clubs in Washington, measures that included the use of new technologies and compliance tools.

Plaintiffs filed their complaint in 2001. Three years later, the Court certified a class of approximately 40,000 current and former Wal-Mart employees. The eight years of litigation were intense and adversarial. Wal-Mart, currently the world's third largest corporation, vigorously denied liability and spared no expense in defending itself.

This lawsuit and similar actions filed against Wal-Mart across America served to reform the pay procedures and employment practices for Wal-Mart's 1.4 million employees nationwide. In a press release announcing the Court's approval of the settlement, Wal-Mart spokesperson Daphne Moore stated, "This lawsuit was filed years ago and the allegations are not representative of the company we are today." Lieff Cabraser served as Court-appointed Co-Lead Class Counsel.

9. ***Amochaev. v. Citigroup Global Markets, d/b/a Smith Barney***, No. C 05-1298 PJH (N.D. Cal.). In August 2008, the Court approved a $33 million settlement for the 2,411 members of the Settlement Class in a gender discrimination case against Smith Barney. Lieff Cabraser represented Female Financial Advisors who charged that Smith Barney, the retail brokerage unit of Citigroup, discriminated against them in account distributions, business leads, referral business, partnership opportunities, and other terms of employment. In addition to the monetary compensation, the settlement included comprehensive injunctive relief for four years designed to increase business opportunities and promote equality in compensation for female brokers.

10. ***Vedachalam v. Tata Consultancy Services***, C 06-0963 CW (N.D. Cal.). Lieff Cabraser served as Co-Lead Counsel for 12,700 foreign nationals sent by the Indian conglomerate Tata to work in the U.S. After 7 years of hard-fought litigation, the District Court in July 2013 granted final approval to a $29.75 million settlement. The complaint charged that Tata breached the contracts of its non-U.S.-citizen employees by requiring them to sign over their federal and state tax refund checks to Tata, and by failing to pay its non-U.S.-citizen employees the monies promised to those employees before they came to the United States. In 2007 and again in 2008, the District Court denied Tata's motions to compel arbitration of Plaintiffs' claims in India. The Court held that no arbitration agreement existed because the documents purportedly requiring arbitration in India applied one set of rules to the Plaintiffs and another set to Tata. In 2009, the Ninth Circuit Court of Appeals affirmed this decision. In July 2011, the District Court denied in part Tata's motion for summary judgment, allowing Plaintiffs' legal claims for breach of contract and certain

violations of California wage laws to go forward. In 2012, the District Court found that the plaintiffs satisfied the legal requirements for a class action and certified two classes.

11. ***Giannetto v. Computer Sciences Corporation***, No. 03-CV-8201 (C.D. Cal.). In one of the largest overtime pay dispute settlements ever in the information technology industry, the Court approved a $24 million settlement with Computer Sciences Corporation in 2005. Plaintiffs charged that the global conglomerate had a common practice of refusing to pay overtime compensation to its technical support workers involved in the installation and maintenance of computer hardware and software in violation of the Fair Labor Standards Act, California's Unfair Competition Law, and the wage and hour laws of 13 states.

12. ***Church v. Consolidated Freightways***, No. C90-2290 DLJ (N.D. Cal.). Lieff Cabraser was the Lead Court-appointed Class Counsel in this class action on behalf of the exempt employees of Emery Air Freight, a freight forwarding company acquired by Consolidated Freightways in 1989. On behalf of the employee class, Lieff Cabraser prosecuted claims for violation of the Employee Retirement Income Security Act, the securities laws, and the Age Discrimination in Employment Act. The case settled in 1993 for $13.5 million.

13. ***Gerlach v. Wells Fargo & Co.***, No. C 05-0585 CW (N.D. Cal.). In January 2007, the Court granted final approval to a $12.8 million settlement of a class action suit by current and former business systems employees of Wells Fargo seeking unpaid overtime. Plaintiffs alleged that Wells Fargo illegally misclassified those employees, who maintained and updated Wells Fargo's business tools according to others' instructions, as "exempt" from the overtime pay requirements of federal and state labor laws.

14. ***Buccellato v. AT&T Operations***, No. C10-00463-LHK (N.D. Cal.). Lieff Cabraser represented a group of current and former AT&T technical support workers who alleged that AT&T misclassified them as exempt and failed to pay them for all overtime hours worked, in violation of federal and state overtime pay laws. In June 2011, the Court approved a $12.5 million collective and class action settlement.

15. ***Buttram v. UPS***, No. C-97-01590 MJJ (N.D. Cal.). Lieff Cabraser and several co-counsel represented a class of approximately 14,000 African-American part-time hourly employees of UPS's Pacific and Northwest Regions alleging race discrimination in promotions and job advancement. In 1999, the Court approved a $12.14 million settlement of the action. Under the injunctive relief portion of the settlement, Class Counsel monitored the promotions of African-American part-time hourly employees to part-time supervisor and full-time package car drivers.

16. ***Goddard, et al. v. Longs Drug Stores Corporation, et al.***, No. RG04141291 (Cal. Supr. Ct.). Store managers and assistant store managers of Longs Drugs charged that the company misclassified them as exempt from overtime wages. Managers regularly worked in excess of 8 hours per day and 40 hours per week without compensation for their overtime hours. Following mediation, in 2005, Longs Drugs agreed to settle the claims for a total of $11 million. Over 1,000 current and former Longs Drugs managers and assistant managers were eligible for compensation under the settlement, over 98% of the class submitted claims.

17. ***Trotter v. Perdue Farms***, No. C 99-893-RRM (JJF) (MPT) (D. Del.). Lieff Cabraser represented a class of chicken processing employees of Perdue Farms, Inc., one of the nation's largest poultry processors, for wage and hour violations. The suit challenged Perdue's failure to compensate its assembly line employees for putting on, taking off, and cleaning protective and sanitary equipment in violation of the Fair Labor Standards Act, various state wage and hour laws, and the Employee Retirement Income Security Act. Under a settlement approved by the Court in 2002, Perdue paid $10 million for wages lost by its chicken processing employees and attorneys' fees and costs. The settlement was in addition to a $10 million settlement of a suit brought by the Department of Labor in the wake of Lieff Cabraser's lawsuit.

18. ***Gottlieb v. SBC Communications***, No. CV-00-04139 AHM (MANx) (C.D. Cal.). With co-counsel, Lieff Cabraser represented current and former employees of SBC and Pacific Telesis Group ("PTG") who participated in AirTouch Stock Funds, which were at one time part of PTG's salaried and non-salaried savings plans. After acquiring PTG, SBC sold AirTouch, which PTG had owned, and caused the AirTouch Stock Funds that were included in the PTG employees' savings plans to be liquidated. Plaintiffs alleged that in eliminating the AirTouch Stock Funds, and in allegedly failing to adequately communicate with employees about the liquidation, SBC breached its duties to 401k plan participants under the Employee Retirement Income Security Act. In 2002, the Court granted final approval to a $10 million settlement.

19. ***Ellis v. Costco Wholesale Corp.***, No. 04-03341-EMC (N.D. Cal.). Lieff Cabraser served as Co-Lead Counsel for current and former female employees who charged that Costco discriminated against women in promotion to management positions. In January 2007, the Court certified a class consisting of over 750 current and former female Costco employees nationwide who were denied promotion to General Manager or Assistant Manager since January 3, 2002. Costco appealed. In September 2011, the U.S. Court of Appeals for the Ninth Circuit remanded the case to the District Court to make class certification findings

consistent with the U.S. Supreme Court's ruling in *Wal-Mart v. Dukes*, 131 S.Ct. 2541 (2011). In September 2012, U.S. District Court Judge Edward M. Chen granted plaintiffs' motion for class certification and certified two classes of over 1,250 current and former female Costco employees, one for injunctive relief and the other for monetary relief. On May 27, 2014, the Court approved an $8 million settlement.

20. ***In Re Farmers Insurance Exchange Claims Representatives' Overtime Pay Litigation***, MDL No. 1439 (D. Ore.). Lieff Cabraser and co-counsel represented claims representatives of Farmers' Insurance Exchange seeking unpaid overtime. Lieff Cabraser won a liability phase trial on a classwide basis, and then litigated damages on an individual basis before a special master. The judgment was partially upheld on appeal. In August 2010, the Court approved an $8 million settlement.

21. ***Zuckman v. Allied Group***, No. 02-5800 SI (N.D. Cal.). In September 2004, the Court approved a settlement with Allied Group and Nationwide Mutual Insurance Company of $8 million plus Allied/Nationwide's share of payroll taxes on amounts treated as wages, providing plaintiffs a 100% recovery on their claims. Plaintiffs, claims representatives of Allied / Nationwide, alleged that the company misclassified them as exempt employees and failed to pay them and other claims representatives in California overtime wages for hours they worked in excess of eight hours or forty hours per week. In approving the settlement, U.S. District Court Judge Susan Illston commended counsel for their "really good lawyering" and stated that they did "a splendid job on this" case.

22. ***Thomas v. California State Automobile Association***, No. CH217752 (Cal. Supr. Ct.). With co-counsel, Lieff Cabraser represented 1,200 current and former field claims adjusters who worked for the California State Automobile Association ("CSAA"). Plaintiffs alleged that CSAA improperly classified their employees as exempt, therefore denying them overtime pay for overtime worked. In May 2002, the Court approved an $8 million settlement of the case.

23. ***Higazi v. Cadence Design Systems***, No. C 07-2813 JW (N.D. Cal.). In July 2008, the Court granted final approval to a $7.664 million settlement of a class action suit by current and former technical support workers for Cadence seeking unpaid overtime. Plaintiffs alleged that Cadence illegally misclassified its employees who install, maintain, or support computer hardware or software as "exempt" from the overtime pay requirements of federal and state labor laws.

24. ***Sandoval v. Mountain Center, Inc., et al.***, No. 03CC00280 (Cal. Supr. Ct.). Cable installers in California charged that defendants owed them overtime wages, as well as damages for missed meal and rest breaks and reimbursement for expenses incurred on the job. In 2005, the Court

approved a $7.2 million settlement of the litigation, which was distributed to the cable installers who submitted claims.

25. ***Lewis v. Wells Fargo***, No. 08-cv-2670 CW (N.D. Cal.). Lieff Cabraser served as Lead Counsel on behalf of approximately 330 I/T workers who alleged that Wells Fargo had a common practice of misclassifying them as exempt and failing to pay them for all overtime hours worked in violation of federal and state overtime pay laws. In April 2011, the Court granted collective action certification of the FLSA claims and approved a $6.72 million settlement of the action.

26. ***Kahn v. Denny's***, No. BC177254 (Cal. Supr. Ct.). Lieff Cabraser brought a lawsuit alleging that Denny's failed to pay overtime wages to its General Managers and Managers who worked at company-owned restaurants in California. The Court approved a $4 million settlement of the case in 2000.

27. ***Wynne v. McCormick & Schmick's Seafood Restaurants***, No. C 06-3153 CW (N.D. Cal.). In August 2008, the Court granted final approval to a settlement valued at $2.1 million, including substantial injunctive relief, for a class of African American restaurant-level hourly employees. The consent decree created hiring benchmarks to increase the number of African Americans employed in front of the house jobs (*e.g.*, server, bartender, host/hostess, waiter/waitress, and cocktail server), a registration of interest program to minimize discrimination in promotions, improved complaint procedures, and monitoring and enforcement mechanisms.

28. ***Sherrill v. Premera Blue Cross***, No. 2:10-cv-00590-TSZ (W.D. Wash.). In April 2010, a technical worker at Premera Blue Cross filed a lawsuit against Premera seeking overtime pay from its misclassification of technical support workers as exempt. In June 2011, the Court approved a collective and class action settlement of $1.45 million.

29. ***Holloway v. Best Buy***, No. C05-5056 PJH (N.D. Cal.). Lieff Cabraser, with co-counsel, represented a class of current employees of Best Buy that alleged Best Buy stores nationwide discriminated against women, African Americans, and Latinos. The complaint charged that these employees were assigned to less desirable positions and denied promotions, and that class members who attained managerial positions were paid less than white males. In November 2011, the Court approved a settlement of the class action in which Best Buy agreed to changes to its personnel policies and procedures that will enhance the equal employment opportunities of the tens of thousands of women, African Americans, and Latinos employed by Best Buy nationwide.

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30. ***Lyon v. TMP Worldwide***, No. 993096 (Cal. Supr. Ct.). Lieff Cabraser served as Class Counsel for a class of certain non-supervisory employees in an advertising firm. The settlement, approved in 2000, provided almost a 100% recovery to class members. The suit alleged that TMP failed to pay overtime wages to these employees.

Lieff Cabraser attorneys have had experience representing employees in additional cases, including cases involving race, gender, sexual orientation, gender identity, and age discrimination; False Claims Act (whistleblower) claims; breach of contract claims; unpaid wages or exempt misclassification (wage/hour) claims; pension plan abuses under ERISA; and other violations of the law. For example, as described in the Antitrust section of this resume, Lieff Cabraser serves as plaintiffs' Co-Lead Counsel in a class action charging that Adobe Systems Inc., Apple Inc., Google Inc., and Intel Corporation violated antitrust laws by conspiring to suppress the wages of certain salaried employees.

Lieff Cabraser is currently investigating charges of discrimination, wage/hour violations, and wage suppression claims against several companies. In addition, our attorneys frequently write amicus briefs on cutting-edge legal issues involving employment law.

In 2015, *The Recorder* named Lieff Cabraser's employment group as a Litigation Department of the Year in the category of California Labor and Employment Law. The Litigation Department of the Year awards recognize "California litigation practices that deliver standout results on their clients' most critical matters." *The Recorder* editors consider the degree of difficulty, dollar value and importance of each matter to the client; the depth and breadth of the practice; and the use of innovative approaches.

U.S. News and Best Lawyers selected Lieff Cabraser as a 2013 national "Law Firm of the Year" in the category of Employment Law – Individuals. *U.S. News* and Best Lawyers ranked firms nationally in 80 different practice areas based on extensive client feedback and evaluations from 70,000 lawyers nationwide. Only one law firm in the U.S. in each practice area receives the "Law Firm of the Year" designation.

Benchmark Plaintiff, a guide to the nation's leading plaintiffs' firms, has given Lieff Cabraser's employment practice group a Tier 1 national ranking, its highest rating. *The Legal 500* guide to the U.S. legal profession has recognized Lieff Cabraser as having one of the leading plaintiffs' employment practices in the nation for the past four years.

Kelly M. Dermody chairs the firm's employment practice group and leads the firm's employment cases. She also serves as Managing Partner of Lieff Cabraser's San Francisco office.

In 2015, the College of Labor and Employment Lawyers named Ms. Dermody a Fellow. Nomination to the College is by ones colleagues only, and recognizes those lawyers who have demonstrated sustained and exceptional services to their clients, bar, bench, and public, and the highest level of character, integrity, professional expertise, and leadership.

The Daily Journal has selected Ms. Dermody as one of the top 100 attorneys in California (2012-2014), top 75 labor and employment lawyers in California (2011-2015), and top 100 women litigators in California (2007, 2010, 2012-2015). She has been named a Northern California "Super Lawyer" every year since 2004, including being named a "Top 10 Lawyer" in 2014.

Since 2010, Ms. Dermody has annually been recognized by her peers for inclusion in *The Best Lawyers in America* in the fields of Employment Law – Individuals and Litigation – Labor and Employment. In 2014, she was named "Lawyer of the Year" by Best Lawyers in the category of Employment Law – Individuals in San Francisco. In 2007, *California Lawyer* magazine awarded Ms. Dermody its prestigious California Lawyer Attorney of the Year (CLAY) Award.

IV. Consumer Protection

A. Current Cases

1. ***Gutierrez v. Wells Fargo Bank***, No. C 07-05923 WHA (N.D. Cal.). Following a two week bench class action trial, U.S. District Court Judge William Alsup in August 2010 issued a 90-page opinion holding that Wells Fargo violated California law by improperly and illegally assessing overdraft fees on its California customers and ordered $203 million in restitution to the certified class. Instead of posting each transaction chronologically, the evidence presented at trial showed that Wells Fargo deducted the largest charges first, drawing down available balances more rapidly and triggering a higher volume of overdraft fees.

   Wells Fargo appealed. In December 2012, the Appellate Court issued an opinion upholding and reversing portions of Judge Alsup's order, and remanded the case to the District Court for further proceedings. In May 2013, Judge Alsup reinstated the $203 million judgment against Wells Fargo and imposed post-judgment interest bringing the total award to nearly $250 million. On October 29, 2014, the Appellate Court affirmed the Judge Alsup's order reinstating the judgment.

   For his outstanding work as Lead Trial Counsel and the significance of the case, *California Lawyer* magazine recognized Richard M. Heimann with a California Lawyer Attorney of the Year (CLAY) Award. In addition, the Consumer Attorneys of California selected Mr. Heimann and Michael W. Sobol as Finalists for the Consumer Attorney of the Year Award for their success in the case.

2. ***In re Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fl.). Lieff Cabraser serves on the Plaintiffs' Executive Committee ("PEC") in Multi-District Litigation against 35 banks, including Bank of America, Chase, Citizens, PNC, Union Bank, and U.S. Bank. The complaints alleged that the banks entered debit card transactions from the "largest to the smallest" to draw down available balances more rapidly and maximize overdraft fees. In March 2010, the Court denied defendants' motions to dismiss the complaints. The Court has approved nearly $1 billion in settlements with the banks.

   In November 2011, the Court granted final approval to a $410 million settlement of the case against Bank of America. Lieff Cabraser was the

lead plaintiffs' law firm on the PEC that prosecuted the case against Bank of America. In approving the settlement with Bank of America, U.S. District Court Judge James Lawrence King stated, "This is a marvelous result for the members of the class." Judge King added, "[B]ut for the high level of dedication, ability and massive and incredible hard work by the Class attorneys . . . I do not believe the Class would have ever seen . . . a penny."

In September 2012, the Court granted final approval to a $35 million of the case against Union Bank. In approving the settlement, Judge King again complimented plaintiffs' counsel for their outstanding work and effort in resolving the case: "The description of plaintiffs' counsel, which is a necessary part of the settlement, is, if anything, understated. In my observation of the diligence and professional activity, it's superb. I know of no other class action case anywhere in the country in the last couple of decades that's been handled as efficiently as this one has, which is a tribute to the lawyers."

3. ***Hansell v. TracFone Wireless***, No. 13-cv-3440-EMC (N.D. Cal.); ***Blaqmoor v. TracFone Wireless***, No. 13-cv-05295-EMC (N.D. Cal.); ***Gandhi v. TracFone Wireless***, No. 13-cv-05296-EMC (N.D. Cal.). In January 2015, Michael W. Sobol, the chair of Lieff Cabraser's consumer protection practice group, announced that consumers nationwide who purchased service plans with "unlimited data" from TracFone Wireless, Inc., were eligible to receive payments under a $40 million settlement of a series of class action lawsuits. One of the nation's largest wireless carriers, TracFone uses the brands Straight Talk, Net10, Telcel America, and Simple Mobile to sell mobile phones with prepaid wireless plans at Walmart and other retail stores nationwide. The class action alleged that TracFone falsely advertised its wireless mobile phone plans as providing "unlimited data," while actually maintaining monthly data usage limits that were not disclosed to customers. It further alleged that TracFone regularly throttled (*i.e.* significantly reduces the speed of) or terminated customers' data plans pursuant to the secret limits. Approved by the Court in July 2015, the settlement permanently enjoins TracFone from making any advertisement or other representation about amount of data its cell phone plans offer without disclosing clearly and conspicuously all material restrictions on the amount and speed of the data plan. Further, TracFone and its brands may not state in their advertisements and marketing materials that any plan provides "unlimited data" unless there is also clear, prominent, and adjoining disclosure of any applicable throttling caps or limits. The litigation is notable in part because, following two years of litigation by class counsel, the Federal Trade Commission joined the litigation and filed a Consent Order with TracFone in the same federal court where the class action litigation is pending. All

compensation to consumers will be provided through the class action settlement.

4. ***Dover v. British Airways***, Case No. 1:12-cv-05567 (E.D.N.Y.). Lieff Cabraser represents participants in British Airways' ("BA") frequent flyer program, known as the Executive Club, in a breach of contract class action lawsuit. BA imposes a very high "fuel surcharge," often in excess of $500, on Executive Club reward tickets. Plaintiffs allege that the "fuel surcharge" is not based upon the price of fuel, and that it therefore violates the terms of the contract.

5. ***Telephone Consumer Protection Act Litigation***. Lieff Cabraser represents consumers who have received debt collection, marketing, or other harassing pre-recorded calls to their cell phones without consenting to receive these calls. The Telephone Consumer Protection Act ("TCPA") prohibits abusive telephone practices by lenders and marketers, and places strict limits on the use of autodialers to call or send texts to cell phones. In a class action lawsuit against Sallie Mae, Inc., we represented student loanholders and other consumers who received automated calls on their mobile phones without their prior express consent from Sallie Mae or an affiliate or subsidiary of SLM Corporation. In September 2012, the Court approved a settlement of $24.15 million. One year later, in a separate class action against Bank of America, the Court approved a $32 million settlement, one of the largest monetary settlements in the history of the TCPA.

   In addition to a $8.7 million settlement with Discover Bank, class settlements with Bank of the West, Capital One, Carrington Mortgage Services, HSBC, and JPMorgan Chase Bank are awaiting Court approval. Lieff Cabraser continues to litigate cases against Allstate, American Express, DIRECTV, Esurance, Farmers, Nationwide, State Farm, TD Auto Finance, and Wells Fargo Bank.

6. ***Campbell v. Facebook***, No. 4:13-cv-05996 (N.D. Cal.). Lieff Cabraser represents Facebook users in a nationwide class action lawsuit alleging that Facebook intercepts certain private data in users' personal and private e-mail messages on the social network and profits by sharing that information with third parties. The complaint alleges that when a user composes a private Facebook message and includes a link to a third party website (a "URL"), Facebook does not treat this message as private. Instead, Facebook scans the content of the message, follows the URL, and searches for information to profile the message-sender's web activity. This enables Facebook to mine aspects of user data and profit from that data by sharing it with third parties - namely, advertisers, marketers, and other data aggregators.

7. ***Moore v. Verizon Communications***, No. 09-cv-01823-SBA (N.D. Cal.); ***Nwabueze v. AT&T***, No. 09-cv-1529 SI (N.D. Cal.); ***Terry v. Pacific Bell Telephone Co.***, No. RG 09 488326 (Alameda County Sup. Ct.). Lieff Cabraser, with co-counsel, represents nationwide classes of landline telephone customers subjected to the deceptive business practice known as "cramming." In this practice, a telephone company bills customers for unauthorized third-party charges assessed by billing aggregators on behalf of third-party providers. A U.S. Senate committee has estimated that Verizon, AT&T, and Qwest place 300 million such charges on customer bills each year (amounting to $2 billion in charges), many of which are unauthorized. Various sources estimate that 90-99% of third-party charges are unauthorized. Both Courts have granted preliminary approval of settlements that allow customers to receive 100% refunds for all unauthorized charges from 2005 to the present, plus extensive injunctive relief to prevent cramming in the future. The Nwabueze and Terry cases are ongoing.

8. ***James v. UMG Recordings, Inc.***, No. CV-11-1613 (N.D. Cal); ***Zombie v. UMG Recordings, Inc.***, No. CV-11-2431 (N.D. Cal). Lieff Cabraser and its co-counsel represent music recording artists in a proposed class action against Universal Music Group. Plaintiffs allege that Universal failed to pay the recording artists full royalty income earned from customers' purchases of digitally downloaded music from vendors such as Apple iTunes. The complaint alleges that Universal licenses plaintiffs' music to digital download providers, but in its accounting of the royalties plaintiffs have earned, treats such licenses as "records sold" because royalty rate for "records sold" is lower than the royalty rate for licenses. Plaintiffs legal claims include breach of contract and violation of California unfair competition laws. In November 2011 the Court denied defendant's motion to dismiss plaintiffs' unfair competition law claims.

9. ***White v. Experian Information Solutions***, No. 05-CV-1070 DOC (C.D. Cal.). In 2005, plaintiffs filed nationwide class action lawsuits on behalf of 750,000 claimants against the nation's three largest repositories of consumer credit information, Experian Information Solutions, Inc., Trans Union, LLC, and Equifax Information Services, LLC. The complaints charged that defendants violated the Fair Credit Reporting Act ("FCRA") by recklessly failing to follow reasonable procedures to ensure the accurate reporting of debts discharged in bankruptcy and by refusing to adequately investigate consumer disputes regarding the status of discharged accounts. In April 2008, the District Court approved a partial settlement of the action that established an historic injunction. This settlement required defendants comply with detailed procedures for the retroactive correction and updating of consumers' credit file information concerning discharged debt (affecting one million consumers who had

filed for bankruptcy dating back to 2003), as well as new procedures to ensure that debts subject to future discharge orders will be similarly treated. As noted by the District Court, "Prior to the injunctive relief order entered in the instant case, however, no verdict or reported decision had ever required Defendants to implement procedures to cross-check data between their furnishers and their public record providers." In 2011, the District Court approved a $45 million settlement of the class claims for monetary relief. In April 2013, the Court of Appeals for the Ninth Circuit reversed the order approving the monetary settlement and remanded the case for further proceedings.

10. ***Healy v. Chesapeake Appalachia***, No. 1:10cv00023 (W.D. Va.); ***Hale v. CNX Gas***, No. 1:10cv00059 (W.D. Va.); ***Estate of Holman v. Noble Energy***, No. 03 CV 9 (Dist. Ct., Co.); ***Droegemueller v. Petroleum Development Corporation***, No. 07 CV 2508 JLK (D. Co.); ***Anderson v. Merit Energy Co.***, No. 07 CV 00916 LTB (D. Co.); ***Holman v. Petro-Canada Resources (USA)***, No. 07 CV 416 (Dist. Ct., Co.). Lieff Cabraser serves as Co-Lead Counsel in several cases pending in federal court in Virginia, in which plaintiffs allege that certain natural gas companies improperly underpaid gas royalties to the owners of the gas. In one case that recently settled, the plaintiffs recovered approximately 95% of the damages they suffered. Lieff Cabraser also achieved settlements on behalf of natural gas royalty owners in five other class actions outside Virginia. Those settlements -- in which class members recovered between 70% and 100% of their damages, excluding interest -- were valued at more than $160 million.

11. ***Adkins v. Morgan Stanley***, No. 12 CV 7667 (S.D.N.Y.). Five African-American residents from Detroit, Michigan, joined by Michigan Legal Services, have brought a class action lawsuit against Morgan Stanley for discrimination in violation of the Fair Housing Act and other civil rights laws. The plaintiffs charge that Morgan Stanley actively ensured the proliferation of high-cost mortgage loans with specific risk factors in order to bundle and sell mortgage-backed securities to investors. The lawsuit is the first to seek to hold a bank in the secondary market accountable for the adverse racial impact of such policies and conduct. Plaintiffs seek certification of the case as a class action for as many as 6,000 African-Americans homeowners in the Detroit area who may have suffered similar discrimination. Lieff Cabraser serves as plaintiffs' counsel with the American Civil Liberties Union, the ACLU of Michigan, and the National Consumer Law Center.

12. ***Williamson v. McAfee, Inc.***, No. 14-cv-00158-EJD (N.D.Cal.). This nationwide class action alleges that McAfee falsely represents the prices of its computer anti-virus software to customers enrolled in its "auto-renewal" program. Plaintiff alleges that McAfee's fraudulent pricing

scheme operates on two levels: First, McAfee offers *non*-auto-renewal subscriptions at stated "discounts" from a "regular" sales price; however, the stated discounts are false because McAfee does not ever sell subscriptions at the stated "regular" price to *non*-auto-renewal customers. Second, plaintiffs allege that McAfee charges the auto-renewal customers the amount of the false "regular" sales price, claiming it to be the "current" regular price even though it does not sell subscriptions at that price to any other customer. Plaintiffs allege that McAfee's false reference price scheme violates California's and New York's unfair competition and false advertising laws.

B. Successes

1. ***Kline v. The Progressive Corporation***, Circuit No. 02-L-6 (Circuit Court of the First Judicial Circuit, Johnson County, Illinois). Lieff Cabraser served as settlement class counsel in a nationwide consumer class action challenging Progressive Corporation's private passenger automobile insurance sales practices. Plaintiffs alleged that the Progressive Corporation wrongfully concealed from class members the availability of lower priced insurance for which they qualified. In 2002, the Court approved a settlement valued at approximately $450 million, which included both cash and equitable relief. The claims program, implemented upon a nationwide mail and publication notice program, was completed in 2003.

2. ***Catholic Healthcare West Cases***, JCCP No. 4453 (Cal. Supr. Ct.). Plaintiff alleged that Catholic Healthcare West ("CHW") charged uninsured patients excessive fees for treatment and services, at rates far higher than the rates charged to patients with private insurance or on Medicare. In January 2007, the Court approved a settlement that provides discounts, refunds and other benefits for CHW patients valued at $423 million. The settlement requires that CHW lower its charges and end price discrimination against all uninsured patients, maintain generous charity case policies allowing low-income and uninsured patients to receive free or heavily discounted care, and protect uninsured patients from unfair collections practices. Lieff Cabraser served as Lead Counsel in the coordinated action.

3. ***In re Neurontin Marketing and Sales Practices Litigation***, No. 04-CV-10739-PBS (D. Mass.). Lieff Cabraser served on the Plaintiffs' Steering Committee in multidistrict litigation arising out of the sale and marketing of the prescription drug Neurontin, manufactured by Parke-Davis, a division of Warner-Lambert Company, which was later acquired by Pfizer, Inc. Lieff Cabraser served as co-counsel to Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals ("Kaiser") in Kaiser's trial against Pfizer in the litigation. On March 25, 2010, a federal court

jury determined that Pfizer violated a federal antiracketeering law by promoting its drug Neurontin for unapproved uses and found Pfizer must pay Kaiser damages up to $142 million. At trial, Kaiser presented evidence that Pfizer knowingly marketed Neurontin for unapproved uses without proof that it was effective. Kaiser said it was misled into believing neuropathic pain, migraines, and bipolar disorder were among the conditions that could be treated effectively with Neurontin, which was approved by the FDA as an adjunctive therapy to treat epilepsy and later for post-herpetic neuralgia, a specific type of neuropathic pain. In November 2010, the Court issued Findings of Fact and Conclusions of Law on Kaiser's claims arising under the California Unfair Competition Law, finding Pfizer liable and ordering that it pay restitution to Kaiser of approximately $95 million. In April 2013, the First Circuit Court of Appeals affirmed both the jury's and the District Court's verdicts. In November 2014, the Court approved a $325 million settlement on behalf of a nationwide class of third party payors.

4. ***Sutter Health Uninsured Pricing Cases***, JCCP No. 4388 (Cal. Supr. Ct.). Plaintiffs alleged that they and a Class of uninsured patients treated at Sutter hospitals were charged substantially more than patients with private or public insurance, and many times above the cost of providing their treatment. In December 2006, the Court granted final approval to a comprehensive and groundbreaking settlement of the action. As part of the settlement, Class members were entitled to make a claim for refunds or deductions of between 25% to 45% from their prior hospital bills, at an estimated total value of $276 million. For a three year period, Sutter agreed to provide discounted pricing policies for uninsureds. In addition, Sutter agreed to maintain more compassionate collections policies that will protect uninsureds who fall behind in their payments. Lieff Cabraser served as Lead Counsel in the coordinated action.

5. ***Citigroup Loan Cases***, JCCP No. 4197 (San Francisco Supr. Ct., Cal.). In 2003, the Court approved a settlement that provided approximately $240 million in relief to former Associates' customers across America. Prior to its acquisition in November 2000, Associates First Financial, referred to as The Associates, was one of the nation's largest "subprime" lenders. Lieff Cabraser represented former customers of The Associates charging that the company added unwanted and unnecessary insurance products onto mortgage loans and engaged in improper loan refinancing practices. Lieff Cabraser served as nationwide Plaintiffs' Co-Liaison Counsel.

6. ***Thompson v. WFS Financial***, No. 3-02-0570 (M.D. Tenn.); ***Pakeman v. American Honda Finance Corporation***, No. 3-02-0490 (M.D. Tenn.); ***Herra v. Toyota Motor Credit Corporation***, No. CGC 03-419 230 (San Francisco Supr. Ct.). Lieff Cabraser with co-

counsel litigated against several of the largest automobile finance companies in the country to compensate victims of—and stop future instances of—racial discrimination in the setting of interest rates in automobile finance contracts. The litigation led to substantial changes in the way Toyota Motor Credit Corporation ("TMCC"), American Honda Finance Corporation ("American Honda") and WFS Financial, Inc. sell automobile finance contracts, limiting the discrimination that can occur. In approving the settlement in *Thompson v. WFS Financial*, the Court recognized the "innovative" and "remarkable settlement" achieved on behalf of the nationwide class. In 2006 in *Herra v. Toyota Motor Credit Corporation*, the Court granted final approval to a nationwide class action settlement on behalf of all African-American and Hispanic customers of TMCC who entered into retail installment contracts that were assigned to TMCC from 1999 to 2006. The monetary benefit to the class was estimated to be between $159-$174 million.

7. ***In re John Muir Uninsured Healthcare Cases***, JCCP No. 4494 (Cal. Supr. Ct.). Lieff Cabraser represented nearly 53,000 uninsured patients who received care at John Muir hospitals and outpatient centers and were charged inflated prices and then subject to overly aggressive collection practices when they failed to pay. In November 2008, the Court approved a final settlement of the *John Muir* litigation. John Muir agreed to provide refunds or bill adjustments of 40-50% to uninsured patients who received medical care at John Muir over a six year period, bringing their charges to the level of patients with private insurance, at a value of $115 million. No claims were required. Every class member received a refund or bill adjustment. Furthermore, John Muir was required to (1) maintain charity care policies to give substantial discounts—up to 100%—to low income, uninsured patients who meet certain income requirements; (2) maintain an Uninsured Patient Discount Policy to give discounts to all uninsured patients, regardless of income, so that they pay rates no greater than those paid by patients with private insurance; (3) enhance communications to uninsured patients so they are better advised about John Muir's pricing discounts, financial assistance, and financial counseling services; and (4) limit the practices for collecting payments from uninsured patients.

8. ***Providian Credit Card Cases***, JCCP No. 4085 (San Francisco Supr. Ct.). Lieff Cabraser served as Co-Lead Counsel for a certified national Settlement Class of Providian credit cardholders who alleged that Providian had engaged in widespread misconduct by charging cardholders unlawful, excessive interest and late charges, and by promoting and selling to cardholders "add-on products" promising illusory benefits and services. In November 2001, the Court granted final approval to a $105 million settlement of the case, which also required Providian to implement substantial changes in its business practices. The

$105 million settlement, combined with an earlier settlement by Providian with Federal and state agencies, represents the largest settlement ever by a U.S. credit card company in a consumer protection case.

9. ***In re Chase Bank USA, N.A. "Check Loan" Contract Litigation***, MDL No. 2032 (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Liaison Counsel and on the Plaintiffs' Executive Committee in Multi-District Litigation ("MDL") charging that Chase Bank violated the implied covenant of good faith and fair dealing by unilaterally modifying the terms of fixed rate loans. The MDL was established in 2009 to coordinate more than two dozen cases that were filed in the wake of the conduct at issue. The nationwide, certified class consisted of more than 1 million Chase cardholders who, in 2008 and 2009, had their monthly minimum payment requirements unilaterally increased by Chase by more than 150%. Plaintiffs alleged that Chase made this change, in part, to induce cardholders to give up their promised fixed APRs in order to avoid the unprecedented minimum payment hike. In November 2012, the Court approved a $100 million settlement of the case.

10. ***In re Synthroid Marketing Litigation***, MDL No. 1182 (N.D. Ill.). Lieff Cabraser served as Co-Lead Counsel for the purchasers of the thyroid medication Synthroid in litigation against Knoll Pharmaceutical, the manufacturer of Synthroid. The lawsuits charged that Knoll misled physicians and patients into keeping patients on Synthroid despite knowing that less costly, but equally effective drugs, were available. In 2000, the District Court gave final approval to a $87.4 million settlement with Knoll and its parent company, BASF Corporation, on behalf of a class of all consumers who purchased Synthroid at any time from 1990 to 1999. In 2001, the Court of Appeals upheld the order approving the settlement and remanded the case for further proceedings. 264 F.3d 712 (7th Cir. 2001). The settlement proceeds were distributed in 2003.

11. ***R.M. Galicia v. Franklin; Franklin v. Scripps Health***, No. IC 859468 (San Diego Supr. Ct., Cal.). Lieff Cabraser served as Lead Class Counsel in a certified class action lawsuit on behalf of 60,750 uninsured patients who alleged that the Scripps Health hospital system imposed excessive fees and charges for medical treatment. The class action originated in July 2006, when uninsured patient Phillip Franklin filed a class action cross-complaint against Scripps Health after Scripps sued Mr. Franklin through a collection agency. Mr. Franklin alleged that he, like all other uninsured patients of Scripps Health, was charged unreasonable and unconscionable rates for his medical treatment. In June 2008, the Court granted final approval to a settlement of the action which includes refunds or discounts of 35% off of medical bills, collectively worth $73 million. The settlement also required Scripps

Health to modify its pricing and collections practices by (1) following an Uninsured Patient Discount Policy, which includes automatic discounts from billed charges for Hospital Services; (2) following a Charity Care Policy, which provides uninsured patients who meet certain income tests with discounts on Health Services up to 100% free care, and provides for charity discounts under other special circumstances; (3) informing uninsured patients about the availability and terms of the above financial assistance policies; and (4) restricting certain collections practices and actively monitoring outside collection agents.

12. ***In re Lawn Mower Engine Horsepower Marketing and Sales Practices Litigation***, MDL No. 1999 (E.D. Wi.). Lieff Cabraser served as co-counsel for consumers that alleged manufacturers of certain gasoline-powered lawn mowers misrepresented, and significantly overstated, the horsepower of the product. As the price for lawn mowers is linked to the horsepower of the engine -- the higher the horsepower, the more expensive the lawn mower -- defendants' alleged misconduct caused consumers to purchase expensive lawn mowers that provided lower horsepower than advertised. In August 2010, the Court approved a $65 million settlement of the action.

13. ***Strugano v. Nextel Communications***, No. BC 288359 (Los Angeles Supr. Ct). In May 2006, the Los Angeles Superior Court granted final approval to a class action settlement on behalf of all California customers of Nextel from January 1, 1999 through December 31, 2002, for compensation for the harm caused by Nextel's alleged unilateral (1) addition of a $1.15 monthly service fee and/or (2) change from second-by-second billing to minute-by-minute billing, which caused "overage" charges (i.e., for exceeding their allotted cellular plan minutes). The total benefit conferred by the Settlement directly to Class Members was between approximately $13.5 million and $55.5 million, depending on which benefit Class Members selected.

14. ***Curry v. Fairbanks Capital Corporation***, No. 03-10895-DPW (D. Mass.). In 2004, the Court approved a $55 million settlement of a class action lawsuit against Fairbanks Capital Corporation arising out of charges against Fairbanks of misconduct in servicing its customers' mortgage loans. The settlement also required substantial changes in Fairbanks' business practices and established a default resolution program to limit the imposition of fees and foreclosure proceedings against Fairbanks' customers. Lieff Cabraser served as nationwide Co-Lead Counsel for the homeowners.

15. ***Payment Protection Credit Card Litigation***. Lieff Cabraser represented consumers in litigation in federal court against some of the nation's largest credit card issuers, challenging the imposition of charges

for so-called "payment protection" or "credit protection" programs. The complaints charged that the credit card companies imposed payment protection without the consent of the consumer and/or deceptively marketed the service, and further that the credit card companies unfairly administered their payment protection programs to the detriment of consumers. In 2012 and 2013, the Courts approved monetary settlements with HSBC ($23.5 million), Bank of America ($20 million), and Discover ($10 million) that also required changes in the marketing and sale of payment protection to consumers.

16. ***California Title Insurance Industry Litigation***. Lieff Cabraser, in coordination with parallel litigation brought by the Attorney General, reached settlements in 2003 and 2004 with the leading title insurance companies in California, resulting in historic industry-wide changes to the practice of providing escrow services in real estate closings. The settlements brought a total of $50 million in restitution to California consumers, including cash payments. In the lawsuits, plaintiffs alleged, among other things, that the title companies received interest payments on customer escrow funds that were never reimbursed to their customers. The defendant companies include Lawyers' Title, Commonwealth Land Title, Stewart Title of California, First American Title, Fidelity National Title, and Chicago Title.

17. ***Vytorin/Zetia Marketing, Sales Practices & Products Liability Litigation***, MDL No. 1938 (D. N.J.). Lieff Cabraser served on the Executive Committee of the Plaintiffs' Steering Committee representing plaintiffs alleging that Merck/Schering-Plough Pharmaceuticals falsely marketed anti-cholesterol drugs Vytorin and Zetia as being more effective than other anti-cholesterol drugs. Plaintiffs further alleged that Merck/Schering-Plough Pharmaceuticals sold Vytorin and Zetia at higher prices than other anti-cholesterol medication when they were no more effective than other drugs. In 2010, the Court approved a $41.5 million settlement for consumers who bought Vytorin or Zetia between November 2002 and February 2010.

18. ***Morris v. AT&T Wireless Services***, No. C-04-1997-MJP (W.D. Wash.). Lieff Cabraser served as class counsel for a nationwide settlement class of cell phone customers subjected to an end-of-billing cycle cancellation policy implemented by AT&T Wireless in 2003 and alleged to have breached customers' service agreements. In May 2006, the New Jersey Superior Court granted final approval to a class settlement that guarantees delivery to the class of $40 million in benefits. Class members received cash-equivalent calling cards automatically, and had the option of redeeming them for cash. Lieff Cabraser had been prosecuting the class claims in the Western District of Washington when a settlement in New Jersey state court was announced. Lieff Cabraser objected to that

settlement as inadequate because it would have only provided $1.5 million in benefits without a cash option, and the Court agreed, declining to approve it. Thereafter, Lieff Cabraser negotiated the new settlement providing $40 million to the class, and the settlement was approved.

19. ***Berger v. Property I.D. Corporation***, No. CV 05-5373-GHK (C.D. Cal.). In January 2009, the Court granted final approval to a $39.4 million settlement with several of the nation's largest real estate brokerages, including companies doing business as Coldwell Banker, Century 21, and ERA Real Estate, and California franchisors for RE/MAX and Prudential California Realty, in an action under the Real Estate Settlement Procedures Act on behalf of California home sellers. Plaintiffs charged that the brokers and Property I.D. Corporation set up straw companies as a way to disguise kickbacks for referring their California clients' natural hazard disclosure report business to Property I.D. (the report is required to sell a home in California). Under the settlement, hundreds of thousands of California home sellers were eligible to receive a full refund of the cost of their report, typically about $100.

20. ***In re Tri-State Crematory Litigation***, MDL No. 1467 (N.D. Ga.). In March 2004, Lieff Cabraser delivered opening statements and began testimony in a class action by families whose loved ones were improperly cremated and desecrated by Tri-State Crematory in Noble, Georgia. The families also asserted claims against the funeral homes that delivered the decedents to Tri-State Crematory for failing to ensure that the crematory performed cremations in the manner required under the law and by human decency. One week into trial, settlements with the remaining funeral home defendants were reached and brought the settlement total to approximately $37 million. Trial on the class members' claims against the operators of crematory began in August 2004. Soon thereafter, these defendants entered into a $80 million settlement with plaintiffs. As part of the settlement, all buildings on the Tri-State property were razed. The property will remain in a trust so that it will be preserved in peace and dignity as a secluded memorial to those whose remains were mistreated, and to prevent crematory operations or other inappropriate activities from ever taking place there. Earlier in the litigation, the Court granted plaintiffs' motion for class certification in a published order. 215 F.R.D. 660 (2003).

21. ***In re American Family Enterprises***, MDL No. 1235 (D. N.J.). Lieff Cabraser served as Co-Lead Counsel for a nationwide class of persons who received any sweepstakes materials sent under the name "American Family Publishers." The class action lawsuit alleged that defendants deceived consumers into purchasing magazine subscriptions and merchandise in the belief that such purchases were necessary to win an

American Family Publishers' sweepstakes prize or enhanced their chances of winning a sweepstakes prize. In September 2000, the Court granted final approval of a $33 million settlement of the class action. In April 2001, over 63,000 class members received refunds averaging over $500 each, representing 92% of their eligible purchases. In addition, American Family Publishers agreed to make significant changes to the way it conducts the sweepstakes.

22. ***Walsh v. Kindred Healthcare Inc.***, No. 3:11-cv-00050 (N.D. Cal.). Lieff Cabraser and co-counsel represented a class of 54,000 current and former residents, and families of residents, of skilled nursing care facilities in a class action against Kindred Healthcare for failing to adequately staff its nursing facilities in California. Since January 1, 2000, skilled nursing facilities in California have been required to provide at least 3.2 hours of direct nursing hours per patient day (NHPPD), which represented the minimum staffing required for patients at skilled nursing facilities.

The complaint alleged a pervasive and intentional failure by Kindred Healthcare to comply with California's required minimum standard for qualified nurse staffing at its facilities. Understaffing is uniformly viewed as one of the primary causes of the inadequate care and often unsafe conditions in skilled nursing facilities. Studies have repeatedly shown a direct correlation between inadequate skilled nursing care and serious health problems, including a greater likelihood of falls, pressure sores, significant weight loss, incontinence, and premature death. The complaint further charged that Kindred Healthcare collected millions of dollars in payments from residents and their family members, under the false pretense that it was in compliance with California staffing laws and would continue to do so.

In December 2013, the Court approved a $8.25 million settlement which included cash payments to class members and an injunction requiring Kindred Healthcare to consistently utilize staffing practices which would ensure they complied with applicable California law. The injunction, subject to a third party monitor, was valued at between $6 to $20 million.

23. ***Cincotta v. California Emergency Physicians Medical Group***, No. 07359096 (Cal. Supr. Ct.). Lieff Cabraser served as class counsel for nearly 100,000 uninsured patients that alleged they were charged excessive and unfair rates for emergency room service across 55 hospitals throughout California. The settlement, approved on October 31, 2008, provided complete debt elimination, 100% cancellation of the bill, to uninsured patients treated by California Emergency Physicians Medical Group during the 4-year class period. These benefits were valued at $27 million. No claims were required, so all of these bills were cancelled.

In addition, the settlement required California Emergency Physicians Medical Group prospectively to (1) maintain certain discount policies for all charity care patients; (2) inform patients of the available discounts by enhanced communications; and (3) limit significantly the type of collections practices available for collecting from charity care patients.

24. ***In re Ameriquest Mortgage Co. Mortgage Lending Practices Litigation***, MDL No. 1715. Lieff Cabraser served as Co-Lead Counsel for borrowers who alleged that Ameriquest engaged in a predatory lending scheme based on the sale of loans with illegal and undisclosed fees and terms. In August 2010, the Court approved a $22 million settlement.

25. ***ING Bank Rate Renew Cases***, Case No. 11-154-LPS (D. Del.). Lieff Cabraser represented borrowers in class action lawsuits charging that ING Direct breached its promise to allow them to refinance their mortgages for a flat fee. From October 2005 through April 2009, ING promoted a $500 or $750 flat-rate refinancing fee called "Rate Renew" as a benefit of choosing ING for mortgages over competitors. Beginning in May 2009, however, ING began charging a higher fee of a full monthly mortgage payment for refinancing using "Rate Renew," despite ING's earlier and lower advertised price. As a result, the complaint alleged that many borrowers paid more to refinance their loans using "Rate Renew" than they should have, or were denied the opportunity to refinance their loan even though the borrowers met the terms and conditions of ING's original "Rate Renew" offer. In August 2012, the Court certified a class of consumers in ten states who purchased or retained an ING mortgage from October 2005 through April 2009. A second case on behalf of California consumers was filed in December 2012. In October 2014, the Court approved a $20.35 million nationwide settlement of the litigation. The settlement provided an average payment of $175 to the nearly 100,000 class members, transmitted to their accounts automatically and without any need to file a claim form.

26. ***Yarrington v. Solvay Pharmaceuticals***, No. 09-CV-2261 (D. Minn.). In March 2010, the Court granted final approval to a $16.5 million settlement with Solvay Pharmaceuticals, one of the country's leading pharmaceutical companies. Lieff Cabraser served as Co-Lead Counsel, representing a class of persons who purchased Estratest—a hormone replacement drug. The class action lawsuit alleged that Solvay deceptively marketed and advertised Estratest as an FDA-approved drug when in fact Estratest was not FDA-approved for any use. Under the settlement, consumers obtained partial refunds for up to 30% of the purchase price paid of Estratest. In addition, $8.9 million of the settlement was allocated to fund programs and activities devoted to promoting women's health and well-being at health organizations, medical schools, and charities throughout the nation.

27. ***Reverse Mortgage Cases***, JCCP No. 4061 (San Mateo County Supr. Ct., Cal.). Transamerica Corporation, through its subsidiary Transamerica Homefirst, Inc., sold "reverse mortgages" marketed under the trade name "Lifetime." The Lifetime reverse mortgages were sold exclusively to seniors, *i.e.*, persons 65 years or older. Lieff Cabraser, with co-counsel, filed suit on behalf of seniors alleging that the terms of the reverse mortgages were unfair, and that borrowers were misled as to the loan terms, including the existence and amount of certain charges and fees. In 2003, the Court granted final approval to an $8 million settlement of the action.

28. ***Brazil v. Dell***, No. C-07-01700 RMW (N.D. Cal.). Lieff Cabraser served as Class Counsel representing a certified class of online consumers in California who purchased certain Dell computers based on the advertisement of an instant-off (or "slash-through") discount. The complaint challenged Dell's pervasive use of "slash-through" reference prices in its online marketing. Plaintiffs alleged that these "slash-through" reference prices were interpreted by consumers as representing Dell's former or regular sales prices, and that such reference prices (and corresponding representations of "savings") were false because Dell rarely, if ever, sold its products at such prices. In October 2011, the Court approved a settlement that provided a $50 payment to each class member who submitted a timely and valid claim. In addition, in response to the lawsuit, Dell changed its methodology for consumer online advertising, eliminating the use of "slash-through" references prices.

29. ***Hepting v. AT&T Corp.***, Case No. C-06-0672-VRW (N.D. Cal.). Plaintiffs alleged that AT&T collaborated with the National Security Agency in a massive warrantless surveillance program that illegally tracked the domestic and foreign communications and communications records of millions of Americans in violation of the U.S. Constitution, Electronic Communications Privacy Act, and other statutes. The case was filed on January 2006. The U.S. government quickly intervened and sought dismissal of the case. By the Spring of 2006, over 50 other lawsuits were filed against various telecommunications companies, in response to a *USA Today* article confirming the surveillance of communications and communications records. The cases were combined into a multi-district litigation proceeding entitled *In re National Security Agency Telecommunications Record Litigation*, MDL No. 06-1791. In June of 2006, the District Court rejected both the government's attempt to dismiss the case on the grounds of the state secret privilege and AT&T's arguments in favor of dismissal. The government and AT&T appealed the decision and the U.S. Court of Appeals for the Ninth Circuit heard argument one year later. No decision was issued. In July 2008, Congress granted the government and AT&T "retroactive immunity" for liability for their wiretapping program under amendments to the Foreign Intelligence

Surveillance Act that were drafted in response to this litigation. Signed into law by President Bush in 2008, the amendments effectively terminated the litigation. Lieff Cabraser played a leading role in the litigation working closely with co-counsel from the Electronic Frontier Foundation.

30. ***In Re Apple and AT&T iPad Unlimited Data Plan Litigation***, No. 5:10-cv-02553 RMW (N.D. Ca.). Lieff Cabraser served as class counsel in an action against Apple and AT&T charging that Apple and AT&T misrepresented that consumers purchasing an iPad with 3G capability could choose an unlimited data plan for a fixed monthly rate and switch in and out of the unlimited plan on a monthly basis as they wished. Less than six weeks after its introduction to the U.S. market, AT&T and Apple discontinued their unlimited data plan for any iPad 3G customers not currently enrolled and prohibited current unlimited data plan customers from switching back and forth from a less expensive, limited data plan. In March 2014, Apple agreed to compensate all class members $40 and approximately 60,000 claims were paid. In addition, sub-class members who had not yet entered into an agreement with AT&T were offered a data plan.

V. Economic Injury Product Defects

A. Current Cases

1. ***Front-Loading Washer Products Liability Litigation***. Lieff Cabraser represents consumers in multiple states who have filed separate class action lawsuits against Whirlpool, Sears and LG Corporations. The complaints charge that certain front-loading automatic washers manufactured by these companies are defectively designed and that the design defects create foul odors from mold and mildew that permeate washing machines and customers' homes. Many class members have spent money for repairs and on other purported remedies. As the complaints allege, none of these remedies eliminates the problem.

2. ***In Re General Motors LLC Ignition Switch Litigation***, 14-MD-2543 (JMF); 14-MC-2434 (JMF). On August 15, 2014, U.S. District Court Judge Jesse M. Furman appointed Elizabeth J. Cabraser as Co-Lead Plaintiffs' Counsel in the GM defective ignition switch litigation with a primary focus on economic loss claims. The litigation seeks compensation on behalf of consumers who purchased or leased GM vehicles containing a defective ignition switch, many of which have now been recalled. The consumer complaints allege that the ignition switches in these vehicles share a common, uniform, and defective design. As a result, these cars are of a lesser quality than GM represented, and class members overpaid for the cars. Further, GM's public disclosure of the ignition switch defect has caused the value of these cars to materially

diminish. The complaints seek monetary relief for the diminished value of the class members' cars.

3. ***Honda Window Defective Window Litigation***. Case No. 2:21-cv-01142-SVW-PLA (C.D. CA). Lieff Cabraser represents consumers in a class action lawsuit filed against Honda Motor Company, Inc. for manufacturing and selling vehicles with allegedly defective window regulator mechanisms. Windows in these vehicles allegedly can, without warning, drop into the door frame and break or become permanently stuck in the fully-open position.

   The experience of one Honda Element owner, as set forth in the complaint, exemplifies the problem: The driver's side window in his vehicle slid down suddenly while he was driving on a smooth road. A few months later, the window on the passenger side of the vehicle also slid down into the door and would not move back up. The owner incurred more than $300 in repair costs, which Honda refused to pay for. Discovery in the action is ongoing.

4. ***In re Chinese-Manufactured Drywall Products Liability Litigation***, No. 10-30568 (E.D. La.). Lieff Cabraser with co-counsel represents a proposed class of builders who suffered economic losses as a result of the presence of Chinese-manufactured drywall in homes and other buildings they constructed. From 2005 to 2008, hundreds-of-millions of square feet of gypsum wallboard manufactured in China were exported to the U.S., primarily to the Gulf Coast states, and installed in newly-constructed and reconstructed properties. After installation of this drywall, owners and occupants of the properties began noticing unusual odors, blackening of silver and copper items and components, and the failure of appliances, including microwaves, refrigerators, and air-conditioning units. Some residents of the affected homes also experienced health problems, such as skin and eye irritation, respiratory issues, and headaches.

   Lieff Cabraser's client, Mitchell Company, Inc., was the first to perfect service on Chinese defendant Taishan Gypsum Co. Ltd. ("TG"), and thereafter secured a default judgment against TG. Lieff Cabraser participated in briefing that led to the District Court's denial of TG's motion to dismiss the class action complaint for lack of personal jurisdiction. On May 21, 2014, the U.S. Court of Appeals for the Fifth Court affirmed the District Court's default judgment against TG, finding jurisdiction based on ties of the company and its agent with state distributors. 753 F.3d 521 (5th Cir. 2014).

5. ***McGuire v. BMW of North America***, No. 2:13-cv-07356 (D.N.J.). With co-counsel, Lieff Cabraser represents the plaintiff in a class action lawsuit filed on behalf of all persons in the U.S. who own or

lease a BMW vehicle equipped with BMW's Advanced Real-Time Traffic Information ("ARTTI") navigation system. BMW markets ARTTI as providing reliable, accurate, and real-time traffic information, and that ARTTI will notify drivers of traffic congestion and accidents along their routes and automatically offer a new route to avoid the traffic incident. The complaint alleges that ARTTI is defective in that it fails to display local real-time traffic information for the area, and fails to automatically re-route ARTTI-equipped vehicles to avoid traffic incidents along the vehicle's intended route. The complaint further alleges that BMW was aware of the defects in ARTII prior to marketing and selling vehicles equipped with the navigation system, and BMW has failed to repair or remedy the defect for plaintiff and class members who brought their vehicle to authorized BMW services centers to address the ARTTI defect.

B. Successes

1. ***In re Mercedes-Benz Tele-Aid Contract Litigation***, MDL No. 1914 (D. N.J.). Lieff Cabraser represented owners and lessees of Mercedes-Benz cars and SUVs equipped with the Tele-Aid system, an emergency response system which links subscribers to road-side assistance operators by using a combination of global positioning and cellular technology. In 2002, the Federal Communications Commission issued a rule, effective 2008, eliminating the requirement that wireless phone carriers provide analog-based networks. The Tele-Aid system offered by Mercedes-Benz relied on analog signals. Plaintiffs charged that Mercedes-Benz committed fraud in promoting and selling the Tele-Aid system without disclosing to buyers of certain model years that the Tele-Aid system as installed would become obsolete in 2008.

   In an April 2009 published order, the Court certified a nationwide class of all persons or entities in the U.S. who purchased or leased a Mercedes-Benz vehicle equipped with an analog-only Tele Aid system after August 8, 2002, and (1) subscribed to Tele Aid service until being informed that such service would be discontinued at the end of 2007, or (2) purchased an upgrade to digital equipment. In September 2011, the Court approved a settlement that provided class members between a $650 check or a $750 to $1,300 certificate toward the purchase or lease of new Mercedes-Benz vehicle, depending upon whether or not they paid for an upgrade of the analog Tele Aid system and whether they still owned their vehicle. In approving the settlement, U.S. District Court Judge Dickinson R. Debevoise stated, "I want to thank counsel for the . . . very effective and good work . . . . It was carried out with vigor, integrity and aggressiveness with never going beyond the maxims of the Court."

2. ***McLennan v. LG Electronics USA***, No. 2:10-cv-03604 (D. N.J.). Lieff Cabraser represented consumers that alleged several LG refrigerator models had a faulty design that caused the interior lights to remain on even when the refrigerator doors were closed (identified as the "light issue"), resulting in overheating and food spoilage. In March 2012, the Court granted final approval to a settlement of the nationwide class action lawsuit. The settlement provides that LG reimburse class members for all out-of-pocket costs (parts and labor) to repair the light issue prior to the mailing of the class notice and extends the warranty with respect to the light issue for 10 years from the date of the original retail purchase of the refrigerator. The extended warranty covers in-home refrigerator repair performed by LG and, in some cases, the cost of a replacement refrigerator. In approving the settlement, U.S. District Court Judge William J. Martini stated, "The Settlement in this case provides for both the complete reimbursement of out-of-pocket expenses for repairs fixing the Light Issue, as well as a warranty for ten years from the date of refrigerator purchase. It would be hard to imagine a better recovery for the Class had the litigation gone to trial. Because Class members will essentially receive all of the relief to which they would have been entitled after a successful trial, this factor weighs heavily in favor of settlement."

3. ***Grays Harbor Adventist Christian School v. Carrier Corporation***, No. 05-05437 (W.D. Wash.). In April 2008, the Court approved a nationwide settlement for current and past owners of high-efficiency furnaces manufactured and sold by Carrier Corporation and equipped with polypropylene-laminated condensing heat exchangers ("CHXs"). Carrier sold the furnaces under the Carrier, Bryant, Day & Night and Payne brand-names. Plaintiffs alleged that starting in 1989 Carrier began manufacturing and selling high efficiency condensing furnaces manufactured with a secondary CHX made of inferior materials. Plaintiffs alleged that as a result, the CHXs, which Carrier warranted and consumers expected to last for 20 years, failed prematurely. The settlement provides an enhanced 20-year warranty of free service and free parts for consumers whose furnaces have not yet failed. The settlement also offers a cash reimbursement for consumers who already paid to repair or replace the CHX in their high-efficiency Carrier furnaces.

   An estimated three million or more consumers in the U.S. and Canada purchased the furnaces covered under the settlement. Plaintiffs valued the settlement to consumers at over $300 million based upon the combined value of the cash reimbursement and the estimated cost of an enhanced warranty of this nature.

4. ***Carideo v. Dell***, No. C06-1772 JLR (W.D. Wash.). Lieff Cabraser represented consumers who owned Dell Inspiron notebook computer model numbers 1150, 5100, or 5160. The class action lawsuit complaint

charged that the notebooks suffered premature failure of their cooling system, power supply system, and/or motherboards. In December 2010, the Court approved a settlement which provided class members that paid Dell for certain repairs to their Inspiron notebook computer a reimbursement of all or a portion of the cost of the repairs.

5. ***Cartwright v. Viking Industries***, No. 2:07-cv-2159 FCD (E.D. Cal.) Lieff Cabraser represented California homeowners in a class action lawsuit which alleged that over one million Series 3000 windows produced and distributed by Viking between 1989 and 1999 were defective. The plaintiffs charged that the windows were not watertight and allowed for water to penetrate the surrounding sheetrock, drywall, paint or wallpaper. Under the terms of a settlement approved by the Court in August 2010, all class members who submitted valid claims were entitled to receive as much as $500 per affected property.

6. ***Pelletz v. Advanced Environmental Recycling Technologies*** (W.D. Wash.). Lieff Cabraser served as Co-Lead Counsel in a case alleging that ChoiceDek decking materials, manufactured by AERT, developed persistent and untreatable mold spotting throughout their surface. In a published opinion in January 2009, the Court approved a settlement that provided affected consumers with free and discounted deck treatments, mold inhibitor applications, and product replacement and reimbursement.

7. ***Create-A-Card v. Intuit***, No. C07-6452 WHA (N.D. Cal.). Lieff Cabraser, with co-counsel, represented business users of QuickBooks Pro for accounting that lost their QuickBooks data and other files due to faulty software code sent by Intuit, the producer of QuickBooks. In September 2009, the Court granted final approval to a settlement that provided all class members who filed a valid claim with a free software upgrade and compensation for certain data-recovery costs. Commenting on the settlement and the work of Lieff Cabraser on September 17, 2009, U.S. District Court Judge William H. Alsup stated, "I want to come back to something that I observed in this case firsthand for a long time now. I think you've done an excellent job in the case as class counsel and the class has been well represented having you and your firm in the case."

8. ***Weekend Warrior Trailer Cases***, JCCP No. 4455 (Cal. Supr. Ct.). Lieff Cabraser, with co-counsel, represented owners of Weekend Warrior trailers manufactured between 1998 and 2006 that were equipped with frames manufactured, assembled, or supplied by Zieman Manufacturing Company. The trailers, commonly referred to as "toy haulers," were used to transport outdoor recreational equipment such as motorcycles and all-terrain vehicles. Plaintiffs charged that Weekend Warrior and Zieman knew of design and performance problems, including bent frames,

detached siding, and warped forward cargo areas, with the trailers, and concealed the defects from consumers. In February 2008, the Court approved a $5.5 million settlement of the action that provided for the repair and/or reimbursement of the trailers. In approving the settlement, California Superior Court Judge Thierry P. Colaw stated that class counsel were "some of the best" and "there was an overwhelming positive reaction to the settlement" among class members.

9. ***Lundell v. Dell***, No. C05-03970 (N.D. Cal.). Lieff Cabraser served as Lead Class Counsel for consumers who experienced power problems with the Dell Inspiron 5150 notebook. In December 2006, the Court granted final approval to a settlement of the class action which extended the one-year limited warranty on the notebook for a set of repairs related to the power system. In addition, class members that paid Dell or a third party for repair of the power system of their notebook were entitled to a 100% cash refund from Dell.

10. ***Kan v. Toshiba American Information Systems***, No. BC327273 (Los Angeles Super. Ct.). Lieff Cabraser served as Co-Lead Counsel for a class of all end-user persons or entities who purchased or otherwise acquired in the United States, for their own use and not for resale, a new Toshiba Satellite Pro 6100 Series notebook. Consumers alleged a series of defects were present in the notebook. In 2006, the Court approved a settlement that extended the warranty for all Satellite Pro 6100 notebooks, provided cash compensation for certain repairs, and reimbursed class members for certain out-of-warranty repair expenses.

11. ***Foothill/DeAnza Community College District v. Northwest Pipe Company***, No. C-00-20749 (N.D. Cal.). In June 2004, the Court approved the creation of a settlement fund of up to $14.5 million for property owners nationwide with Poz-Lok fire sprinkler piping that fails. Since 1990, Poz-Lok pipes and pipe fittings were sold in the U.S. as part of fire suppression systems for use in residential and commercial buildings. After leaks in Poz-Lok pipes caused damage to its DeAnza Campus Center building, Foothill/DeAnza Community College District in California retained Lieff Cabraser to file a class action lawsuit against the manufacturers of Poz-Lok. The college district charged that Poz-Lok pipe had manufacturing and design defects that resulted in the premature corrosion and failure of the product. Under the settlement, owners whose Poz-Lok pipes are leaking today, or over the next 15 years, may file a claim for compensation.

12. ***Toshiba Laptop Screen Flicker Settlement***. Lieff Cabraser negotiated a settlement with Toshiba America Information Systems, Inc. ("TAIS") to provide relief for owners of certain Toshiba Satellite 1800 Series, Satellite Pro 4600 and Tecra 8100 personal notebook computers

whose screens flickered, dimmed or went blank due to an issue with the FL Inverter Board component. In 2004 under the terms of the Settlement, owners of affected computers who paid to have the FL Inverter issue repaired by either TAIS or an authorized TAIS service provider recovered the cost of that repair, up to $300 for the Satellite 1800 Series and the Satellite Pro 4600 personal computers, or $400 for the Tecra 8100 personal computers. TAIS also agreed to extend the affected computers' warranties for the FL Inverter issue by 18 months.

13. ***McManus v. Fleetwood Enterprises, Inc.***, No. SA-99-CA-464-FB (W.D. Tex.). Lieff Cabraser served as Class Counsel on behalf of original owners of 1994-2000 model year Fleetwood Class A and Class C motor homes. In 2003, the Court approved a settlement that resolved lawsuits pending in Texas and California about braking while towing with 1994 Fleetwood Class A and Class C motor homes. The lawsuits alleged that Fleetwood misrepresented the towing capabilities of new motor homes it sold, and claimed that Fleetwood should have told buyers that a supplemental braking system is needed to stop safely while towing heavy items, such as a vehicle or trailer. The settlement paid $250 to people who bought a supplemental braking system for Fleetwood motor homes that they bought new. Earlier, the appellate court found that common questions predominated under purchasers' breach of implied warranty of merchantability claim. 320 F.3d 545 (5th Cir. 2003).

14. ***Richison v. American Cemwood Corp.***, No. 005532 (San Joaquin Supr. Ct., Cal.). Lieff Cabraser served as Co-Lead Class Counsel for an estimated nationwide class of 30,000 owners of homes and other structures on which defective Cemwood Shakes were installed. In November 2003, the Court granted final approval to a $75 million Phase 2 settlement in the American Cemwood roofing shakes national class action litigation. This amount was in addition to a $65 million partial settlement approved by the Court in May 2000, and brought the litigation to a conclusion.

15. ***ABS Pipe Litigation***, JCCP No. 3126 (Contra Costa County Supr. Ct., Cal.). Lieff Cabraser served as Lead Class Counsel on behalf of property owners whose ABS plumbing pipe was allegedly defective and caused property damage by leaking. Six separate class actions were filed in California against five different ABS pipe manufacturers, numerous developers of homes containing the ABS pipe, as well as the resin supplier and the entity charged with ensuring the integrity of the product. Between 1998 and 2001, we achieved 12 separate settlements in the class actions and related individual lawsuits for approximately $78 million.

Commenting on the work of Lieff Cabraser and co-counsel in the case, California Superior Court (now appellate) Judge Mark B. Simons stated

on May 14, 1998: "The attorneys who were involved in the resolution of the case certainly entered the case with impressive reputations and did nothing in the course of their work on this case to diminish these reputations, but underlined, in my opinion, how well deserved those reputations are."

16. ***Williams v. Weyerhaeuser***, No. 995787 (San Francisco Supr. Ct.). Lieff Cabraser served as Class Counsel on behalf of a nationwide class of hundreds of thousands or millions of owners of homes and other structures with defective Weyerhaeuser hardboard siding. A California-wide class was certified for all purposes in February 1999, and withstood writ review by both the California Court of Appeals and Supreme Court of California. In 2000, the Court granted final approval to a nationwide settlement of the case which provides class members with compensation for their damaged siding, based on the cost of replacing or, in some instances, repairing, damaged siding. The settlement has no cap, and requires Weyerhaeuser to pay all timely, qualified claims over a nine year period. The claims program is underway and paying claims.

17. ***Naef v. Masonite***, No. CV-94-4033 (Mobile County Circuit Ct., Ala.). Lieff Cabraser served as Co-Lead Class Counsel on behalf of a nationwide Class of an estimated 4 million homeowners with allegedly defective hardboard siding manufactured and sold by Masonite Corporation, a subsidiary of International Paper, installed on their homes. The Court certified the class in November 1995, and the Alabama Supreme Court twice denied extraordinary writs seeking to decertify the Class, including in *Ex Parte Masonite*, 681 So. 2d 1068 (Ala. 1996). A month-long jury trial in 1996 established the factual predicate that Masonite hardboard siding was defective under the laws of most states. The case settled on the eve of a second class-wide trial, and in 1998, the Court approved a settlement. Under a claims program established by the settlement that ran through 2008, class members with failing Masonite hardboard siding installed and incorporated in their property between January 1, 1980 and January 15, 1998 were entitled to make claims, have their homes evaluated by independent inspectors, and receive cash payments for damaged siding. Combined with settlements involving other alleged defective home building products sold by Masonite, the total cash paid to homeowners exceeded $1 billion.

18. ***In re General Motors Corp. Pick-Up Fuel Tank Products Liability Litigation***, MDL No. 961 (E.D. Pa.). Lieff Cabraser served as Court-appointed Co-Lead Counsel representing a class of 4.7 million plaintiffs who owned 1973-1987 GM C/K pickup trucks with allegedly defective gas tanks. The Consolidated Complaint asserted claims under the Lanham Act, the Magnuson-Moss Act, state consumer protection statutes, and common law. In 1995, the Third Circuit vacated the District

Court settlement approval order and remanded the matter to the District Court for further proceedings. In July 1996, a new nationwide class action was certified for purposes of an enhanced settlement program valued at a minimum of $600 million, plus funding for independent fuel system safety research projects. The Court granted final approval of the settlement in November 1996.

19. ***In re Louisiana-Pacific Inner-Seal Siding Litigation***, No. C-95-879-JO (D. Ore.). Lieff Cabraser served as Co-Lead Class Counsel on behalf of a nationwide class of homeowners with defective exterior siding on their homes. Plaintiffs asserted claims for breach of warranty, fraud, negligence, and violation of consumer protection statutes. In 1996, U.S. District Judge Robert E. Jones entered an Order, Final Judgment and Decree granting final approval to a nationwide settlement requiring Louisiana-Pacific to provide funding up to $475 million to pay for inspection of homes and repair and replacement of failing siding over the next seven years.

20. ***In re Intel Pentium Processor Litigation***, No. CV 745729 (Santa Clara Supr. Ct., Cal.). Lieff Cabraser served as one of two Court-appointed Co-Lead Class Counsel, and negotiated a settlement, approved by the Court in June 1995, involving both injunctive relief and damages having an economic value of approximately $1 billion.

21. ***Cox v. Shell***, No. 18,844 (Obion County Chancery Ct., Tenn.). Lieff Cabraser served as Class Counsel on behalf of a nationwide class of approximately 6 million owners of property equipped with defective polybutylene plumbing systems and yard service lines. In November 1995, the Court approved a settlement involving an initial commitment by Defendants of $950 million in compensation for past and future expenses incurred as a result of pipe leaks, and to provide replacement pipes to eligible claimants. The deadline for filing claims expired in 2009.

22. ***Hanlon v. Chrysler Corp.***, No. C-95-2010-CAL (N.D. Cal.). In 1995, the District Court approved a $200+ million settlement enforcing Chrysler's comprehensive minivan rear latch replacement program, and to correct alleged safety problems with Chrysler's pre-1995 designs. As part of the settlement, Chrysler agreed to replace the rear latches with redesigned latches. The settlement was affirmed on appeal by the Ninth Circuit in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (1998).

23. ***Gross v. Mobil***, No. C 95-1237-SI (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Class Counsel in this nationwide action involving an estimated 2,500 aircraft engine owners whose engines were affected by Mobil AV-1, an aircraft engine oil. Plaintiffs alleged claims for strict liability, negligence, misrepresentation, violation of consumer protection statutes, and for injunctive relief. Plaintiffs obtained a preliminary injunction

requiring Defendant Mobil Corporation to provide notice to all potential class members of the risks associated with past use of Defendants' aircraft engine oil. In addition, Plaintiffs negotiated a proposed Settlement, granted final approval by the Court in November 1995, valued at over $12.5 million, under which all Class Members were eligible to participate in an engine inspection and repair program, and receive compensation for past repairs and for the loss of use of their aircraft associated with damage caused by Mobil AV-1.

VI. Antitrust/Trade Regulation/Intellectual Property

A. Current Cases

1. ***In re High-Tech Employee Antitrust Litigation***, No. 11 CV 2509 (N.D. Cal.). Lieff Cabraser serves as Co-Lead Class Counsel in a consolidated class action charging that Adobe Systems Inc., Apple Inc., Google Inc., Intel Corporation, Intuit Inc., Lucasfilm Ltd., and Pixar violated antitrust laws by conspiring to suppress the pay of technical, creative, and other salaried employees. The complaint alleges that the conspiracy among defendants restricted recruiting of each other's employees. On October 24, 2013, U.S. District Court Judge Lucy H. Koh certified a class of approximately 64,000 persons who worked in Defendants' technical, creative, and/or research and development jobs from 2005-2009. On March 3, 2015, the Court granted preliminary approval to a proposed $415 million settlement with Apple, Google, Intel, and Adobe. Earlier, on May 15, 2014, the Court approved partial settlements totaling $20 million resolving claims against Intuit, Lucasfilm, and Pixar.

2. ***Charles Schwab Bank, N.A. v. Bank of America Corp.***, No. 11 CV 6411 (N.D. Cal.). Lieff Cabraser serves as counsel for The Charles Schwab Corporation, its affiliates Charles Schwab Bank, N.A., and Charles Schwab & Co., Inc., which manages the investments of the Charles Schwab Bank, N.A. (collectively "Schwab"), and several series of The Charles Schwab Family of Funds, Schwab Investments, Charles Schwab Worldwide Funds plc ("Schwab Fund Series"), and the Bay Area Toll Authority ("BATA") in individual lawsuits against Bank of America Corporation, Credit Suisse Group AG, J.P. Morgan Chase & Co., Citibank, Inc., and additional banks for allegedly manipulating the London Interbank Offered Rate ("LIBOR").

   The complaints allege that beginning in 2007, the defendants conspired to understate their true costs of borrowing, causing the calculation of LIBOR to be set artificially low. As a result, Schwab, the Schwab Fund Series, and BATA received less than their rightful rates of return on their LIBOR-based investments. The complaints assert claims under federal antitrust laws, the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), and the statutory and common law of

California. The actions were transferred to the Southern District of New York for consolidated or coordinated proceedings with the LIBOR multidistrict litigation pending there. The MDL is proceeding.

3. ***Cipro Cases I and II***, JCCP Nos. 4154 and 4220 (Cal. Supr. Ct.). Lieff Cabraser represents California consumers and third party payors in a class action lawsuit filed in California state court charging that Bayer Corporation, Barr Laboratories, and other generic prescription drug manufacturers conspired to restrain competition in the sale of Bayer's blockbuster antibiotic drug Ciprofloxacin, sold as Cipro. Between 1997 and 2003, Bayer paid its would-be generic drug competitors nearly $400 million to refrain from selling more affordable versions of Cipro. As a result, consumers were forced to pay inflated prices for the drug -- frequently prescribed to treat urinary tract, prostate, abdominal, and other infections.

   The Trial Court granted defendants' motion for summary judgment, which the Appellate Court affirmed in October 2011. Plaintiffs sought review before the California Supreme Court and were successful. Following briefing, the case was stayed pending the U.S. Supreme Court's decision in *FTC v. Actavis*. After the U.S. Supreme Court in *Actavis* overturned the Appellate Court's ruling that pay-for-delay deals in the pharmaceutical industry are generally legal, plaintiffs and Bayer entered into settlement negotiations. In November 2013, the Trial Court approved a $74 million settlement with Bayer.

   On May 7, 2015, the California Supreme Court resoundingly endorsed consumers' right to challenge pharmaceutical pay-for-delay settlements under California competition law. The Court held that "[p]arties illegally restrain trade when they privately agree to substitute consensual monopoly in place of potential competition."

4. ***In re Lithium-Ion Batteries Antitrust Litigation***, MDL No. 2420. Lieff Cabraser serves as Interim Co-Lead Indirect Purchaser Counsel representing consumers in a class action filed against LG, GS Yuasa, NEC, Sony, Sanyo, Panasonic, Hitachi, LG Chem, Samsung, Toshiba, and Sanyo for allegedly conspiring to fix and raise the prices of lithium-ion rechargeable batteries in violation of U.S. antitrust law from 2002 to 2011. The defendants are the world's leading manufacturers of lithium-ion rechargeable batteries, which provide power for a wide variety of consumer electronic products. As a result of the defendants' alleged anticompetitive and unlawful conduct, consumers across America paid artificially inflated prices for lithium-ion rechargeable batteries.

5. ***Jackson v. American Airlines***, No. 3:15-cv-03520 (N.D. Cal.). Lieff Cabraser represents consumers in a class action lawsuit against the four largest U.S. airline carriers: American Airlines Group, Inc., Delta Air

Lines, Inc., Southwest Airlines Co., and United Airlines, Inc. These airlines that collectively account for over 80 percent of all domestic airline travel. The complaint alleges that for years the airlines have colluded to restrain capacity, eliminate competition in the market, and increase the price of domestic airline airfares in violation of U.S. antitrust law. The proposed class consists of all persons and entities who purchased domestic airline tickets directly from one or more defendants from July 2, 2011 to the present.

6. ***In re Municipal Derivatives Litigation***, MDL No. 1950 (S.D.N.Y.). Lieff Cabraser represents the City of Oakland, the County of Alameda, City of Fresno, Fresno County Financing Authority, and East Bay Delta Housing and Finance Agency in a class action lawsuit brought on behalf of themselves and California entities that purchased guaranteed investment contracts, swaps, and other municipal derivatives products from Bank of America, N.A., JP Morgan Chase & Co., Piper Jaffray & Co., Societe Generale SA, UBS AG, and other banks, brokers and financial institutions. The complaint charges that defendants conspired to give cities, counties, school districts, and other governmental agencies artificially low bids for guaranteed investment contracts, swaps, and other municipal derivatives products, which are used by public entities use to earn interest on bond proceeds. The complaint charges that defendants met secretly to discuss prices, customers, and markets of municipal derivatives sold in the U.S. and elsewhere; intentionally created the false appearance of competition by engaging in sham auctions in which the results were pre-determined or agreed not to bid on contracts; and covertly shared their unjust profits with losing bidders to maintain the conspiracy. In April 2010, the Court denied defendants' motions to dismiss. Lieff Cabraser has settled its five municipality clients' claims with several defendants.

B. Successes

1. ***Natural Gas Antitrust Cases***, JCCP Nos. 4221, 4224, 4226 & 4228 (Cal. Supr. Ct.). In 2003, the Court approved a landmark of $1.1 billion settlement in class action litigation against El Paso Natural Gas Co. for manipulating the market for natural gas pipeline transmission capacity into California. Lieff Cabraser served as Plaintiffs' Co-Lead Counsel and Co-Liaison Counsel in the *Natural Gas Antitrust Cases I-IV*.

   In June 2007, the Court granted final approval to a $67.39 million settlement of a series of class action lawsuits brought by California business and residential consumers of natural gas against a group of natural gas suppliers, Reliant Energy Services, Inc., Duke Energy Trading and Marketing LLC, CMS Energy Resources Management Company, and Aquila Merchant Services, Inc.

Plaintiffs charged defendants with manipulating the price of natural gas in California during the California energy crisis of 2000-2001 by a variety of means, including falsely reporting the prices and quantities of natural gas transactions to trade publications, which compiled daily and monthly natural gas price indices; prearranged wash trading; and, in the case of Reliant, "churning" on the Enron Online electronic trading platform, which was facilitated by a secret netting agreement between Reliant and Enron.

The 2007 settlement followed a settlement reached in 2006 for $92 million partial settlement with Coral Energy Resources, L.P.; Dynegy Inc. and affiliates; EnCana Corporation; WD Energy Services, Inc.; and The Williams Companies, Inc. and affiliates.

2. ***Wholesale Electricity Antitrust Cases I & II***, JCCP Nos. 4204 & 4205 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Lead Counsel in the private class action litigation against Duke Energy Trading & Marketing, Reliant Energy, and The Williams Companies for claims that the companies manipulated California's wholesale electricity markets during the California energy crisis of 2000-2001. Extending the landmark victories for California residential and business consumers of electricity, in September 2004, plaintiffs reached a $206 million settlement with Duke Energy Trading & Marketing, and in August 2005, plaintiffs reached a $460 million settlement with Reliant Energy, settling claims that the companies manipulated California's wholesale electricity markets during the California energy crisis of 2000-01. Lieff Cabraser earlier entered into a settlement for over $400 million with The Williams Companies.

3. ***In re Brand Name Prescription Drugs***, MDL No. 997 (N.D. Ill.). Lieff Cabraser served as Class Counsel for a class of tens of thousands of retail pharmacies against the leading pharmaceutical manufacturers and wholesalers of brand name prescription drugs for alleged price-fixing from 1989 to 1995 in violation of the federal antitrust laws. Plaintiffs charged that defendants engaged in price discrimination against retail pharmacies by denying them discounts provided to hospitals, health maintenance organizations, and nursing homes. In 1996 and 1998, the Court approved settlements with certain manufacturers totaling $723 million.

4. ***Microsoft Private Antitrust Litigation***. Representing businesses and consumers, Lieff Cabraser prosecuted multiple private antitrust cases against Microsoft Corporation in state courts across the country, including Florida, New York, North Carolina, and Tennessee. Plaintiffs alleged that Microsoft had engaged in anticompetitive conduct, violated state deceptive and unfair business practices statutes, and overcharged businesses and consumers for Windows operating system software and

for certain software applications, including Microsoft Word and Microsoft Office. In August 2006, the New York Supreme Court granted final approval to a settlement that made available up to $350 million in benefits for New York businesses and consumers. In August 2004, the Court in the North Carolina action granted final approval to a settlement valued at over $89 million. In June 2004, the Court in the Tennessee action granted final approval to a $64 million settlement. In November 2003, in the Florida Microsoft litigation, the Court granted final approval to a $202 million settlement, one of the largest antitrust settlements in Florida history. Lieff Cabraser served as Co-Lead Counsel in the New York, North Carolina and Tennessee cases, and held leadership roles in the Florida case.

5. ***In re TFT-Flat Panel) Antitrust Litigation***, MDL No. 1827 (N.D. Cal.). Lieff Cabraser served as Court-appointed Co-Lead Counsel for direct purchasers in litigation against the world's leading manufacturers of Thin Film Transistor Liquid Crystal Displays. TFT-LCDs are used in flat-panel televisions as well as computer monitors, laptop computers, mobile phones, personal digital assistants, and other devices. Plaintiffs charged that defendants conspired to raise and fix the prices of TFT-LCD panels and certain products containing those panels for over a decade, resulting in overcharges to purchasers of those panels and products. In March 2010, the Court certified two nationwide classes of persons and entities that directly purchased TFT-LCDs from January 1, 1999 through December 31, 2006, one class of panel purchasers, and one class of buyers of laptop computers, computer monitors, and televisions that contained TFT-LCDs. Over the course of the litigation, the classes reached settlements with all defendants except Toshiba. The case against Toshiba proceeded to trial. In July 2012, the jury found that Toshiba participated in the price-fixing conspiracy. The case was subsequently settled, bringing the total settlements in the litigation to over $470 million. For his outstanding work in the precedent-setting litigation, California Lawyer recognized Richard M. Heimann with a 2013 California Lawyer of the Year award.

6. ***Sullivan v. DB Investments***, No. 04-02819 (D. N.J.). Lieff Cabraser served as Class Counsel for consumers who purchased diamonds from 1994 through March 31, 2006, in a class action lawsuit against the De Beers group of companies. Plaintiffs charged that De Beers conspired to monopolize the sale of rough diamonds in the U.S. In May 2008, the District Court approved a $295 million settlement for purchasers of diamonds and diamond jewelry, including $130 million to consumers. The settlement also barred De Beers from continuing its illegal business practices and required De Beers to submit to the jurisdiction of the Court to enforce the settlement. In December 2011, the Third Circuit Court of

Appeals affirmed the District Court's order approving the settlement. 667 F.3d 273 (3rd Cir. 2011).

For sixty years, De Beers has flouted U.S. antitrust laws. In 1999, De Beers' Chairman Nicholas Oppenheimer stated that De Beers "likes to think of itself as the world's . . . longest-running monopoly. [We seek] to manage the diamond market, to control supply, to manage prices and to act collusively with our partners in the business." The hard-fought litigation spanned several years and nations. Despite the tremendous resources available to the U.S. Department of Justice and state attorney generals, it was only through the determination of plaintiffs' counsel that De Beers was finally brought to justice and the rights of consumers were vindicated. Lieff Cabraser attorneys played key roles in negotiating the settlement and defending it on appeal. Discussing the DeBeers case, The National Law Journal noted that Lieff Cabraser was "among the plaintiffs' firms that weren't afraid to take on one of the business world's great white whales."

7. ***In re Linerboard Antitrust Litigation***, MDL No. 1261 (E.D. Pa.). Lieff Cabraser served as Class Counsel on behalf of a class of direct purchasers of linerboard. The Court approved a settlement totaling $202 million.

8. ***Azizian v. Federated Department Stores***, No. 3:03 CV 03359 SBA (N.D. Cal.). In March 2005, the Court granted final approval to a settlement that Lieff Cabraser and co-counsel reached with numerous department store cosmetics manufacturers and retailers. The settlement was valued at $175 million and included significant injunctive relief, for the benefit of a nationwide class of consumers of department store cosmetics. The complaint alleged the manufacturers and retailers violated antitrust law by engaging in anticompetitive practices to prevent discounting of department store cosmetics.

9. ***Haley Paint Co. v. E.I. Dupont De Nemours and Co. et al.***, No. 10-cv-00318-RDB (D. Md.). Lieff Cabraser served as Co-Lead Counsel for direct purchasers of titanium dioxide in a nationwide class action lawsuit against Defendants E.I. Dupont De Nemours and Co., Huntsman International LLC, Kronos Worldwide Inc., and Cristal Global (fka Millennium Inorganic Chemicals, Inc.), alleging these corporations participated in a global cartel to fix the price of titanium dioxide. Titanium dioxide, a dry chemical powder, is the world's most widely used pigment for providing whiteness and brightness in paints, paper, plastics, and other products. Plaintiffs charged that defendants coordinated increases in the prices for titanium dioxide despite declining demand, decreasing raw material costs, and industry overcapacity.

Unlike some antitrust class actions, Plaintiffs proceeded without the benefit of any government investigation or proceeding. Plaintiffs overcame attacks on the pleadings, discovery obstacles, a rigorous class certification process that required two full rounds of briefing and expert analysis, and multiple summary judgment motions. In August 2012, the Court certified the class. Plaintiffs prepared fully for trial and achieved a settlement with the final defendant on the last business day before trial. In December 2013, the Court approved a series of settlements with defendants totaling $163 million.

10. ***Pharmaceutical Cases I, II, and III***, JCCP Nos. 2969, 2971 & 2972 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Lead Counsel and Co-Liaison Counsel representing a certified class of indirect purchasers (consumers) on claims against the major pharmaceutical manufacturers for violations of the Cartwright Act and the Unfair Competition Act. The class alleged that defendants unlawfully fixed discriminatory prices on prescription drugs to retail pharmacists in comparison with the prices charged to certain favored purchasers, including HMOs and mail order houses. In April 1999, the Court approved a settlement providing $148 million in free, brand-name prescription drugs to health agencies that served California's poor and uninsured. In October 2001, the Court approved a settlement with the remaining defendants in the case, which provided an additional $23 million in free, brand-name prescription drugs to these agencies.

11. ***In re Lupron Marketing and Sales Practices Litigation***, MDL No. 1430 (D. Mass.). In May 2005, the Court granted final approval to a settlement of a class action lawsuit by patients, insurance companies and health and welfare benefit plans that paid for Lupron, a prescription drug used to treat prostate cancer, endometriosis and precocious puberty. The settlement requires the defendants, Abbott Laboratories, Takeda Pharmaceutical Company Limited, and TAP Pharmaceuticals, to pay $150 million, inclusive of costs and fees, to persons or entities who paid for Lupron from January 1, 1985 through March 31, 2005. Plaintiffs charged that the defendants conspired to overstate the drug's average wholesale price ("AWP"), which resulted in plaintiffs paying more for Lupron than they should have paid. Lieff Cabraser served as Co-Lead Plaintiffs' Counsel.

12. ***Marchbanks Truck Service v. Comdata Network***, No. 07-cv-01078 (E.D. Pa.). In July 2014, the Court approved a $130 million settlement of a class action brought by truck stops and other retail fueling facilities that paid percentage-based transaction fees to Comdata on proprietary card transactions using Comdata's over-the-road fleet card. The complaint challenged arrangements among Comdata, its parent company Ceridian LLC, and three national truck stop chains: defendants

TravelCenters of America LLC and its wholly owned subsidiaries, Pilot Travel Centers LLC and its predecessor Pilot Corporation, and Love's Travel Stops & Country Stores, Inc. The alleged anticompetitive conduct insulated Comdata from competition, enhanced its market power, and led to independent truck stops' paying artificially inflated transaction fees. In addition to the $130 million payment, the settlement required Comdata to change certain business practices that will promote competition among payment cards used by over-the-road fleets and truckers and lead to lower merchant fees for the independent truck stops. Lieff Cabraser served as Co-Lead Class Counsel in the litigation.

13. ***California Vitamins Cases***, JCCP No. 4076 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Liaison Counsel and Co-Chairman of the Plaintiffs' Executive Committee on behalf of a class of California indirect vitamin purchasers in every level of the chain of distribution. In January 2002, the Court granted final approval of a $96 million settlement with certain vitamin manufacturers in a class action alleging that these and other manufacturers engaged in price fixing of particular vitamins. In December 2006, the Court granted final approval to over $8.8 million in additional settlements.

14. ***In re Buspirone Antitrust Litigation***, MDL No. 1413 (S.D. N.Y.). In November 2003, Lieff Cabraser obtained a $90 million cash settlement for individual consumers, consumer organizations, and third party payers that purchased BuSpar, a drug prescribed to alleviate symptoms of anxiety. Plaintiffs alleged that Bristol-Myers Squibb Co. (BMS), Danbury Pharmacal, Inc., Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. entered into an unlawful agreement in restraint of trade under which BMS paid a potential generic manufacturer of BuSpar to drop its challenge to BMS' patent and refrain from entering the market. Lieff Cabraser served as Plaintiffs' Co-Lead Counsel.

15. ***In re Travel Agency Commission Antitrust Litigation***, MDL No. 1058 (D. Minn.). Lieff Cabraser served as Co-Lead Counsel for a certified class of U.S. travel agents on claims against the major U.S. air carriers, who allegedly violated the federal antitrust laws by fixing the commissions paid to travel agents. In 1997, the Court approved an $82 million settlement.

16. ***In re Commercial Explosives Antitrust Litigation***, MDL No. 1093 (D. Utah). Lieff Cabraser served as Class Counsel on behalf of direct purchasers of explosives used in mining operations. In 1998, the Court approved a $77 million settlement of the litigation.

17. ***In re Toys 'R' Us Antitrust Litigation***, MDL No. 1211 (E.D. N.Y.). Lieff Cabraser served as Co-Lead Counsel representing a class of direct purchasers (consumers) who alleged that Toys 'R' Us conspired with the

major toy manufacturers to boycott certain discount retailers in order to restrict competition and inflate toy prices. In February 2000, the Court approved a settlement of cash and product of over $56 million.

18. ***Meijer v. Abbott Laboratories***, Case No. C 07-5985 CW (N.D. Cal.). Lieff Cabraser served as co-counsel for the group of retailers charging that Abbott Laboratories monopolized the market for AIDS medicines used in conjunction with Abbott's prescription drug Norvir. These drugs, known as Protease Inhibitors, have enabled patients with HIV to fight off the disease and live longer. In January 2011, the Court denied Abbott's motion for summary judgment on plaintiffs' monopolization claim. Trial commenced in February 2011. After opening statements and the presentation of four witnesses and evidence to the jury, plaintiffs and Abbott Laboratories entered into a $52 million settlement. The Court granted final approval to the settlement in August 2011.

19. ***In re Carpet Antitrust Litigation***, MDL No. 1075 (N.D. Ga.). Lieff Cabraser served as Class Counsel and a member of the trial team for a class of direct purchasers of twenty-ounce level loop polypropylene carpet. Plaintiffs, distributors of polypropylene carpet, alleged that Defendants, seven manufacturers of polypropylene carpet, conspired to fix the prices of polypropylene carpet by agreeing to eliminate discounts and charge inflated prices on the carpet. In 2001, the Court approved a $50 million settlement of the case.

20. ***In re High Pressure Laminates Antitrust Litigation***, MDL No. 1368 (S.D. N.Y.). Lieff Cabraser served as Trial Counsel on behalf of a class of direct purchasers of high pressure laminates. The case in 2006 was tried to a jury verdict. The case settled for over $40 million.

21. ***Schwartz v. National Football League***, No. 97-CV-5184 (E.D. Pa.). Lieff Cabraser served as counsel for individuals who purchased the "NFL Sunday Ticket" package of private satellite transmissions in litigation against the National Football League for allegedly violating the Sherman Act by limiting the distribution of television broadcasts of NFL games by satellite transmission to one package. In August 2001, the Court approved of a class action settlement that included: (1) the requirement that defendants provide an additional weekly satellite television package known as Single Sunday Ticket for the 2001 NFL football season, under certain circumstances for one more season, and at the defendants' discretion thereafter; (2) a $7.5 million settlement fund to be distributed to class members; (3) merchandise coupons entitling class members to discounts at the NFL's Internet store which the parties value at approximately $3 million; and (4) $2.3 million to pay for administering the settlement fund and notifying class members.

22. ***In re Lasik/PRK Antitrust Litigation***, No. CV 772894 (Cal. Supr. Ct.). Lieff Cabraser served as a member of Plaintiffs' Executive Committee in class actions brought on behalf of persons who underwent Lasik/PRK eye surgery. Plaintiffs alleged that defendants, the manufacturers of the laser system used for the laser vision correction surgery, manipulated fees charged to ophthalmologists and others who performed the surgery, and that the overcharges were passed onto consumers who paid for laser vision correction surgery. In December 2001, the Court approved a $12.5 million settlement of the litigation.

23. ***In the Matter of the Arbitration between CopyTele and AU Optronics***, Case No. 50 117 T 009883 13 (Internat'l Centre for Dispute Resolution). Lieff Cabraser successfully represented CopyTele, Inc. in a commercial dispute involving intellectual property. In 2011, CopyTele entered into an agreement with AU Optronics ("AUO") under which both companies would jointly develop two groups of products incorporating CopyTele's patented display technologies. CopyTele charged that AUO never had any intention of jointly developing the CopyTele technologies, and instead used the agreements to fraudulently obtain and transfer licenses of CopyTele's patented technologies. The case required the review of thousands of pages of documents in Chinese and in English culminating in a two week arbitration hearing. In December 2014, after the hearing, the parties resolved the matter, with CopyTele receiving $9 million.

24. ***Quantegy Recording Solutions, LLC, et al. v. Toda Kogyo Corp., et al.***, No. C-02-1611 (PJH). In August 2006 and January 2009, the Court approved the final settlements in antitrust litigation against manufacturers, producers, and distributors of magnetic iron oxide ("MIO"). MIO is used in the manufacture of audiotape, videotape, and data storage tape. Plaintiffs alleged that defendants violated federal antitrust laws by conspiring to fix, maintain, and stabilize the prices and to allocate the worldwide markets for MIO from 1991 to October 12, 2005. The value of all settlements reached in the litigation was $6.35 million. Lieff Cabraser served as Plaintiffs' Co-Lead Counsel.

25. ***In re Static Random Access Memory (SRAM) Antitrust Litigation***, MDL No. 1819 (N.D. Cal.). Plaintiffs allege that from November 1, 1996 through December 31, 2006, the defendant manufacturers conspired to fix and maintain artificially high prices for SRAM, a type of memory used in many products, including smartphones and computers. Lieff Cabraser served as one of three members of the Steering Committee for consumers and other indirect purchasers of SRAM. In February 2008, U.S. District Court Judge Claudia Wilken denied most aspects of defendants' motions to dismiss plaintiffs' complaints. In November 2009, the Court certified a nationwide class

seeking injunctive relief and twenty-seven state classes seeking damages. In 2010, the Court granted final approval of a first set of settlements. In October 2011, the Court granted final approval of settlements with the remaining defendants.

26. ***Carbon Fiber Cases I, II, III***, JCCP Nos. 4212, 4216 & 4222 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Liaison Counsel on behalf of indirect purchasers of carbon fiber. Plaintiffs alleged that defendants illegally conspired to raise prices of carbon fiber. Settlements have been reached with all of the defendants.

27. ***Methionine Cases I and II***, JCCP Nos. 4090 & 4096 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Lead Counsel on behalf of indirect purchasers of methionine, an amino acid used primarily as a poultry and swine feed additive to enhance growth and production. Plaintiffs alleged that the companies illegally conspired to raise methionine prices to super-competitive levels. The case settled.

28. ***McIntosh v. Monsanto***, No. 4:01CV65RSW (E.D. Mo.). Lieff Cabraser served as Co-Lead Counsel in a class action lawsuit against Monsanto Company and others alleging that a conspiracy to fix prices on genetically modified Roundup Ready soybean seeds and Yieldgard corn seeds. The case settled.

29. ***Tortola Restaurants v. Minnesota Mining and Manufacturing***, No. 314281 (Cal. Supr. Ct). Lieff Cabraser served as Co-Lead Counsel on behalf of indirect purchasers of Scotch-brand invisible and transparent tape. Plaintiffs alleged that defendant 3M conspired with certain retailers to monopolize the sale of Scotch-brand tape in California. The case was resolved as part of a nationwide settlement that Lieff Cabraser negotiated, along with co-counsel.

30. ***In re Compact Disc Antitrust Litigation***, MDL No. 1216 (C.D. Cal.). Lieff Cabraser served as Co-Lead Counsel for the direct purchasers of compact discs on claims that the producers fixed the price of CDs in violation of the federal antitrust laws.

31. ***In re Electrical Carbon Products Antitrust Litigation***, MDL No. 1514 (D.N.J.). Lieff Cabraser represented the City and County of San Francisco and a class of direct purchasers of carbon brushes and carbon collectors on claims that producers fixed the price of carbon brushes and carbon collectors in violation of the Sherman Act.

VII. Environmental and Toxic Exposures

A. Current Cases

1. ***In Re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico***, MDL No. 2179 (E.D. La.). Lieff Cabraser serves on the Court-appointed Plaintiffs' Steering Committee ("PSC") and with co-counsel represents fishermen, property owners, business owners, wage earners, and other harmed parties in class action litigation against BP, Transocean, Halliburton, and other defendants involved in the Deepwater Horizon oil rig blowout and resulting oil spill in the Gulf of Mexico on April 20, 2010. The Master Complaints allege that the defendants were insouciant in addressing the operations of the well and the oil rig, ignored warning signs of the impending disaster, and failed to employ and/or follow proper safety measures, worker safety laws, and environmental protection laws in favor of cost-cutting measures.

   In 2012, the Court approved two class action settlements that will fully compensate hundreds of thousands of victims of the tragedy. The settlements resolve the majority of private economic loss, property damage, and medical injury claims stemming from the Deepwater Horizon Oil Spill, and hold BP fully accountable to individuals and businesses harmed by the spill. Under the settlements, there is no dollar limit on the amount BP will pay. In 2014, the U.S. Supreme Court denied review of BP's challenge to its own class action settlement. Approval of that settlement is now final, and has so far delivered nearly $5 billion to compensate claimants' losses. The medical settlement is also final, and an additional $1 billion settlement has been reached with defendant Halliburton.

B. Successes

1. ***In re Exxon Valdez Oil Spill Litigation***, No. 3:89-cv-0095 HRH (D. Al.). The *Exxon Valdez* ran aground on March 24, 1989, spilling 11 million gallons of oil into Prince William Sound. Lieff Cabraser served as one of the Court-appointed Plaintiffs' Class Counsel. The class consisted of fisherman and others whose livelihoods were gravely affected by the disaster. In addition, Lieff Cabraser served on the Class Trial Team that tried the case before a jury in federal court in 1994. The jury returned an award of $5 billion in punitive damages.

   In 2001, the Ninth Circuit Court of Appeals ruled that the original $5 billion punitive damages verdict was excessive. In 2002, U.S. District Court Judge H. Russell Holland reinstated the award at $4 billion. Judge Holland stated that, "Exxon officials knew that carrying huge volumes of crude oil through Prince William sound was a dangerous business, yet they knowingly permitted a relapsed alcoholic to direct the operation of

the *Exxon Valdez* through Prince William Sound." In 2003, the Ninth Circuit again directed Judge Holland to reconsider the punitive damages award under United States Supreme Court punitive damages guidelines. In January 2004, Judge Holland issued his order finding that Supreme Court authority did not change the Court's earlier analysis.

In December 2006, the Ninth Circuit Court of Appeals issued its ruling, setting the punitive damages award at $2.5 billion. Subsequently, the U.S. Supreme Court further reduced the punitive damages award to $507.5 million, an amount equal to the compensatory damages. With interest, the total award to the plaintiff class was $1.515 billion.

2. ***In re Imprelis Herbicide Marketing, Sales Practices and Products Liability Litigation***, MDL No. 2284 (E.D. Pa.). Lieff Cabraser served as Co-Lead Counsel for homeowners, golf course companies and other property owners in a nationwide class action lawsuit against E.I. du Pont de Nemours & Company ("DuPont"), charging that its herbicide Imprelis caused widespread death among trees and other non-targeted vegetation across the country. DuPont marketed Imprelis as an environmentally friendly alternative to the commonly used 2,4-D herbicide. Just weeks after Imprelis' introduction to the market in late 2010, however, complaints of tree damage began to surface. Property owners reported curling needles, severe browning, and dieback in trees near turf that had been treated with Imprelis. In August 2011, the U.S. Environmental Protection Agency banned the sale of Imprelis.

   The complaint charged that DuPont failed to disclose the risks Imprelis posed to trees, even when applied as directed, and failed to provide instructions for the safe application of Imprelis. In response to the litigation, DuPont created a process for property owners to submit claims for damages. Approximately $400 million was paid to approximately 25,000 claimants. In October 2013, the Court approved a settlement of the class action that substantially enhanced the DuPont claims process, including by adding an extended warranty, a more limited release of claims, the right to appeal the denial of claim by DuPont to an independent arborist, and publication of DuPont's tree payment schedule.

3. ***In re GCC Richmond Works Cases***, JCCP No. 2906 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Liaison Counsel and Lead Class Counsel in coordinated litigation arising out of the release on July 26, 1993, of a massive toxic sulfuric acid cloud which injured an estimated 50,000 residents of Richmond, California. The Coordination Trial Court granted final approval to a $180 million class settlement for exposed residents.

4. ***In re Unocal Refinery Litigation***, No. C 94-04141 (Cal. Supr. Ct.). Lieff Cabraser served as one of two Co-Lead Class Counsel and on the Plaintiffs' Steering Committee in this action against Union Oil Company

of California ("Unocal") arising from a series of toxic releases from Unocal's San Francisco refinery in Rodeo, California. The action was settled in 1997 on behalf of approximately 10,000 individuals for $80 million.

5. ***West v. G&H Seed Co., et al.***, No. 99-C-4984-A (La. State Ct.). With co-counsel, Lieff Cabraser represented a certified class of 1,500 Louisiana crawfish farmers who charged in a lawsuit that Fipronil, an insecticide sold under the trade name ICON, damaged their pond-grown crawfish crops. In Louisiana, rice and crawfish are often farmed together, either in the same pond or in close proximity to one another.

   After its introduction to the market in 1999, ICON was used extensively in Louisiana to kill water weevils that attacked rice plants. The lawsuit alleged that ICON also had a devastating effect on crawfish harvests with some farmers losing their entire crawfish crop. In 2004, the Court approved a $45 million settlement with Bayer CropScience, which during the litigation purchased Aventis CropScience, the original manufacturer of ICON. The settlement was reached after the parties had presented nearly a month's worth of evidence at trial and were on the verge of making closing arguments to the jury.

6. ***Kingston, Tennessee TVA Coal Ash Spill Litigation***, No. 3:09-cv-09 (E.D. Tenn.). Lieff Cabraser represented hundreds of property owners and businesses harmed by the largest coal ash spill in U.S. history. On December 22, 2008, more than a billion gallons of coal ash slurry spilled when a dike burst on a retention pond at the Kingston Fossil Plant operated by the Tennessee Valley Authority (TVA) in Roane County, Tennessee. A wall of coal ash slurry traveled across the Emory River, polluting the river and nearby waterways, and covering nearly 300 acres with toxic sludge, including 12 homes and damaging hundreds of properties. In March 2010, the Court denied in large part TVA's motion to dismiss the litigation. In the Fall of 2011, the Court conducted a four week bench trial on the question of whether TVA was liable for releasing the coal ash into the river system. The issue of damages was reserved for later proceedings. In August 2012, the Court found in favor of plaintiffs on their claims of negligence, trespass, and private nuisance. In August 2014, the case came to a conclusion with TVA's payment of $27.8 million to settle the litigation.

7. ***In re Sacramento River Spill Cases I and II***, JCCP Nos. 2617 & 2620 (Cal. Supr. Ct.). On July 14, 1991, a Southern Pacific train tanker car derailed in northern California, spilling 19,000 gallons of a toxic pesticide, metam sodium, into the Sacramento River near the town of Dunsmir at a site along the rail lines known as the Cantara Loop. The metam sodium mixed thoroughly with the river water and had a

devastating effect on the river and surrounding ecosystem. Within a week, every fish, 1.1 million in total, and all other aquatic life in a 45-mile stretch of the Sacramento River was killed. In addition, many residents living along the river became ill with symptoms that included headaches, shortness of breath, and vomiting. The spill considered the worst inland ecological disaster in California history.

Lieff Cabraser served as Court-appointed Plaintiffs' Liaison Counsel and Lead Class Counsel, and chaired the Plaintiffs' Litigation Committee in coordinated proceedings that included all of the lawsuits arising out of this toxic spill. Settlement proceeds of approximately $16 million were distributed pursuant to Court approval of a plan of allocation to four certified plaintiff classes: personal injury, business loss, property damage/diminution, and evacuation.

8. ***Kentucky Coal Sludge Litigation***, No. 00-CI-00245 (Cmmw. Ky.). On October 11, 2000, near Inez, Kentucky, a coal waste storage facility ruptured, spilling 1.25 million tons of coal sludge (a wet mixture produced by the treatment and cleaning of coal) into waterways in the region and contaminating hundreds of properties. This was one of the worst environmental disasters in the Southeastern United States. With co-counsel, Lieff Cabraser represented over 400 clients in property damage claims, including claims for diminution in the value of their homes and properties. In April 2003, the parties reached a confidential settlement agreement on favorable terms to the plaintiffs.

9. ***Toms River Childhood Cancer Incidents***, No. L-10445-01 MT (Sup. Ct. NJ). With co-counsel, Lieff Cabraser represented 69 families in Toms River, New Jersey, each with a child having cancer, that claimed the cancers were caused by environmental contamination in the Toms River area. Commencing in 1998, the parties—the 69 families, Ciba Specialty Chemicals, Union Carbide and United Water Resources, Inc., a water distributor in the area—participated in an unique alternative dispute resolution process, which lead to a fair and efficient consideration of the factual and scientific issues in the matter. In December 2001, under the supervision of a mediator, a confidential settlement favorable to the families was reached.

VIII. False Claims Act

A. Current Cases

Lieff Cabraser represents whistleblowers in a wide range of False Claims Act cases, including Medicare kickback and healthcare fraud, defense contractor fraud, and securities and financial fraud. We have more than a dozen whistleblower cases currently under seal and investigation in federal and state jurisdictions across the U.S. For that reason, we do not list all of our current False Claims Act and qui tam cases in our resume.

1. ***State of California ex rel. Associates Against FX Insider State Street Corp.***, No. 34-2008-00008457 (Sacramento Supr. Ct., Cal.) ("***State Street I***"). Lieff Cabraser serves as co-counsel for the whistleblowers in this action against State Street Corporation which serves as the contractual custodian for over 40% of public pension funds in the United States. As the contractual custodian, State Street is responsible for undertaking the foreign currency exchange (FX) transactions necessary to facilitate a customer's purchases or sales of foreign securities. The complaint charges that State Street violated the California False Claims Act by systematically manipulating the timing of its execution and reporting of FX trades in order to enrich itself, at the expense of California custodial public pension fund clients, including the California Public Employees' Retirement System and the California State Teachers' Retirement System. The case is in the discovery stage after the Trial Court denied State Street's demurrer.

2. ***United States ex rel. Matthew Cestra v. Cephalon***, No. 14-01842 (E.D. Pa.); ***United States ex rel. Bruce Boise et al. v. Cephalon***, No. 08-287 (E.D. Pa.) Lieff Cabraser, with co-counsel, represents four whistleblowers bringing claims on behalf of the U.S. Government and various states under the federal and state False Claims Acts against Cephalon, Inc., a pharmaceutical company. The complaints allege that Cephalon has engaged in unlawful off-label marketing of certain of its drugs, largely through misrepresentations, kickbacks, and other unlawful or fraudulent means, causing the submission of hundreds of thousands of false claims for reimbursement to federal and state health care programs. The Boise case involves Provigil and its successor drug Nuvigil, limited-indication wakefulness drugs that are unsafe and/or not efficacious for the wide array of off-label psychiatric and neurological conditions for which Cephalon has marketed them, according to the allegations. The Cestra case involves an expensive oncological drug called Treanda, which is approved only for second-line treatment of indolent non-Hodgkin's Lymphoma despite what the relators allege to be the company's off-label marketing of the drug for first-line treatment. Various motions are pending.

B. Successes

1. ***United States ex rel. Mary Hendow and Julie Albertson v. University of Phoenix***, No. 2:03-cv-00457-GEB-DAD (E.D. Cal.). Lieff Cabraser obtained a record whistleblower settlement against the University of Phoenix that charged the university had violated the incentive compensation ban of the Higher Education Act (HEA) by providing improper incentive pay to its recruiters. The HEA prohibits colleges and universities whose students receive federal financial aid from paying their recruiters based on the number of students enrolled, which creates a risk of encouraging recruitment of unqualified students who, Congress has determined, are more likely to default on their loans. High student loan default rates not only result in wasted federal funds, but the students who receive these loans and default are burdened for years with tremendous debt without the benefit of a college degree.

   The complaint alleged that the University of Phoenix defrauded the U.S. Department of Education by obtaining federal student loan and Pell Grant monies from the federal government based on false statements of compliance with HEA. In December 2009, the parties announced a $78.5 million settlement. The settlement constitutes the second-largest settlement ever in a False Claims Act case in which the federal government declined to intervene in the action and largest settlement ever involving the Department of Education. The University of Phoenix case led to the Obama Administration passing new regulations that took away the so-called "safe harbor" provisions that for-profit universities relied on to justify their alleged recruitment misconduct. For his outstanding work as Lead Counsel and the significance of the case, *California Lawyer* magazine recognized Lieff Cabraser attorney Robert J. Nelson with a California Lawyer of the Year (CLAY) Award.

2. ***State of California ex rel. Sherwin v. Office Depot***, Case No. BC410135 (Cal. Supr. Ct.). In February 2015, the Court approved a $77.5 million settlement with Office Depot to settle a whistleblower lawsuit brought under the California False Claims Act. The whistleblower was a former Office Depot account manager. The City of Los Angeles, County of Santa Clara, Stockton Unified School District, and 16 additional California cities, counties, and school districts intervened in the action to assert their claims (including common-law fraud and breach of contract) against Office Depot directly. The governmental entities purchased office supplies from Office Depot under a nationwide supply contract known as the U.S. Communities contract. Office Depot promised in the U.S. Communities contract to sell office supplies at its best governmental pricing nationwide. The complaint alleged that Office Depot repeatedly failed to give most of its California governmental customers the lowest

price it was offering other governmental customers. Other pricing misconduct was also alleged.

State of California ex rel. Rockville Recovery Associates v. Multiplan, No. 34-2010-00079432 (Sacramento Supr. Ct., Cal.). In a case that received widespread media coverage, Lieff Cabraser represented whistleblower Rockville Recovery Associates in a qui tam suit for civil penalties under the California Insurance Frauds Prevention Act ("IFPA"), Cal. Insurance Code § 1871.7, against Sutter Health, one of California's largest healthcare providers, and obtained the largest penalty ever imposed under the statute. The parties reached a $46 million settlement that was announced in November 2013, shortly before trial was scheduled to commence.

The complaint alleged that the 26 Sutter hospitals throughout California submitted false, fraudulent, or misleading charges for anesthesia services (separate from the anesthesiologist's fees) during operating room procedures that were already covered in the operating room bill.

After Lieff Cabraser defeated Sutter Health's demurrer and motion to compel arbitration, California Insurance Commissioner Dave Jones intervened in the litigation in May 2011. Lieff Cabraser attorneys continued to serve as lead counsel, and litigated the case for over two more years. In all, plaintiffs defeated no less than 10 dispositive motions, as well as three writ petitions to the Court of Appeals.

In addition to the monetary recovery, Sutter Health agreed to a comprehensive series of billing and transparency reforms, which California Insurance Commissioner Dave Jones called "a groundbreaking step in opening up hospital billing to public scrutiny." On the date the settlement was announced, the California Hospital Association recognized its significance by issuing a press release stating that the settlement "compels industry-wide review of anesthesia billing." Defendant Multiplan, Inc., a large leased network Preferred Provider Organization, separately paid a $925,000 civil penalty for its role in enabling Sutter's alleged false billing scheme.

3. ***United States ex rel. Dye v. ATK Launch Systems***, No. 1:06-CV-39-TS (D. Utah). Lieff Cabraser served as co-counsel for a whistleblower who alleged that ATK Launch Systems knowingly sold defective and potentially dangerous illumination flares to the United States military in violation of the federal False Claims Act. The specialized flares were used in nighttime combat, covert missions, and search and rescue operations. A key design specification set by the Defense Department was that these highly flammable and dangerous items ignite only under certain conditions. The complaint alleged that the ATK flares at issue could ignite when dropped from a height of less than 10 feet – and, according to ATK's

own analysis, from as little as 11.6 inches – notwithstanding contractual specifications that they be capable of withstanding such a drop. In April 2012, the parties reached a settlement valued at $37 million.

4. ***United States ex rel. Mauro Vosilla and Steven Rossow v. Avaya, Inc.***, Case No. Case No. CV04-8763 PA JTLx (C.D. Cal.). Lieff Cabraser represented whistleblower in litigation alleging that defendants Avaya, Lucent Technologies, and AT&T violated the Federal False Claims Act and state false claims statutes. The complaint alleged that defendants charged governmental agencies for the lease, rental, and post-warranty maintenance of telephone communications systems and services that the governmental agencies no longer possessed and/or were no longer maintained by defendants. In November 2010, the parties entered into a $21.75 million settlement of the litigation.

IX. Digital Privacy and Data Security

A. Current Cases

1. ***In re Google Inc. Street View Electronic Communications Litigation***, Case No. 3:10-md-021784-CRB (N.D. Cal.). Lieff Cabraser represents persons whose right to privacy was violated when Google intentionally equipped its Google Maps "Street View" vehicles with Wi-Fi antennas and software that collected data transmitted by those persons' Wi-Fi networks located in their nearby homes. Google collected not only basic identifying information about individuals' Wi-Fi networks, but also personal, private data being transmitted over their Wi-Fi networks such as emails, usernames, passwords, videos, and documents. Plaintiffs allege that Google's actions violated the federal Wiretap Act, as amended by the Electronic Communications Privacy Act. On September 10, 2013, the Ninth Circuit Court of Appeals held that Google's actions are not exempt from the Act.

2. ***Perkins v. LinkedIn***, Case No. 13-CV-04303-LHK (N.D. Cal.). Lieff Cabraser represents individuals who joined LinkedIn's network and, without their consent or authorization, had their names and likenesses used by LinkedIn to endorse LinkedIn's services and send repeated emails to their contacts asking that they join LinkedIn. On June 11, 2015, the parties notified the Court that they had reached a settlement for $13-13.75 million, one of the largest per-class member settlements ever in a digital privacy class action. In addition to the monetary relief, LinkedIn has agreed to make significant changes to Add Connections disclosures and functionality. Specifically, LinkedIn has revised disclosures to real-time permission screens presented to members using Add Connections, and has agreed to implement new functionality allowing LinkedIn members to manage their contacts, including viewing and deleting contacts and

sending invitations, and to stop reminder emails from being sent if users have sent connection invitations inadvertently.

3. ***Campbell v. Facebook***, No. 4:13-cv-05996 (N.D. Cal.). Lieff Cabraser serves as Co-Lead Counsel in a nationwide class action lawsuit alleging that Facebook intercepts certain private data in users' personal and private messages on the social network and profits by sharing that information with third parties. In December 2014, the Court in large part denied Facebook's motion to dismiss. In rejecting one of Facebook's core arguments, the U.S. District Court Judge Phyllis Hamilton stated: "An electronic communications service provider cannot simply adopt any revenue-generating practice and deem it 'ordinary' by its own subjective standard."

4. ***In re Carrier IQ Privacy Litigation***, MDL No. 2330 (N.D. Cal.). Lieff Cabraser represents a plaintiff in Multi-District Litigation against Samsung, LG, Motorola, HTC, and Carrier IQ alleging that smartphone manufacturers violated privacy laws by installing tracking software, called IQ Agent, on millions of cell phones and other mobile devices that use the Android operating system. Without notifying users or obtaining consent, IQ Agent tracks users' keystrokes, passwords, apps, text messages, photos, videos, and other personal information and transmits this data to cellular carriers. In a 96-page order issued in January 2015, U.S. District Court Judge Edward Chen granted in part, and denied in part, defendants' motion to dismiss. Importantly, the Court permitted the core Wiretap Act claim to proceed as well as the claims for violations of the Magnuson-Moss Warranty Act and the California Unfair Competition Law and breach of the common law duty of implied warranty.

5. ***Corona v. Sony Pictures Entertainment***, Case No. 2:14-CV-09660-RGK (C.D. Cal.). Lieff Cabraser serves as Plaintiffs' Co-Lead Counsel in class action litigation against Sony for failing to take reasonable measures to secure the data of its employees from hacking and other attacks. As a result, personally identifiable information of thousands of current and former Sony employees and their families was obtained and published on websites across the Internet. Among the staggering array of personally identifiable information compromised were medical records, Social Security Numbers, birth dates, personal emails, home addresses, salaries, tax information, employee evaluations, disciplinary actions, criminal background checks, severance packages, and family medical histories. The complaint charges that Sony owed a duty to take reasonable steps to secure the data of its employees from hacking. Sony allegedly breached this duty by failing to properly invest in adequate IT security, despite having already succumbed to one of the largest data breaches in history only three years ago.

6. ***Diaz v. Intuit***, Case No. 5:15-CV-01778-PSG (N.D. Cal.). Lieff Cabraser represents identity theft victims in a nationwide class action lawsuit against Intuit for allegedly failing to protect consumers' data from foreseeable and preventable breaches, and by facilitating the filing of fraudulent tax returns through its TurboTax software program. The complaint alleges that Intuit failed to protect data provided by consumers who purchased TurboTax, used to file an estimated 30 million tax returns for American taxpayers every year, from easy access by hackers and other cybercriminals. The complaint further alleges that Intuit was aware of the widespread use of TurboTax exclusively for the filing of fraudulent tax returns. Yet, Intuit failed to adopt basic cyber security policies to prevent this misuse of TurboTax. As a result, fraudulent tax returns were filed in the names of the plaintiffs and thousands of other individuals across America, including persons who never purchased TurboTax.

7. ***Henson v. Turn***, Case No. 3:15-CV-01497 (N.D. Cal.). Lieff Cabraser represents plaintiffs in class action litigation alleging that internet marketing company Turn, Inc. violates users' digital privacy by installing software tracking beacons on smartphones, tablets, and other mobile computing devices. The complaint alleges that in an effort to thwart standard privacy settings and features, Turn deploys so-called "zombie cookies" that cannot be detected or deleted, and that track smartphone activity across various browsers and applications. Turn uses the data harvested by these cookies to build robust user profiles and sell targeted and profitable advertising, all without the user's knowledge or consent. The complaint alleges that Turn's conduct violates consumer protection laws and amounts to trespass.

X. International and Human Rights Litigation

A. Successes

1. ***Holocaust Cases***. Lieff Cabraser was one of the leading firms that prosecuted claims by Holocaust survivors and the heirs of Holocaust survivors and victims against banks and private manufacturers and other corporations who enslaved and/or looted the assets of Jews and other minority groups persecuted by the Nazi Regime during the Second World War era. We serve as Settlement Class Counsel in the case against the Swiss banks that the Court approved a U.S. $1.25 billion settlement in July 2000. Lieff Cabraser donated its attorneys' fees in the Swiss Banks case, in the amount of $1.5 million, to endow a Human Rights clinical chair at Columbia University Law School. We were also active in slave

labor and property litigation against German and Austrian defendants, and Nazi-era banking litigation against French banks. In connection therewith, Lieff Cabraser participated in multi-national negotiations that led to Executive Agreements establishing an additional approximately U.S. $5 billion in funds for survivors and victims of Nazi persecution. Our website provides links to the websites of settlement and claims administrators in these cases.

Commenting on the work of Lieff Cabraser and co-counsel in the litigation against private German corporations, entitled *In re Holocaust Era German Industry, Bank & Insurance Litigation* (MDL No. 1337), U.S. District Court Judge William G. Bassler stated on November 13, 2002:

> Up until this litigation, as far as I can tell, perhaps with some minor exceptions, the claims of slave and forced labor fell on deaf ears. You can say what you want to say about class actions and about attorneys, but the fact of the matter is, there was no attention to this very, very large group of people by Germany, or by German industry until these cases were filed. . . . What has been accomplished here with the efforts of the plaintiffs' attorneys and defense counsel is quite incredible. . . . I want to thank counsel for the assistance in bringing us to where we are today. Cases don't get settled just by litigants. It can only be settled by competent, patient attorneys.

2. ***Cruz v. U.S., Estados Unidos Mexicanos, Wells Fargo Bank, et al.***, No. 01-0892-CRB (N.D. Cal.). Working with co-counsel, Lieff Cabraser succeeded in correcting an injustice that dated back 60 years. The case was brought on behalf of Mexican workers and laborers, known as Braceros ("strong arms"), who came from Mexico to the United States pursuant to bilateral agreements from 1942 through 1946 to aid American farms and industries hurt by employee shortages during World War II in the agricultural, railroad, and other industries. As part of the Braceros program, employers held back 10% of the workers' wages, which were to be transferred via United States and Mexican banks to savings accounts for each Bracero. The Braceros were never reimbursed for the portion of their wages placed in the forced savings accounts.

Despite significant obstacles including the aging and passing away of many Braceros, statutes of limitation hurdles, and strong defenses to claims under contract and international law, plaintiffs prevailed in a settlement in February 2009. Under the settlement, the Mexican government provided a payment to Braceros, or their surviving spouses or children, in the amount of approximately $3,500 (USD). In approving the

settlement on February 23, 2009, U.S. District Court Judge Charles Breyer stated:

> I've never seen such litigation in eleven years on the bench that was more difficult than this one. It was enormously challenging. . . . It had all sorts of issues . . . that complicated it: foreign law, constitutional law, contract law, [and] statute of limitations. . . . Notwithstanding all of these issues that kept surfacing . . . over the years, the plaintiffs persisted. I actually expected, to tell you the truth, at some point that the plaintiffs would just give up because it was so hard, but they never did. They never did. And, in fact, they achieved a settlement of the case, which I find remarkable under all of these circumstances.

FIRM BIOGRAPHY:

PARTNERS

ELIZABETH J. CABRASER, Admitted to practice in California, 1978; U.S. Supreme Court, 1996; U.S. Tax Court, 1979; California Supreme Court, 1978; U.S. District Court, Northern District of California, 1978; U.S. District Court, Eastern District of California, 1979; U.S. District Court, Central District of California and Southern District of California, 1992; U.S. District Court, Eastern District of Michigan, 2005; U.S. Court of Appeals, First Circuit, 2011; U.S. Court of Appeals, Second Circuit, 2009; U.S. Court of Appeals, Third Circuit, 1994; U.S. Court of Appeals, Fifth Circuit, 1992; U.S. Court of Appeals, Sixth Circuit, 1992; U.S. Court of Appeals, Seventh Circuit, 2001; U.S. Court of Appeals, Ninth Circuit, 1979; U.S. Court of Appeals, Tenth Circuit, 1992; U.S. Court of Appeals, Eleventh Circuit, 1992; U.S. District Court, District of Hawaii, 1986; Fourth Circuit Court of Appeals, 2013. *Education*: Boalt Hall School of Law, University of California (J.D., 1978); University of California at Berkeley (A.B., 1975). *Awards and Honors*: AV Preeminent Peer Review Rated, Martindale-Hubbell; "California Litigation Star," *Benchmark Litigation*, 2012-2015; "Top 100 Trial Lawyers in America," *Benchmark Litigation*, 2015; selected for inclusion by peers in *The Best Lawyers in America* in the fields of "Mass Tort Litigation/Class Actions – Plaintiffs, Personal Injury Litigation – Plaintiffs, Product Liability Litigation – Plaintiffs," 2005-2015; "Top California Women Litigators," *Daily Journal*, 2007-2015; "Lawdragon 500 Leading Lawyers in America," *Lawdragon*, 2005-2015; "Outstanding Women Lawyer," *National Law Journal*, 2015; "Top 10 Northern California Super Lawyer," *Super Lawyers*, 2011-2015; "Top 50 Female Northern California Super Lawyers," *Super Lawyers*, 2005-2015; "Top 100 Northern California Super Lawyers," *Super Lawyers*, 2005-2015; "Northern California Super Lawyer," *Super Lawyers*, 2004-2015; "Lawyer of the Year," *Best Lawyers*, recognized in the category of Product Liability Litigation - Plaintiffs for San Francisco, 2014; "Top 100 Attorneys in California," *Daily Journal*, 2002-2007, 2010-2012; "Recommended Lawyer," *The Legal 500* (U.S. edition, 2000-2014); "100 Most Influential Lawyers in America," *The National Law Journal*, 1997, 2000, 2006, & 2013; "Outstanding Achievement Award," Chambers USA, 2012; "Margaret Brent Women Lawyers of Achievement Award," American Bar Association Commission on Women in the

Profession, 2010; "Edward Pollock Award," Consumer Attorneys of California, 2008; "Lawdragon 500 Leading Plaintiffs' Lawyers," *Lawdragon*, Winter 2007; "50 Most Influential Women Lawyers in America," *The National Law Journal*, 1998 & 2007; "Award For Public Interest Excellence," University of San Francisco School of Law Public Interest Law Foundation, 2007; "Top 75 Women Litigators," *Daily Journal*, 2005-2006; "Lawdragon 500 Leading Litigators in America," *Lawdragon*, 2006; "Distinguished Leadership Award," Legal Community Against Violence, 2006; "Women of Achievement Award," Legal Momentum (formerly the NOW Legal Defense & Education Fund), 2006; "Top 30 Securities Litigator," *Daily Journal*, 2005; "Top 50 Women Litigators," *Daily Journal*, 2004; "Citation Award," University of California, Berkeley Boalt Hall, 2003; "Distinguished Jurisprudence Award," Anti-Defamation League, 2002; "Top 30 Women Litigators," *California Daily Journal*, 2002; "Top Ten Women Litigators," *The National Law Journal*, 2001; "Matthew O. Tobriner Public Service Award," Legal Aid Society, 2000; "California Law Business Top 100 Lawyers," *California Daily Journal*, 2000; "California Lawyer of the Year (CLAY)," *California Lawyer*, 1998; "Presidential Award of Merit," Consumer Attorneys of California, 1998; "Public Justice Achievement Award," Public Justice, 1997. *Publications & Presentations*: Editor-in-Chief, *California Class Actions Practice and Procedure*, LexisNexis (updated annually); "Punitive Damages," Proving and Defending Damage Claims, Chapter 8, Aspen Publishers (updated annually); "Symposium: Enforcing the Social Contract through Representative Litigation," 33 Connecticut Law Review 1239 (Summer 2011); "Apportioning Due Process: Preserving The Right to Affordable Justice," 87 Denver U. L.Rev. 437 (2010); "Due Process Pre-Empted: Stealth Preemption As a Consequence of Agency Capture" (2010); "When Worlds Collide: The Supreme Court Confronts Federal Agencies with Federalism in *Wyeth v. Levine*," 84 Tulane L. Rev. 1275 (2010); "Just Choose: The Jurisprudential Necessity to Select a Single Governing Law for Mass Claims Arising from Nationally Marketed Consumer Goods and Services," *Roger Williams University Law Review* (Winter 2009); "California Class Action Classics," Consumer Attorneys of California (January/February Forum 2009); Executive Editor, ABA Section of Litigation, *Survey of State Class Action Law*, 2008-2010; Coordinating Editor, ABA Section of Litigation, Survey of State Class Action Law, 2006-2007; "The Manageable Nationwide Class: A Choice-of-Law Legacy of Phillips Petroleum Co. v. Shutts," *University of Missouri- Kansas City Law Review*, Volume 74, Number 3, Spring 2006; Co-Author with Fabrice N. Vincent, "Class Actions Fairness Act of 2005," *California Litigation*, Vol. 18, No. 3 (2005); Co-Author with Joy A. Kruse, Bruce Leppla, "Selective Waiver: Recent Developments in the Ninth Circuit and California," (pts. 1 & 2), *Securities Litigation Report* (West Legalworks May & June 2005); Editor-in-Chief, *California Class Actions Practice and Procedures* (2003); "A Plaintiffs' Perspective On The Effect of State Farm v. Campbell On Punitive Damages in Mass Torts" (May 2003); Co-Author, "Decisions Interpreting California's Rules of Class Action Procedure," *Survey of State Class Action Law*, updated and re-published in *5 Newberg on Class Actions* (ABA 2001-2004); Co-Author, "Mass But Not (Necessarily) Class: Emerging Aggregation Alternatives Under the Federal Rules," *ABA 8th Annual National Institute on Class Actions*, New York (Oct. 15, 2004), New Orleans (Oct. 29, 2004); Co-Author, "2004 ABA Toxicology Monograph-California State Law," (January 2004); "Mass Tort Class Actions," ATLA's Litigating Tort Cases, Vol. 1, Chapter 9 (June 2003); "Human Rights Violations as Mass Torts: Compensation as a Proxy for Justice in the United States Civil Litigation System"; Co-Author with Fabrice N. Vincent, "Ethics and Admissibility: Failure to Disclose Conflicts of Interest in and/or Funding of Scientific Studies and/or Data May Warrant Evidentiary Exclusions," *Mealey's December Emerging Drugs Reporter* (December

2002); Co-Author with Fabrice N. Vincent, "The Shareholder Strikes Back: Varied Approaches to Civil Litigation Claims Are Available to Help Make Shareholders Whole," *Mealey's Emerging Securities Litigation Reporter* (September 2002); Coordinating Editor and Co-Author of California section of the *ABA State Class Action Survey* (2001-2002); "Unfinished Business: Reaching the Due Process Limits of Punitive Damages in Tobacco Litigation Through Unitary Classwide Adjudication," *36 Wake Forest Law Review 979* (Winter 2001); "Symposium: Enforcing the Social Contract through Representative Litigation," *33 Connecticut Law Review 1239* (Summer 2001); "Equity for the Victims, Equity for the Transgressor: The Classwide Treatment of Punitive Damages Claims," *74 Tulane Law Review 2005* (June 2000); "Class Action Trends and Developments After Amchem and Ortiz," in *Civil Practice and Litigation Techniques in Federal and State Courts* (ALI-ABA Course of Study 1999); Contributor/Editor, *Moore's Federal Practice* (1999); Co-Author, "Preliminary Issues Regarding Forum Selection, Jurisdiction, and Choice of Law in Class Actions," (December 1999); "Life After Amchem: The Class Struggle Continues," *31 Loyola Law Review 373* (1998); "Recent Developments in Nationwide Products Liability Litigation: The Phenomenon of Non-Injury Products Cases, the Impact of Amchem and the Trend Toward State Court Adjudication," *Products Liability* (ABA February 1998); Contributor/Editor, *California Causes of Action* (1998); "Beyond Bifurcation: Multi-Phase Structure in Mass Tort Class Actions," *Class Actions & Derivative Suits* (Spring 1997); "The Road Not Taken: Thoughts on the Fifth Circuit's Decertification of the Castano Class," *SB24 ALI-ABA 433* (1996); "Getting the Word Out: Pre-Certification Notice to Class Members Under Rule 23(d)(2)," *Class Actions & Derivative Suits Newsletter* (October 1995); "Mass Tort Class Action Settlements," *24 CTLA Forum 11* (January-February 1994); "Do You Know the Way from San Jose? The Evolution of Environmental and Toxic Nuisance Class Actions," *Class Actions & Derivative Suits* (Spring 1994); "An Oracle of Change? Realizing the Potential of Emerging Fee Award Methodologies for Enhancing The Role and Control of Investors in Derivative and Class Action Suits," *Principles of Corporate Governance* (ALI October 1994); "How To Streamline Complex Litigation: Tailor a Case Management Order to Your Controversy," *21 The Brief 12* (ABA/TIPS Summer 1992); "The Applicability of the Fraud-On-The-Market Theory to Undeveloped Markets: When Fraud Creates the Market," *12 Class Action Reports 402* (1989); "Mandatory Certification of Settlement Classes," *10 Class Action Reports 151* (1987). *Member*: American Academy of Arts and Sciences (Fellow); American Association for Justice (Fight for Justice Campaign; Women Trial Lawyers Caucus; California State Liaison); American Bar Association (Committee on Mass Torts, Past Co-Chair; Committee on Class Actions and Derivative Suits; Tort and Insurance Practice Section; Rules & Procedures Committee, Past Vice-Chair; Civil Procedure & Evidence News Letter, Contributor; Business Law Section); American Law Institute (1993 - present; Council, 1999 - present; Adviser, the Restatement Third, Consumer Contracts project and the Restatement Third, Torts: Liability for Economic Harm; Members Consultative Group, the Restatement Third, Torts: Liability for Physical Harm; past Adviser, the Recognition & Enforcement of Foreign Judgments project and the Principles of the Law of Aggregate Litigation project); Association of Business Trial Lawyers; Bar Association of the Fifth Federal Circuit; Bar Association of San Francisco (Past President, Securities Litigation Section; Board of Directors, 1997 - 1998; Judiciary Committee); Bay Area Lawyers for Individual Freedom; California Constitution Revision Commission (1993 -1996); California Women Lawyers; Consumer Attorneys of California; Federal Bar Association; Federal Bar Association (Northern District of California Chapter); Federal Civil Rules Advisory Committee (Appointed by Supreme Court, 2011); Lawyers Club of San Francisco; National

Center for State Courts (Board Member; Mass Tort Conference Planning Committee); National Judicial College (Board of Trustees); Ninth Circuit Judicial Conference (Lawyer Delegate, 1992 - 1995); Northern District of California Civil Justice Reform Act (Advisory Committee; Advisory Committee on Professional Conduct); Northern District of California Civil Justice Reform Act (CJRA) Advisory Committee; Public Justice Foundation; Queen's Bench; State Bar of California.

RICHARD M. HEIMANN, Admitted to practice in Pennsylvania, 1972; District of Columbia, 1974; California, 1975; U.S. District Court, Northern District of California, 1975; U.S. Court of Appeals, Ninth Circuit, 1975; U.S. Supreme Court, 1980; U.S. Court of Appeals, Second Circuit, 1980; U.S. District Court, District of Hawaii, 1986; New York, 2000; District of Colorado. *Education*: Georgetown University (J.D., 1972); *Georgetown Law Journal*, 1971-72; University of Florida (B.S.B.A., with honors, 1969). *Prior Employment*: Mr. Heimann served as Deputy District Attorney and Acting Assistant District Attorney for Tulare County, California, 1974-75, and as an Assistant Public Defender in Philadelphia, Pennsylvania, 1972-74. As a private civil law attorney, Mr. Heimann has tried over 30 civil jury cases, including complex cases such as the successful *FPI/Agretech* and *Edsaco* securities class action trials. In April 2002 in the *Edsaco* case, a federal jury in San Francisco, California returned a $170.7 million verdict against Edsaco Ltd., which included $165 million in punitive damages. *Awards & Honors*: "California Litigation Star," *Benchmark Litigation*, 2013-2015; *Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*San Francisco's Best Lawyers*," 2007-2015; Legal 500 recommended lawyer, *LegalEase*, 2013; AV Preeminent Peer Review Rated, Martindale-Hubbell;"Top 100 Northern California Super Lawyers," *Super Lawyers,* 2013; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2011; California Lawyer of the Year (CLAY) Award, California Lawyer, 2011, 2013; "Lawdragon Finalist," Lawdragon, 2009-2011; "Top 100 Attorneys in California," Daily Journal, 2010-2011; "Top Attorneys In Securities Law," Super Lawyers Corporate Counsel Edition, 2010, 2012; "Northern California Super Lawyer," Super Lawyers, 2004-2013. *Publications & Presentations:* Securities Law Roundtable, *California Lawyer* (March 2013); Securities Law Roundtable, *California Lawyer* (September 2010); Securities Law Roundtable*, California Lawyer* (March 2009); Securities Law Roundtable, *California Lawyer* (April 2008); Securities Law Roundtable, *California Lawyer* (April 2007); Co-Author, "Preliminary Issues Regarding Forum Selection, Jurisdiction, and Choice of Law in Class Actions" (December 1999). *Member*: State Bar of California; Bar Association of San Francisco.

WILLIAM BERNSTEIN, Admitted to practice in California, 1975; U.S. Court of Appeals, Ninth Circuit, 1987; U.S. District Court, Northern District of California, 1975; New York and U.S. Supreme Court, 1985; U.S. District Court, Central and Eastern Districts of California, 1991; U.S. District Court, Southern District of California, 1992; U.S. Court of Appeals, Third Circuit, 2008. *Education*: University of San Francisco (J.D., 1975); *San Francisco Law Review*, 1974-75; University of Pennsylvania (B.A., general honors, 1972). *Community Service*: Adjunct Professor of Law, University of San Francisco, Settlement Law, 2006-present; Judge Pro Tem for San Francisco Superior Court, 2000-present; Marin Municipal Court, 1984; Discovery Referee for the Marin Superior Court, 1984-89; Arbitrator for the Superior Court of Marin, 1984-1990. *Awards & Honors*: AV Preeminent Peer Review Rated, Martindale-Hubbell; *Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*San Francisco's Best Lawyers*," 2013-2015; "California Litigation Star," *Benchmark Plaintiff*

(ranked as one of California's leading litigators in antitrust law); "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2014; "Lawdragon Finalist," *Lawdragon*, 2009-2011; "Northern California Super Lawyer," *Super Lawyers*, 2004-2014; "Top Attorneys In Antitrust Law," *Super Lawyers Corporate Counsel Edition*, 2010, 2012; Princeton Premier Registry, Business Leaders and Professionals, 2008-2009; "Top 100 Trial Lawyers in California," American Trial Lawyers Association, 2008; *Who's Who Legal*, 2007; Unsung Hero Award, Appleseed, 2006. *Publications & Presentations*: "The Rise and Fall of Enron's One-To-Many Trading Platform," American Bar Association Antitrust Law Section, Annual Spring Meeting (2005); Co-Author with Donald C. Arbitblit, "Effective Use of Class Action Procedures in California Toxic Tort Litigation," *Hastings West-Northwest Journal of Environmental and Toxic Torts Law and Policy*, No. 3 (Spring 1996). *Member*: Board of Governors, Association of Business Trial Lawyers; Bar Association of San Francisco; Marin County Bar Association (Admin. of Justice Committee, 1988); State Bar of California.

DONALD C. ARBITBLIT, Admitted to practice in Vermont, 1979; California and U.S. District Court, Northern District of California, 1986. *Education*: Boalt Hall School of Law, University of California (J.D., 1979); Order of the Coif; Tufts University (B.S., *magna cum laude*, 1974). *Awards and Honors:* Legal 500 recommended lawyer, *LegalEase*, 2013; *The Best Lawyers in America,* based on peer and blue ribbon panel review, selected for list of *"San Francisco's Best Lawyers,"* 2012-2015; AV Preeminent Peer Review Rated, Martindale-Hubbell; "*Lawdragon* Finalist," *Lawdragon*, 2009-2011; "Northern California Super Lawyers," *Super Lawyers*, 2004, 2006-2008, 2014. *Publications & Presentations*: Co-Author with Wendy Fleishman, "The Risky Business of Off-Label Use," *Trial* (March 2005); "Comment on Joiner: Decision on the Daubert Test of Admissibility of Expert Testimony," *6 Mealey's Emerging Toxic Torts*, No. 18 (December 1997); Co-author with William Bernstein, "Effective Use of Class Action Procedures in California Toxic Tort Litigation," *3 Hastings West-Northwest Journal of Environmental Law and Policy*, No. 3 (Spring 1996); "The Plight of American Citizens Injured by Transboundary River Pollution," *8 Ecology Law Quarterly*, No. 2 (1979). *Appointments*: Co-Chair, California JCCP Yaz Science Committee, 2010-Present; Member of the Federal Court-appointed Science Executive Committee, and Chair of the Epidemiology/Clinical Trials Subcommittee, *In re Vioxx Products Liability Litigation*, MDL No. 1657 (E.D. La.); Member of the Federal Court-appointed Science and Expert Witness Committees in *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation*, MDL No. 1203 (E.D. Pa.), *In re Baycol Products Litigation,* MDL No. 1431 (D. Minn.) and *Rezulin Products Liability Litigation*, MDL No. 1348 (S.D.N.Y.). *Member*: State Bar of California; Bar Association of San Francisco.

STEVEN E. FINEMAN, Managing Partner. Admitted to practice in California, 1989; U.S. District Court, Northern, Eastern and Central Districts of California and U.S. Court of Appeals, Ninth Circuit, 1995; U.S. Court of Appeals, Fifth Circuit, 1996; New York, U.S. District Court, Eastern and Southern Districts of New York, U.S. District Court, District of Colorado, 2006; U.S. Court of Appeals, Second Circuit and U.S. Supreme Court, 1997; U.S. District Court for the District of Columbia, 1997. *Education*: University of California, Hastings College of the Law (J.D., 1988); University of California, San Diego (B.A., 1985); Stirling University, Scotland (English Literature and Political Science, 1983-84). *Awards & Honors*: "New York Litigation Star," *Benchmark Litigation*, 2013-2015; *The Best Lawyers in America*, based on peer and blue

ribbon panel review, selected for list of "*The New York Area's Best Lawyers*," 2006-2015; Member, *Best Lawyers* Advisory Board, a select group of U.S. and international law firm leaders and general counsel, 2011-2012; "Lawdragon Finalist," *Lawdragon*, 2009-present; "Super Lawyer for New York Metro," *Super Lawyers*, 2006-2014; "Top Attorneys In Securities Law," *Super Lawyers Business Edition*, 2008-present; Consultant to the Office of Attorney General, State of New York, in connection with an industry-wide investigation and settlement concerning health insurers' use of the "Ingenix database" to determine usual and customary rates for out-of-network services, April 2008-February 2009; "100 Managing Partners You Need to Know," *Lawdragon*, 2008; "40 under 40," selected as one of the country's most successful litigators under the age of 40, *The National Law Journal*, 2002. *Publications & Presentations*: Global Justice Forum, Presented by Robert L. Lieff – Moderator of Financial Fraud Litigation Panel and Participant on Financing of Litigation Panel (October 4, 2011, Columbia Law School, New York, New York); The Canadian Institute, The 12th Annual Forum on Class Actions – Panel Member, *Key U.S. and Cross-Border Trends: Northbound Impacts and Must-Have Requirements* (September 21, 2011, Toronto, Ontario, Canada); Co-Author with Michael J. Miarmi, "The *Basic*s of Obtaining Class Certification in Securities Fraud Cases: U.S. Supreme Court Clarifies Standard, Rejecting Fifth Circuit's 'Loss Causation' Requirement," *Bloomberg Law Reports* (July 5, 2011); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, Representing Plaintiffs in Large-Scale Litigation (March 2, 2011, Stanford, California); Stanford University Law School — Panel Member, Symposium on the Future of the Legal Profession, (March 1, 2011, Stanford, California); Stanford University Law School, Member, Advisory Forum, Center of the Legal Profession (2011-Present); 4th Annual International Conference on the Globalization of Collective Litigation — Panel Member, Funding Issues: Public versus Private Financing (December 10, 2010, Florida International University College of Law, Miami, Florida); "Bill of Particulars, A Review of Developments in New York State Trial Law," Column, *The Supreme Court's Decisions in Iqbol and Twombly Threaten Access to Federal Courts* (Winter 2010); American Constitution Society for Law and Policy, Access to Justice in Federal Courts — Panel Member, The Iqbal and Twombly Cases (January 21, 2010, New York, New York); American Bar Association, Section of Litigation, The 13th Annual National Institute on Class Actions — Panel Member, Hydrogen Peroxide Will Clear It Up Right Away: Developments in the Law of Class Certification (November 20, 2009, Washington, D.C.); Global Justice Forum, Presented by Robert L. Lieff and Lieff, Cabraser, Heimann & Bernstein, LLP — Conference Co-Host and Moderator of Mediation/Arbitration Panel (October 16, 2009, Columbia Law School, New York, New York); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, Foreign Claimants in U.S. Courts/U.S. Lawyers in Foreign Courts (April 6, 2009, Stanford, California); Consultant to the Office of Attorney General, State of New York, in connection with an industry-wide investigation and settlement concerning health insurers' use of the "Ingenix database" to determine usual and customary rates for out-of-network services, April 2008-February 2009; Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, Foreign Claimants in U.S. Courts/U.S. Lawyers in Foreign Courts (April 16, 2008, Stanford, California); Benjamin N. Cardozo Law School, The American Constitution Society for Law & Policy, and Public Justice, Co-Organizer of conference and Master of Ceremonies for conference, Justice and the Role of Class Actions (March 28, 2008, New York, New York); Stanford University Law School and The Centre for Socio-Legal Studies, Oxford University, Conference on The Globalization of Class

Actions, Panel Member, Resolution of Class and Mass Actions (December 13 and 14, 2007, Oxford, England); Editorial Board and Columnist, "Federal Practice for the State Court Practitioner," New York State Trial Lawyers Association's "Bill of Particulars," (2005-present); "Bill of Particulars, A Review of Developments in New York State Trial Law," *Federal Multidistrict Litigation Practice* (Fall 2007); "Bill of Particulars, A Review of Developments in New York State Trial Law," *Pleading a Federal Court Complaint* (Summer 2007); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, Foreign Claimants in U.S. Courts (April 17, 2007, Palo Alto, California); "Bill of Particulars, A Review of Developments in New York State Law," *Initiating Litigation and Electronic Filing in Federal Court* (Spring 2007); "Bill of Particulars, A Review of Developments in New York State Trial Law," Column, *Federal Court Jurisdiction: Getting to Federal Court By Choice or Removal* (Winter 2007); American Constitution Society for Law and Policy, 2006 National Convention, Panel Member, Finding the Balance: Federal Preemption of State Law (June 16, 2006, Washington, D.C.); Global Justice Forum, Presented by Lieff, Cabraser, Heimann & Bernstein, LLP — Conference Moderator and Panel Member on Securities Litigation (May 19, 2006, Paris, France); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, Foreign Claimants in U.S. Court (April 25, 2006, Stanford, California); Global Justice Forum, Presented by Lieff, Cabraser, Heimann & Bernstein, LLP — Conference Moderator and Speaker and Papers, The Basics of Federal Multidistrict Litigation: How Disbursed Claims are Centralized in U.S. Practice and Basic Principles of Securities Actions for Institutional Investors (May 20, 2005, London, England); New York State Trial Lawyers Institute, Federal Practice for State Practitioners, Speaker and Paper, *Federal Multidistrict Litigation Practice*, (March 30, 2005, New York, New York), published in "Bill of Particulars, A Review of Developments in New York State Trial Law" (Spring 2005); Stanford University Law School, The Stanford Center on Conflict and Negotiation, Interdisciplinary Seminar on Conflict and Dispute Resolution, Guest Lecturer, In Search of "Global Settlements": Resolving Class Actions and Mass Torts with Finality (March 16, 2004, Stanford, California); Lexis/Nexis, Mealey's Publications and Conferences Group, Wall Street Forum: Mass Tort Litigation, Co-Chair of Event (July 15, 2003, New York, New York); Northstar Conferences, The Class Action Litigation Summit, Panel Member on Class Actions in the Securities Industry, and Paper, Practical Considerations for Investors' Counsel - Getting the Case (June 27, 2003, Washington, D.C.); The Manhattan Institute, Center for Legal Policy, Forum Commentator on Presentation by John H. Beisner, Magnet Courts: If You Build Them, Claims Will Come (April 22, 2003, New York, New York); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's Courses on Complex Litigation, Selecting The Forum For a Complex Case — Strategic Choices Between Federal And State Jurisdictions, and Alternative Dispute Resolution ADR In Mass Tort Litigation, (March 4, 2003, Stanford, California); American Bar Association, Tort and Insurance Practice Section, Emerging Issues Committee, Member of Focus Group on Emerging Issues in Tort and Insurance Practice (coordinated event with New York University Law School and University of Connecticut Law School, August 27, 2002, New York, New York); Duke University and University of Geneva, "Debates Over Group Litigation in Comparative Perspective," Panel Member on Mass Torts and Products Liability (July 21-22, 2000, Geneva, Switzerland); *New York Law Journal*, Article, Consumer Protection Class Actions Have Important Position, Applying New York's Statutory Scheme (November 23, 1998); Leader Publications, Litigation Strategist, "Fen-Phen," Articles, *The Admissibility of Scientific Evidence in Fen-Phen Litigation and Daubert Developments:*

Something For Plaintiffs, Defense Counsel (June 1998, New York, New York); "Consumer Protection Class Actions Have Important Position, Applying New York's Statutory Scheme," New York Law Journal (November 23, 1998); The Defense Research Institute and Trial Lawyer Association, Toxic Torts and Environmental Law Seminar, Article and Lecture, A Plaintiffs' Counsels' Perspective: What's the Next Horizon? (April 30, 1998, New York, New York); Lexis/Nexis, Mealey's Publications and Conference Group, Mealey's Tobacco Conference: Settlement and Beyond 1998, Article and Lecture, The Expanding Litigation (February 21, 1998, Washington, D.C.); New York State Bar Association, Expert Testimony in Federal Court After Daubert and New Federal Rule 26, Article and Lecture, Breast Implant Litigation: Plaintiffs' Perspective on the Daubert Principles (May 23, 1997, New York, New York); Plaintiff Toxic Tort Advisory Council, Lexis/Nexis, Mealey's Publications and Conferences Group (January 2002-2005). *Member*: American Association for Justice; American Bar Association; American Constitution Society; Association of the Bar of the City of New York; Bar Association of the District of Columbia; Civil Justice Foundation (Board of Trustees, 2004-present); Fight for Justice Campaign; Human Rights First; National Association of Shareholder and Consumer Attorneys (Executive Committee, 2009-present); New York State Bar Association; New York State Trial Lawyers Association (Board of Directors, 2001-2004); New York State Trial Lawyers Association's "Bill of Particulars" (Editorial Board and Columnist, "Federal Practice for the State Court Practitioner," 2005-present); Plaintiff Toxic Tort Advisory Council (Lexis/Nexis, Mealey's Publications and Conferences Group, 2002-2005); Public Justice Foundation (President, 2011-2012; Executive Committee, July 2006-present; Board of Directors, July 2002-present); Co-Chair, Major Donors/Special Gifts Committee, July 2009-present; Class Action Preservation Project Committee, July 2005-present); State Bar of California; Supreme Court Historical Society.

ROBERT J. NELSON, Admitted to practice in California, 1987; U.S. District Court, Central District of California, 1987; U.S. District Court, Northern District of California, 1988; U.S. Court of Appeals, Ninth Circuit, 1988; U.S. Court of Appeals, Sixth Circuit, 1995; District of Columbia, 1998; New York, 1999; U.S. District Court, Eastern District of New York, Southern District of New York, 2001; U.S. District Court, Eastern District of California, 2006; U.S. District Court, Northern District of Ohio; U.S. District Court, Southern District of Ohio; U.S. District Court, Middle District of Tennessee. *Education*: New York University School of Law (J.D., 1987): Order of the Coif, Articles Editor, *New York University Law Review*; Root-Tilden-Kern Scholarship Program. Cornell University (A.B., *cum laude* 1982): Member, Phi Beta Kappa; College Scholar Honors Program. London School of Economics (General Course, 1980-81): Graded First. *Prior Employment:* Judicial Clerk to Judge Stephen Reinhardt, U.S. Court of Appeals, Ninth Circuit, 1987-88; Assistant Federal Public Defender, Northern District of California, 1988-93; Legal Research and Writing Instructor, University of California-Hastings College of the Law, 1989-91 (Part-time position). *Awards & Honors*: "California Litigation Star," *Benchmark Litigation*, 2013-2015; *The Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*San Francisco's Best Lawyers*," 2012-2015; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2007, 2010, 2014; Legal 500 recommended lawyer, *LegalEase*, 2013-Present; "Lawdragon Finalist," *Lawdragon*, 2009-2011; "California Lawyer Attorney of the Year (CLAY)" Award, *California Lawyer*, 2008, 2010; "Northern California Super Lawyer," *Super Lawyers*, 2004-2013; "San Francisco Trial Lawyer of the Year Finalist," San Francisco Trial Lawyers' Association, 2007. *Publications:* False

Claims Roundtable, California Lawyer (January 2013); False Claims Roundtable, California Lawyer (April 2012); False Claims Roundtable, California Lawyer (June 2011); False Claims Roundtable, *California Lawyer* (June 2010); Product Liability Roundtable, *California Lawyer* (March 2010); Product Liability Roundtable, *California Lawyer* (July 2009); "Class Action Treatment of Punitive Damages Issues after *Philip Morris v. Williams*: We Can Get There from Here," 2 Charleston Law Review 2 (Spring 2008) (with Elizabeth J. Cabraser); Product Liability Roundtable, California Lawyer (December 2007); Contributing Author, California Class Actions Practice and Procedures (Elizabeth J. Cabraser editor in chief, 2003); "The Importance of Privilege Logs," The Practical Litigator, Vol. II, No. 2 (March 2000) (ALI-ABA Publication); "To Infer or Not to Infer a Discriminatory Purpose: Rethinking Equal Protection Doctrine," 61 New York University Law Review 334 (1986). *Member*: American Association for Justice, Fight for Justice Campaign; American Bar Association; American Civil Liberties Union of Northern California; Bar Association of San Francisco; Bar of the District of Columbia; Consumer Attorneys of California; Human Rights Watch California Committee North; New York State Bar Association; RE-volv, Board Member; San Francisco Trial Lawyers Association; State Bar of California

KELLY M. DERMODY, Admitted to practice in California (1994); U.S. Supreme Court (2013); U.S. Court of Appeals for the First Circuit (2012); U.S. Court of Appeals for the Second Circuit (2010); U.S. Court of Appeals for the Third Circuit (2001); U.S. Court of Appeals for the Fourth Circuit (2008); U.S. Court of Appeals for the Sixth Circuit (2008); U.S. Court of Appeals for the Seventh Circuit (2006); U.S. Court of Appeals for the Ninth Circuit (2007); U.S. District Court, Northern District of California (1995); U.S. District Court, Central District of California; U.S. District Court, Eastern District of California (2012); U.S. District Court of Colorado (2007). *Education*: Boalt Hall School of Law, University of California, Berkeley (J.D. 1993); Moot Court Executive Board (1992-1993); Articles Editor, *Industrial Relations Law Journal/Berkeley Journal of Employment and Labor Law* (1991-1992); Harvard University (A.B. *magna cum laude*, 1990), Senior Class Ames Memorial Public Service Award. *Prior Employment*: Law Clerk to Chief Judge John T. Nixon, U.S. District Court, Middle District of Tennessee, 1993-1994; Adjunct Professor of Law, Golden Gate University School of Law, Employment Law (Spring 2001). *Awards & Honors:* AV Preeminent Peer Review Rated, Martindale-Hubbell; "California Litigation Star," *Benchmark Litigation*, 2013-2015; selected for inclusion by peers in *The Best Lawyers in America* in fields of Employment Law – Individuals and Litigation – Labor and Employment, 2010-2015; "Top 75 Labor and Employment Attorneys in California," *Daily Journal*, 2011-2015; "Top California Women Litigators," *Daily Journal*, 2007, 2010, 2012-2015; "500 Leading Lawyers in America," *Lawdragon*, 2010-2015; "Northern California Super Lawyer," *Super Lawyers*, 2004-2015; "Top 50 Women Northern California Super Lawyers," *Super Lawyers*, 2007-2015; "Top 100 Northern California Super Lawyers," *Super Lawyers*, 2007, 2009-2015; Distinguished Jurisprudence Award, Anti-Defamation League, 2014; "Lawyer of the Year," *Best Lawyers*, recognized in the category of Employment Law – Individuals for San Francisco, 2014; "Top 100 Attorneys in California, *Daily Journal,* 2012-2014; "Top 10 Northern California Super Lawyers, *Super Lawyers*, 2014; "Dolores Huerta Adelita Award," California Rural Assistance, 2013; "Recommended Lawyer," *The Legal 500* (U.S. edition, 2013); "Women of Achievement Award," Legal Momentum (formerly the NOW Legal Defense & Education Fund), 2011; "Irish Legal 100" Finalist, *The Irish Voice*, 2010; "Florence K. Murray Award," National Association of Women Judges, 2010 (for influencing women to pursue legal careers,

opening doors for women attorneys, and advancing opportunities for women within the legal profession); "Lawdragon Finalist," *Lawdragon*, 2007-2009; "Community Service Award," Bay Area Lawyers for Individual Freedom, 2008; "Community Justice Award," Centro Legal de la Raza, 2008; "Award of Merit," Bar Association of San Francisco, 2007; "California Lawyer Attorney of the Year (CLAY) Award," *California Lawyer*, 2007; "500 Leading Plaintiffs' Lawyers in America," *Lawdragon*, Winter 2007; "Trial Lawyer of the Year Finalist," Public Justice Foundation, 2007; "Consumer Attorney of the Year" Finalist, Consumer Attorneys of California, 2006; "California's Top 20 Lawyers Under 40," *Daily Journal*, 2006; "Living the Dream Partner," Lawyers' Committee for Civil Rights of the San Francisco Bay Area, 2005; "Top Bay Area Employment Attorney," *The Recorder*, 2004. *Member*: American Bar Association, Labor and Employment Law Section (Governing Council, 2009-present; Co-Chair, Section Conference, 2008-2009; Vice-Chair, Section Conference, 2007-2008; Co-Chair, Committee on Equal Opportunity in the Legal Profession, 2006-2007); Bar Association of San Francisco (Board of Directors, 2005-2012; President, 2011-2012; President-Elect, 2010-2011; Treasurer, 2009-2010; Secretary, 2008-2009; Litigation Section; Executive Committee, 2002-2005); Bay Area Lawyers for Individual Freedom; Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Board of Directors, 1998-2005; Secretary, 1999-2003; Co-Chair, 2003-2005; Member, 1997-Present); Carver Healthy Environments and Response to Trauma in Schools (Steering Committee, 2007); College of Labor and Employment Lawyers (Fellow, 2015); Consumer Attorneys of California; Equal Rights Advocates (Litigation Committee, 2000-2002); National Association of Women Judges (Independence of the Judiciary Co-Chair, 2011-2014; Resource Board, Co-Chair, 2009-2011, Member, 2005-2014); National Center for Lesbian Rights (Board of Directors, 2002-2008; Co-Chair, 2005-2006); National Employment Lawyers' Association; Northern District of California Historical Society (Board of Directors, 2015- Present); Northern District of California Lawyer Representative to the Ninth Circuit Judicial Conference (2007-2010); Pride Law Fund (Board of Directors, 1995-2002; Secretary, 1995-1997; Chairperson, 1997-2002); Public Justice Foundation; State Bar of California.

JONATHAN D. SELBIN, Admitted to practice in California; District of Columbia; New York; U.S. Court of Appeals, Third Circuit; U.S. Court of Appeals, Fifth Circuit; U.S. Court of Appeals, Sixth Circuit; U.S. Court of Appeals, Seventh Circuit; U.S. Court of Appeals, Ninth Circuit; U.S. Court of Appeals, Eleventh Circuit; U.S. District Court, Northern District of California; U.S. District Court, Central District of California; U.S. District Court, Northern District of Illinois; U.S. District Court, Southern District of New York; U.S. District Court, Eastern District of New York; U.S. District Court, Eastern District of Michigan; U.S. District Court, Northern District of Florida; U.S. Supreme Court; U.S. District Court, Eastern District of Wisconsin. U.S. Court of Appeals, Tenth Circuit, 2014. *Education*: Harvard Law School (J.D., *magna cum laude*, 1993); University of Michigan (B.A., *summa cum laude*, 1989). *Prior Employment*: Law Clerk to Judge Marilyn Hall Patel, U.S. District Court, Northern District of California, 1993-95. *Awards & Honors*: "New York Litigation Star," *Benchmark Litigation*, 2013-2015; *The Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*The New York Area's Best Lawyers*," 2013-2015; "New York Super Lawyers," *Super Lawyers*, 2006-2013; "*Lawdragon* Finalist," *Lawdragon*, 2009. *Publications & Presentations*: On Class Actions (2009); Contributing Author, "Ninth Circuit Reshapes California Consumer-Protection Law," American Bar Association (July 2012); Contributing Author, *California Class Actions Practice and Procedures (*Elizabeth J. Cabraser editor-in-chief, 2003); "Bashers

Beware: The Continuing Constitutionality of Hate Crimes Statutes After R.A.V.," 72 *Oregon Law Review* 157 (Spring, 1993). *Member*: American Association for Justice; American Bar Association; District of Columbia Bar Association; New York Advisory Board, Alliance for Justice; New York State Bar Association; New York State Trial Lawyers Association; State Bar of California.

MICHAEL W. SOBOL, Admitted to practice in Massachusetts, 1989; California, 1998; United States District Court, District of Massachusetts, 1990; U.S. District Court, Northern District of California, 2001; U.S. District Court, Central District of California, 2005; U.S. Court of Appeals for the Ninth Circuit (2009); U.S. Court of Appeals for the Eleventh Circuit (2012). *Education*: Boston University (J.D., 1989); Hobart College (B.A., *cum laude*, 1983). *Prior Employment*: Lecturer in Law, Boston University School of Law, 1995-1997. *Awards & Honors:* "California Litigation Star," *Benchmark Litigation*, 2013-2015; *The Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*San Francisco's Best Lawyers*," 2013-2015; "Top 100 Northern California Super Lawyers," *Super Lawyers*, 2013; "Top 100 Attorneys in California," *Daily Journal*, 2012-2013; "Trial Lawyer of the Year Finalist," Public Justice, 2012; "Northern California Super Lawyer," *Super Lawyers*, 2012-2013; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2011; "*Lawdragon* Finalist," *Lawdragon*, 2009. *Publications & Presentations*: Panelist, National Consumer Law Center's 15th Annual Consumer Rights Litigation Conference, Class Action Symposium; Panelist, Continuing Education of the Bar (C.E.B.) Seminar on Unfair Business Practices—California's Business and Professions Code Section 17200 and Beyond; Columnist, *On Class Actions*, Association of Business Trial Lawyers, 2005 to present; *The Fall of Class Action Waivers* (2005); *The Rise of Issue Class Certification* (2006); *Proposition 64's Unintended Consequences* (2007); *The Reach of Statutory Damages* (2008). *Member*: State Bar of California; Bar Association of San Francisco; Consumer Attorneys of California, Board of Governors, (2007-2008, 2009-2010); National Association of Consumer Advocates.

FABRICE N. VINCENT, Admitted to practice in California, 1992; U.S. District Court, Northern District of California, Central District of California, Eastern District of California, Ninth Circuit Court of Appeals, 1992. *Education*: Cornell Law School (J.D., *cum laude*, 1992); University of California at Berkeley (B.A., 1989). *Awards & Honors: The Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*San Francisco's Best Lawyers*," 2012-2015; "Super Lawyer for Northern California," *Super Lawyers*, 2006–2014; "Outstanding Subcommittee Chair for the Class Actions & Derivative Suits," *ABA Section of Litigation*, 2013. *Publications & Presentations*: Lead Author, *Citizen Report on Utility Terrain Vehicle (UTV) Hazards and Urgent Need to Improve Safety and Performance Standards; and Request for Urgent Efforts To Increase Yamaha Rhino Safety and Avoid Needless New Catastrophic Injuries, Amputations and Deaths*, Lieff Cabraser Heimann & Bernstein, LLP (2009); Co-Author with Elizabeth J. Cabraser, "Class Actions Fairness Act of 2005," *California Litigation,* Vol. 18, No. 3 (2005); Co-Editor, *California Class Actions Practice and Procedures* (2003-06); Co-Author, "Ethics and Admissibility: Failure to Disclose Conflicts of Interest in and/or Funding of Scientific Studies and/or Data May Warrant Evidentiary Exclusions," *Mealey's December Emerging Drugs Reporter* (December 2002); Co-author, "The Shareholder Strikes Back: Varied Approaches to Civil Litigation Claims Are Available to Help Make Shareholders Whole," *Mealey's Emerging Securities Litigation Reporter* (September 2002);

Co-Author, "Decisions Interpreting California's Rules of Class Action Procedure," *Survey of State Class Action Law* (ABA 2000-09), updated and re-published in 5 *Newberg on Class Actions* (2001-09); Coordinating Editor and Co-Author of California section of the ABA State Class Action Survey (2001-06); Co-Editor-In-Chief, *Fen-Phen Litigation Strategist* (Leader Publications 1998-2000); Author of "Off-Label Drug Promotion Permitted" (Oct. 1999); Co-Author, "The Future of Prescription Drug Products Liability Litigation in a Changing Marketplace," and "Six Courts Certify Medical Monitoring Claims for Class Treatment," 29 *Forum* 4 (Consumer Attorneys of California 1999); Co-Author, *Class Certification of Medical Monitoring Claims in Mass Tort Product Liability Litigation* (ALI-ABA Course of Study 1999); Co-Author, "How Class Proofs of Claim in Bankruptcy Can Help in Medical Monitoring Cases," (Leader Publications 1999); Author, "AHP Loses Key California Motion In Limine," (February 2000); Co-Author, Introduction, "Sanctioning Discovery Abuses in the Federal Court," (LRP Publications 2000); "With Final Approval, Diet Drug Class Action Settlement Avoids Problems That Doomed Asbestos Pact," (Leader Publications 2000); Author, "Special Master Rules Against SmithKline Beecham Privilege Log," (November 1999). *Member*: American Association for Justice; Association of Business Trial Lawyers; State Bar of California; Bar Association of San Francisco; American Bar Association; Fight for Justice Campaign; Association of Business Trial Lawyers; Society of Automotive Engineers.

DAVID S. STELLINGS, Admitted to practice in New York, 1994; New Jersey; 1994; U.S. District Court, Southern District of New York, 1994. *Education*: New York University School of Law (J.D., 1993); Editor, *Journal of International Law and Politics;* Cornell University (B.A., *cum laude*, 1990). *Awards & Honors*: "Super Lawyer for New York Metro," *Super Lawyers*, 2012-2014; "Trial Lawyer of the Year Finalist," Public Justice, 2012; "*Lawdragon* Finalist, *Lawdragon*, 2009. *Member*: New York State Bar Association; New Jersey State Association; Bar Association of the City of New York; American Bar Association.

ERIC B. FASTIFF, Admitted to practice in California, 1996; District of Columbia, 1997; U.S. Courts of Appeals for the Third, Ninth and Federal Circuit; U.S. District Courts for the Northern, Southern, Eastern, and Central Districts of California, District of Columbia; U.S. District Court, Eastern District of Wisconsin; U.S. Court of Federal Claims. *Education*: Cornell Law School (J.D., 1995); Editor-in-Chief, *Cornell International Law Journal;* London School of Economics (M.Sc.(Econ.), 1991); Tufts University (B.A., *cum laude, magno cum honore in thesi*, 1990). *Prior Employment*: Law Clerk to Hon. James T. Turner, U.S. Court of Federal Claims, 1995-1996; International Trade Specialist, Eastern Europe Business Information Center, U.S. Department of Commerce, 1992. *Awards & Honors*: "California Litigation Star," *Benchmark Litigation*, 2013-2015; *The Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*San Francisco's Best Lawyers*," 2013-2015; Legal 500 recommended lawyer, *LegalEase*, 2013; "Northern California Super Lawyer," *Super Lawyers*, 2010-2013;"Top 100 Layers in California," *Daily Journal*, 2013; "Top Attorneys in Business Law," *Super Lawyers* Corporate Counsel Edition, 2012; "*Lawdragon* Finalist," *Lawdragon*, 2009. *Publications & Presentations*: General Editor, *California Class Actions Practice and Procedures*, (2003-2009); Coordinating Editor and Co-Author of California section of the *ABA State Class Action Survey* (2003-2008); Author, "US Generic Drug Litigation Update," 1 *Journal of Generic Medicines* 212 (2004); Author, "The Proposed Hague Convention on the Recognition and Enforcement of Civil and Commercial Judgments: A Solution to Butch

Reynolds's Jurisdiction and Enforcement Problems," 28 *Cornell International Law Journal* 469 (1995). *Member*: American Antitrust Institute (Advisory Board, 2012-Present); Bar Association of San Francisco; Children's Day School (Board of Trustees); District of Columbia Bar Association; *Journal of Generic Medicines* (Editorial Board Member, 2003-Present); State Bar of California; U.S. Court of Federal Claims Bar Association.

WENDY R. FLEISHMAN, Admitted to practice in New York, 1992; Pennsylvania, 1977; U.S. Supreme Court, 2000; U.S. Court of Appeals 2nd Circuit, 1998; U.S. Court of Appeals 3rd Circuit, 2010; U.S. Court of Appeals 8th Circuit, 2009; U.S. Court of Appeals 9th Circuit, 2010; U.S. District Court, District of Arizona, 2013; U.S. District Court, Northern District of California; U.S. District Court, Western District of New York, 2012; U.S. District Court Eastern District of New York, 1999; U.S. District Court Northern District of New York, 1999; U.S. District Court Southern District of New York, 1995; U.S. District Court, Eastern District of Wisconsin, 2013; U.S. District Court, Eastern District of Pennsylvania, 1984; U.S. District Court, Western District of Pennsylvania, 2001; U.S. Court of Appeals 5th Circuit, March 5, 2014. *Education*: University of Pennsylvania (Post-Baccalaureate Pre-Med, 1982); Temple University (J.D., 1977); Sarah Lawrence College (B.A., 1974). *Prior Employment*: Skadden, Arps, Slate, Meagher & Flom LLP in New York (Counsel in the Mass Torts and Complex Litigation Department), 1993-2001; Fox, Rothschild O'Brien & Frankel (partner), 1988-93 (tried more than thirty civil, criminal, employment and jury trials, and AAA arbitrations, including toxic tort, medical malpractice and serious injury and wrongful death cases); Ballard Spahr Andrews & Ingersoll (associate), 1984-88 (tried more than thirty jury trials on behalf of the defense and the plaintiffs in civil personal injury and tort actions as well as employment—and construction—related matters); Assistant District Attorney in Philadelphia, PA, 1977-84 (in charge of and tried major homicide and sex crime cases). *Awards and Honors*: "New York Litigation Star," *Benchmark Litigation*, 2013-2015; "New York Super Lawyers," *Super Lawyers*, 2006-2014; Legal 500 recommended lawyer, *LegalEase*, 2013; AV Preeminent Peer Review Rated, Martindale-Hubbell; Officer of New York State Trial Lawyers Association, 2010-present; New York State Academy of Trial Lawyers, 2011; "*Lawdragon* Finalist," *Lawdragon*, 2009. *Publications & Presentations*: "Where Do You Want To Be? Don't Get Left Behind, Creating a Vision for Your Practice," Minority Caucus and Women Trial Lawyers Caucus (July 22, 2013); Editor, Brown & Fleishman, "Proving and Defending Damage Claims: A Fifty-State Guide" (2007-2010); Co-Author with Donald Arbitblit, "The Risky Business of Off-Label Use," *Trial* (March 2005); Co-Author, "From the Defense Perspective," *Scientific Evidence, Chapter 6, Aspen Law Pub* (1999); Editor, *Trial Techniques Newsletter,* Tort and Insurance Practices Section, American Bar Association (1995-1996; 1993-1994); "How to Find, Understand, and Litigate Mass Torts," NYSTLA Mass Torts Seminar (April 2009); "Ethics of Fee Agreements in Mass Torts," AAJ Education Programs (July 2009). *Appointments:* Lead Counsel, Joint Coordinated California Litigation, *Amo Lens Solution Litigation*; Co-Liaison, *In re Zimmer Durom Cup Hip Implant Litigation*; Plaintiffs' Steering Committee, DePuy ASR Hip Implant Litigation; Liaison, NJ Ortho Evra Patch Product Liability Litigation; Co-Liaison, NJ Reglan Mass Tort Litigation; Co-Chair, Mealey's Drug & Medical Device Litigation Conference (2007); Executive Committee, *In re ReNu MoistureLoc Product Liability Litigation*, MDL; Discovery Chair, *In re Guidant Products Liability Litigation*; Co-Chair Science Committee, *In re Baycol MDL Litigation*; Pricing Committee, *In re Vioxx MDL Litigation*. *Member*: New York State Trial Lawyers Association (Treasurer, 2010-present; Board of Directors, 2004-Present);

Association of the Bar of the City of New York (Product Liability Committee, 2007-present; Judiciary Committee, 2004-Present); American Bar Association (Annual Meeting, Torts & Insurance Practices Section, NYC, Affair Chair, 1997; Trial Techniques Committee, Torts and Insurance Practices, Chair-Elect, 1996); American Association for Justice (Board of Governors); Pennsylvania Bar Association (Committee on Legal Ethics and Professionalism, 1993-Present; Committee on Attorney Advertising, 1993-Present; Vice-Chair, Task Force on Attorney Advertising, 1991-92); State Bar of New York; Federal Bar Association; Member, Gender and Race Bias Task Force of the Second Circuit, 1994-present; Deputy Counsel, Governor Cuomo's Screening Committee for New York State Judicial Candidates, 1993-94; New York Women's Bar Association; New York County Lawyers; Fight for Justice Campaign; PATLA; Philadelphia Bar Association (Member of Committee on Professionalism 1991-92).

JOY A. KRUSE, Admitted to practice in Washington, D.C., 1984; California; U.S. Supreme Court; U.S. Courts of Appeals for the Ninth and Federal Circuits; U.S. District Courts for the Northern, and Eastern Districts of California; U.S. District Court for the Central District of California, 2006; U.S. District Court, District of Colorado, 2006; U.S. District Court, Eastern District of Wisconsin, 2001. *Education*: Harvard Law School (J.D., 1984); Wellesley College (B.A., 1977). *Prior Employment*: Assistant Federal Public Defender, Northern District of California, 1992-96; Public Defender Service, Washington D.C., 1984-89. *Awards & Honors:* AV Preeminent Peer Review Rated, Martindale-Hubbell; *The Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*San Francisco's Best Lawyers*," 2013-2015; "*Lawdragon* Finalist," *Lawdragon*, 2009. *Presentations & Publications*: Panelist, "Corporate Governance Litigation," PLI Securities Litigation & Enforcement Institute, San Francisco (October 15, 2009); Co-Author with Richard M. Heimann and Sharon M. Lee, "Post-*Tellabs* Treatment of Confidential Witnesses in Federal Securities Litigation," *Journal of Securities Law, Regulation, & Compliance* (Vol. 2, No. 3 June 2009); "*California Lawyer* Securities Law Roundtable" (October 2008); Co-Author with Elizabeth J. Cabraser, Bruce Leppla, "Selective Waiver: Recent Developments in the Ninth Circuit and California," (pts. 1 & 2), *Securities Litigation Report* (West Legalworks May and June 2005). *Member*: Phi Beta Kappa; State Bar of California; Bar Association of San Francisco; Equal Rights Advocate (Member; Board of Directors); Northern District of California Practice Program Committee (Member; Board of Directors).

RACHEL GEMAN, Admitted to practice in New York, 1998; Southern and Eastern Districts of New York, 1999; U.S. District Court, Eastern District of Michigan, 2005; U.S. District Court of Colorado, 2007; U.S. Supreme Court. *Education*: Columbia University School of Law (J.D. 1997); Stone Scholar; Equal Justice America Fellow; Human Rights Fellow; Editor, *Columbia Journal of Law and Social Problems*; Harvard University (A.B. *cum laude* 1993). *Prior Employment*: Adjunct Professor, New York Law School; Special Advisor, United States Mission to the United Nations, 2000; Law Clerk to Judge Constance Baker Motley, U.S. District Court, Southern District of New York, 1997-98. *Awards & Honors*: "Lawyer of the Year," *Best Lawyers*, recognized in the category of Employment Law – Individuals for San Francisco, 2014; "Super Lawyer for New York Metro," *Super Lawyers*, 2013-2014; Legal 500 recommended lawyer, *LegalEase*, 2013; AV Preeminent Peer Review Rated, Martindale-Hubbell; *The Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*The New York Area's Best Lawyers*," 2012-2015; "Rising Stars for New York Metro," *Super Lawyers*, a

publication of Thomson Reuters , 2011; Distinguished Honor Award, United States Department of State, 2001. *Publications & Presentations*: Speaker and Moderator, "Statistics for Lawyers - Even Those Who Hate Math," National Employment Lawyers Association Annual Convention (2015); Speaker, "Gender Pay Disparities: Enforcement, Litigation, and Remedies," New York City Conference on Representing Employees (2015); Speaker, "Protecting Pay: Representing Workers With Wage and Hour Claims," National Employment Lawyers Association (2015); Speaker and Author, "What Employment Lawyers Need to Know About Non-Employment Class Actions," ABA Section of Labor and Employment Law Conference (2014); Moderator, "Dodd-Frank and Sarbanes-Oxley Whistleblower Issues," National Employment Lawyers Association/New York (2014); Author, "Whistleblower Under Pressure," *Trial Magazine* (April 2013); Panelist, "Class Certification Strategies: Dukes in the Rear View Mirror," Impact Fund Class Action Conference (2013); Author & Panelist, "Who is an Employer Under the FLSA?" National Employment Lawyers Association Conference (2013); Panelist, "Fraud and Consumer Protection: Plaintiff and Defense Strategies," Current Issues in Pharmaceutical and Medical Device Litigation, ABA Section of Litigation (2012); Participant and Moderator, "Ask the EEOC: Current Insights on Enforcement and Litigation," ABA Section of Labor and Employment Law (2011); Panelist, "Drafting Class Action Complaints," New York State Bar Association (2011); Participant and Moderator, "Ask the EEOC: Current Insights on Enforcement and Litigation," ABA Section of Labor and Employment Law (2011); *The New York Employee Advocate*, Co-Editor (2005-2009), Regular Contributor (2008-present); Moderator, "Hot Topics in Wage and Hour Class and Collective Actions," American Association for Justice Tele-Seminar (2010); Author & Panelist, "Class Action Considerations: Certification, Settlement, and More," American Conference Institute Advanced Forum (2009); Panelist, "Rights Without Remedies," American Constitutional Society National Convention, Revitalizing Our Democracy: Progress and Possibilities (2008); Panelist, Fair Measure: Toward Effective Attorney Evaluations, American Bar Association Annual Meeting (2008); Panelist, "Getting to Know You: Use and Misuse of Selection Devices for Hiring and Promotion," ABA Labor & Employment Section Annual Meeting (2008); Author, "'Don't I Think I Know You Already?': Excessive Subjective Decision-Making as an Improper Tool for Hiring and Promotion," ABA Labor & Employment Section Annual Meeting (2008); Author & Panelist, "Ethical Issues in Representing Workers in Wage & Hour Actions," Representing Workers in Individuals & Collective Actions under the FLSA (2007); Author & Panelist, "Evidence and Jury Instructions in FLSA Actions," Georgetown Law Center/ACL-ABA (2007); Author & Panelist, "Crucial Events in the 'Life' of an FLSA Collective Action: Filing Considerations and the Two-step 'Similarly-Situated' Analysis," National Employment Lawyers Association, Annual Convention (2006); Author & Panelist, "Time is Money, Except When It's Not: Compensable Time and the FLSA," National Employment Lawyers Association, Impact Litigation Conference (2005); Panelist, "Electronic Discovery," Federal Judicial Center & Institute of Judicial Administration, Workshop on Employment Law for Federal Judges (2005); "Image-Based Discrimination and the BFOQ Defense," *EEO Today: The Newsletter of the EEO Committee of the ABA's Section of Labor and Employment Law*, Vol. 9, Issue 1 (2004); "Fair Labor Standards Act Overtime Exemptions: Proposed Regulatory Changes," *New York State Bar Association Labor and Employment Newsletter* (2004); Chair & Panelist, "Current Topics in Fair Labor Standards Act Litigation," Conference, Association of the Bar of the City of New York (2003); Moderator, "Workforce Without Borders," ABA Section of Labor & Employment Law, EEOC Midwinter Meeting (2003). *Member*: American Bar Association [Labor and Employment Law Section, Standing Committee on Equal Employment

Opportunity (Member, Past Employee Co-Chair, 2009-2011)]; Association of the Bar of the City of New York; National Employment Lawyers' Association - New York Chapter (Board Member, 2005-2011); National Employment Lawyers' Association – National; Public Justice Foundation; Taxpayers Against Fraud Education Fund.

KRISTEN LAW SAGAFI, Admitted to practice in California (2002); U.S. District Court, Northern District of California (2002); U.S. District Court, Central District of California (2005); US District Court, Northern District of Florida (2009); U.S. Court of Appeals for the Eleventh Circuit (2010). *Education*: Boalt Hall School of Law, University of California, Berkeley (J.D. 2002); Executive Editor, *Ecology Law Quarterly*; Moot Court Advocacy Award; Moot Court Board; Hopi Appellate Clinic; Ohio Wesleyan University (B.A., *summa cum laude,* 1995); Presidential Scholar; Phi Beta Kappa. *Litigation Experience:* Ms. Sagafi and Lieff Cabraser received recognition in *The National Law Journal's* Plaintiffs' Hot List for their outstanding success in *Grays Harbor Adventis Christian School v. Carrier Corp*. The case resulted in a settlement worth $300 million for consumers who had purchased certain Carrier furnaces that were allegedly made with inferior materials that caused them to fail prematurely. *Honors & Awards*: "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2014; "Top 40 Professionals Under 40 Years Old," *San Francisco Business Times*, 2014; "Rising Stars for Northern California," *Super Lawyers*, 2009-2014; "50 Lawyers on the Fast Track," *The Recorder*, 2012. *Member*: Phi Beta Kappa; State Bar of California.

BRENDAN P. GLACKIN, Admitted to practice in California, 1998; New York, 2000; U.S. District Court, Northern, Central, Eastern and Southern Districts of California, 2001; U.S. Court of Appeals for the Ninth Circuit, 2004; U.S. District Court, Southern District of New York, 2001; U.S. District Court, District of Colorado, 2001; U.S. Court of Appeals for the Second Circuit, 2013; U.S. Court of Appeals for the Ninth Circuit. *Education*: Harvard Law School (J.D., *cum laude*, 1998); University of Chicago (A.B., Phi Beta Kappa, 1995). *Prior Employment*: Contra Costa Public Defender, 2005-2007; Boies, Schiller & Flexner, 2000-2005; Willkie Farr & Gallagher, 1999-2000; Law Clerk to Honorable William B. Shubb, U.S. District Court, Eastern District of California, 1998-1999. *Awards & Honors:* "Northern California Super Lawyer," *Super Lawyers,* 2013-2014. *Member*: State Bar of California; BASF Antitrust Section, Executive Committee. *Seminars:* Ramifications of *American Needle, Inc. v. National Football League,* 2010; Antitrust Institute 2011: Developments & Hot Topics, 2011; Antitrust Trials: The View From the Trenches, 2013; Applying Settlement Offsets to Antitrust Judgments, ABA Spring Meetings, 2013; California Trial Advocacy, PLI, 2013; Building Trial Skills, NITA, 2013.

MARK P. CHALOS, Admitted to practice in Tennessee, 1998; U.S. Court of Appeals, Sixth Circuit, 1998; U.S. District Court, Middle District of Tennessee, 2000; U.S. District Court, Western District of Tennessee, 2002; U.S. District Court, Eastern District of Tennessee, 2006; U.S. District Court, Northern District of Florida, 2006; U.S. District Court, Northern District of California, 2007; U.S. Supreme Court, 2012. *Education*: Emory University School of Law (J.D., 1998); Dean's List; Award for Highest Grade, Admiralty Law; Research Editor, *Emory International Law Review*; Phi Delta Phi Legal Fraternity; Vanderbilt University (B.A., 1995). *Honors & Awards*: "Tennessee Litigation Star," *Benchmark Litigation,* 2013-2015; *The Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*Nashville's Best Lawyers*," 2012-2015; "Mid-South Super Lawyers," *Super Lawyers*, 2011-

2014; AV Peer Review Rated, Martindale-Hubbell; "Best of the Bar," *Nashville Business Journal*, 2008-2010; "Top 40 Under 40," *The Tennessean*, 2004; "Mid-South Rising Stars," *Super Lawyers*, 2008-2010. *Publications & Presentations*: "Supreme Court Limits The Reach Of Alien Tort Statute In Kiobel," Legal Solutions Blog, April 2013; "The Rise of Bellwether Trials," Legal Solutions Blog, March 2013; "Amgen: The Supreme Court Refuses to Erect New Class Action Bar," Legal Solutions Blog, March 2013; "Are International Wrongdoers Above the Law?," The Trial Lawyer Magazine, January 2013; "Kiobel v. Royal Dutch Petroleum: Supreme Court to Decide Role of US Courts Abroad," ABA Journal, January 2013. "Legislation Protects the Guilty [in Deadly Meningitis Outbreak]," Tennessean, December 2012; Litigating International Torts in United States Courts, 2012 ed., Thomson Reuters/West (2012); "Successfully Suing Foreign Manufacturers," TRIAL Magazine, November 2008; "Washington Regulators Versus American Juries: The United States Supreme Court Shifts the Balance in Riegel v. Medtronic," *Nashville Bar Journal*, 2008; "Washington Bureaucrats Taking Over American Justice System," *Tennessean.com* (December 2007); "The End of Meaningful Punitive Damages," *Nashville Bar Journal*, November 2001; "Is Civility Dead?" *Nashville Bar Journal*, October 2003; "The FCC: The Constitution, Censorship, and a Celebrity Breast," Nashville Bar Journal, April 2005. *Member*: American Association for Justice (Chair, Public Education Committee, 2015); American Bar Association (Past-Chair, YLD Criminal & Juvenile Justice Committee; Tort Trial and Insurance Practice Section Professionalism Committee); First Center for the Visual Arts (Founding Member, Young Professionals Program); Harry Phillips American Inn of Court; Kappa Chapter of Kappa Sigma Fraternity Alumni Association (President); Metropolitan Nashville Arts Commission (Grant Review Panelist); Nashville Bar Association (YLD Board of Directors; Nashville Bar Association YLD Continuing Legal Education and Professional Development Director); Nashville Bar Journal (Editorial Board); Tennessee Association for Justice (Board of Directors, 2008-2011; Legislative Committee); Tennessee Bar Association (Continuing Legal Education Committee); Tennessee Trial Lawyers Association (Board of Directors); Historic Belcourt Theatre (Past Board Chair; Board of Directors); Nashville Cares (Board of Directors).

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Association (President, 2003-2004), National Moot Court Team (Regional Champion, 2003-2004), American Constitution Society (Secretary, 2002-2003), Judicial Process Clinic (2003), Criminal Justice Clinic (2003-2004); Samford University (B.S., *cum laude*, in Mathematics with Honors, minor in Journalism, 1995). *Prior Employment:* Harwell Howard Hyne Gabbert & Manner, P.C., 2004-2010; Summer Associate, Harwell Howard Hyne Gabbert & Manner, P.C., 2003; Summer Associate, Edward, Angell, Palmer, Dodger, LLP, 2003. *Awards:* "Paladin Award," Tennessee Association for Justice, 2015; "Rising Star for Mid-South," Super Lawyers, 2014. *Member:* American Bar Association; American Constitution Society, Nashville Chapter (Member & Chair of 2008 Supreme Court Preview Event); Camp Ridgecrest Alumni & Friends (Board Member); Harry Phillips American Inn of Court, Nashville Chapter (Associate Member, 2008-2010; Barrister, 2010-2014); Historic Edgefield, Inc. (President, 2009-2011); Nashville Bar Association; Tennessee Bar Association.

STEPHEN H. CASSIDY, Admitted to practice in California, 1989; U.S. District Court, Northern District of California and U.S. Court of Appeals, Ninth Circuit, 1997. *Education*: Hastings College of the Law (J.D., *magna cum laude*, 1989); Associate Managing Editor, *Hastings International and Comparative Law Review*, 1988-1989; Order of the Coif; Member, Thurston Society; Recipient, American Jurisprudence Awards for Real Property, Evidence and American Legal History; Georgetown University (B.S.F.S., 1986). *Prior Employment*: Law Clerk to Magistrate-Judge Joan S. Brennan, U.S. District, Northern District of California, 1989-90; Alameda County Public Defender's Office (1990-1991); Marin County Public Defender's Office (1991-1992); Motions Attorney, U.S. Court of Appeals, Ninth Circuit, 1992-94, 1996-97. *Awards & Honors:* AV Preeminent Peer Review Rated, Martindale-Hubbell. *Publications & Presentations*: TVA + Coal Ash, American Association for Justice, July 2013; "Magnetix Toy Injuries: A Failure to Inform Safety Regulators," OpEd News (2009); "Restoring Patient Rights and Promoting Safer Medical Device," OpEd News (2009); "Internet Marketing for Plaintiffs' Firms," CAOC Conference (May 2004); "Enhancing the Role of Law Firm Marketing Departments," LexisNexis Law Firm Marketers' Roundtable (November 2003); Contributing Author, *California Class Actions Practice and Procedures (*Elizabeth J. Cabraser editor in chief, 2003); Co-Author, "Decisions Interpreting California's Rules of Class Action Procedure," in *Survey of State Class Action Law* (ABA 2001); "The Newest Member of the Nuclear Club: Pakistan's Drive for a Nuclear Weapon's Capability," 12 *Hastings Int'l & Comp. L. Rev.* 679 (1989). *Member*: State Bar of California; Bar Association of San Francisco; American Bar Association (Litigation Section); Public Justice; Fight for Justice Campaign; Consumer Attorneys of California; San Francisco Trial Lawyers Association; Alameda Contra Costa Trial Lawyers' Association; American Association for Justice

DANIEL P. CHIPLOCK, Admitted to practice in New York, 2001; U.S. District Court, Southern District of New York, 2001; U.S. District Court, Eastern District of New York, 2001; U.S. District Court, District of Colorado, 2006; U.S. Court of Appeals for the Second Circuit, 2009; U.S. Court of Appeals for the Sixth Circuit, 2011; U.S. Supreme Court. *Education*: Stanford Law School (J.D., 2000); Article Review Board, *Stanford Environmental Law Journal*; Recipient, Keck Award for Public Service; Columbia University (B.A., *summa cum laude*, 1994); Phi Beta Kappa. *Member*: State Bar of New York; American Association for Justice; Fight for Justice Campaign; Public Justice; National Association of Shareholder and Consumer Attorneys (Executive Committee/Secretary); American Constitution Society for Law

and Policy (Advocate's Circle). *Classes/Seminars:* "Fraud on the Market," Federal Bar Council, Feb. 25, 2014 (CLE panel participant).

NIMISH R. DESAI, Admitted to practice in California, 2006; US District Court, Northern District of California, 2007; US District Court, Central District of California, 2008; US District Court, Northern District of Florida, 2009; U.S. Court of Appeals, Ninth Circuit, 2009. *Education*: Boalt Hall School of Law, University of California, Berkeley (J.D., 2006), Finalist and Best Brief, McBaine Moot Court Competition (2006), Moot Court Best Brief Award (2004); University of Texas, Austin, (B.S. & B.A., High Honors, 2002). *Prior Employment*: Extern, Sierra Club Environmental Law Program, 2004; Researcher, Public Citizen, 2003; Center for Energy and Environmental Resources, 2001-2002. *Awards & Honors:* "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2014; "Northern California Super Lawyer," *Super Lawyers,* 2013-2014; "Rising Star for Northern California," *Super Lawyers*, 2012. *Publications & Presentations*: "BP, Exxon Valdez, and Class-Wide Punitive Damages," 21 Class Action and Derivative Suit Committee Newsletter (Fall 2010); "American Chemistry Council v. Johnson: Community Right to Know, But About What? D.C. Circuit Takes Restrictive View of EPCRA," 33 *Ecology L.Q.* 583 (Winter 2006); "Lessons Learned and Unlearned: A Case Study of Medical Malpractice Award Caps in Texas," *The Subcontinental*, (Winter 2004, Vol. 1, Issue 4, pp. 81-87); "Separation of Fine Particulate Matter Emitted from Gasoline and Diesel Vehicles Using Chemical Mass Balancing Techniques," *Environmental Science Technology*, (2003; 37(17) pp. 3904-3909); "Analysis of Motor Vehicle Emissions in a Houston Tunnel during Texas Air Quality Study 2000," *Atmospheric Environment*, 38, 3363-3372 (2004). *Member*: State Bar of California; Bar Association of San Francisco; Consumer Attorneys of California; American Bar Association; American Constitution Society; East Bay Community Law Center (Board Member, 2010-present); South Asian Bar Association (Board Member, 2010-present). *Languages*: Gujarati (conversational).

NICHOLAS DIAMAND, Admitted to practice in New York, 2003; England; Wales; U.S. District Court, Southern, Eastern, and Western Districts of New York; US. Court of Appeals, Seventh Circuit; U.S. Supreme Court. *Education*: Columbia University School of Law (LL.M., Stone Scholar, 2002); College of Law, London, England (C.P.E.; L.P.C.; Commendation, 1997); Columbia University (B.A., *magna cum laude,* 1992). *Awards & Honors:* "Super Lawyer for New York Metro," *Super Lawyers*, 2013-2014; "Rising Star for New York Metro," *Super Lawyers*, 2012. *Prior Employment*: Solicitor, Herbert Smith, London (1999-2001); Law Clerk to the Honorable Edward R. Korman, Chief Judge, U.S. District Court, Eastern District of New York (2002-03). *Publications & Presentations*: Author, "U.S. Securities Litigation & Enforcement Action," *Corporate Disputes* magazine, April-June 2015; Speaker, Strafford CLE webinar "Ethical Risks in Class Litigation," 2015; Speaker, International Corporate Governance Network Conference, 2014; "Fraud on the Market in a Post-*Amgen* World" (with M. Miarmi), Trial Magazine, November 2013; Contributing Author, *California Class Actions Practice and Procedure* (Elizabeth J. Cabraser, Editor-in-Chief), 2006; Panelist, "Obstacles to Access to Justice in Pharmaceutical Cases," *Pharmaceutical Regulation and Product Liability*, British Institute of International and Comparative Law, April 21, 2006; Panelist, "Pre-Trial Discovery in the United States," Union Internationale des Avocats, Winter Seminar, February 2006. *Member*: New York City Bar Association; New York State Bar Association; Public Justice

Foundation; International Corporate Governance Network; Peer Articles Reviewer, American Association for Justice, *Trial* magazine.

DEAN M. HARVEY, Admitted to practice in California, 2007; U.S. District Court, Northern District of California; U.S. District Court, Central District of California; U.S. District Court, Eastern District of California; U.S. District Court, Southern District of California; U.S. Court of Appeals for the Ninth Circuit; U.S. District Court, Eastern District of Wisconsin, 2013. *Education*: Boalt Hall School of Law, University of California, Berkeley (J.D. 2006); Articles Editor, *California Law Review* (2005-2006); Assistant Editor, *Berkeley Journal of International Law* (2004); University of Minnesota, Twin Cities (B.A. *summa cum laude*, 2002). *Prior Employment*: Partner, Lieff Cabraser Heimann & Bernstein, LLP (2013-Present); Associate, Lieff Cabraser Heimann & Bernstein, LLP (2009-2013); Associate, Boies, Schiller & Flexner LLP (2007-2008); Law Clerk, The Honorable James V. Selna, U.S. District Court for the Central District of California (2006-2007); Law Clerk, U.S. Department of Justice, Antitrust Division, San Francisco Field Office (2006); Summer Law Intern, U.S. Department of Justice (2005); Summer Associate, Boies, Schiller & Flexner LLP (2005). *Awards & Honors*: "Super Lawyer for Northern California," *Super Lawyers*, 2013-2015; "Lawyers on the Fast Track," The Recorder, 2013; "Rising Star for Northern California," Super Lawyers, 2010-2012; "William E. Swope Antitrust Writing Prize," 2006. *Publications*: Contributing Author, *The Class Action Fairness Act: Law and Strategy*, American Bar Association, 2013; Contributing Author, *Concurrent Antitrust Criminal and Civil Proceedings: Identifying Problems and Planning for Success*, American Bar Association (2013); Co-Editor, *California Class Actions Practice and Procedures* (2010-2013); Articles Editor, *Competition* (the Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California) (2012); Contributing Author, *ABA Annual Review of Antitrust Law Developments* (2011); *New Guidance for Standard Setting Organizations: Broadcom Corp. v. Qualcomm Inc. and In the Matter of Rambus, Inc., 5 ABA Sherman Act Section 1 Newsl. 35* (2008); *Anticompetitive Social Norms as Antitrust Violations,* 94 Calif. L. Rev. 769 (2006). *Member*: American Bar Association (Antitrust Section); Bar Association of San Francisco; San Francisco Trial Lawyers Association.

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ROGER N. HELLER, Admitted to practice in California, 2001; U.S. District Court, Northern District of California, 2001, U.S. Court of Appeals for the Ninth Circuit, 2001. *Education*: Columbia University School of Law (J.D., 2001); Columbia Law Review, Senior Editor. Emory University (B.A., 1997). *Prior Employment*: Extern, Honorable Michael Dolinger, U.S. District Court, Southern District of New York, 1999; Associate, O'Melveny & Myers LLP, 2001-2005; Senior Staff Attorney, Disability Rights Advocates, 2005-2008. *Honors & Awards*: "Rising Star," *Law 360*, 2014; "Northern California Super Lawyer," *Super Lawyers*, 2013-2014; "Trial Lawyer of the Year Finalist," Public Justice, 2012; "Northern California Rising Stars," *Super Lawyers*, 2011-2012; Harlan Fiske Stone Scholar, 1998-2001. *Publications & Presentations*: Co-author, Fighting For Troops on the Homefront, Trial Magazine (September 2006). *Member*: American Bar Association; Bar Association of San Francisco; Consumer Attorneys of California; State Bar of California; Advisory Committee Member, Santa Venetia Community Plan.

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SHARON M. LEE, Admitted to practice in New York 2002; U.S. District Court, Southern District of New York, 2003; U.S. District Court, Eastern District of New York, 2003; Washington State, 2005. *Education*: St. John's University School of Law (J.D. 2001); *New York International Law Review*, Notes & Comments Editor, 2000-2001; St. John's University (M.A. 1998); St. John's University (B.A. 1997). *Prior Employment*: Milberg Weiss & Bershad, LLP, 2003-2007. *Member*: American Bar Association; Asian Bar Association of Washington; Washington State Bar Association; Washington State Joint Asian Judicial Evaluation Committee. *Publications & Presentations*: Author, *The Development of China's Securities Regulatory Framework and the Insider Trading Provisions of the New Securities Law*, 14 N.Y. Int'l L.Rev. 1 (2001); Co-author, *Post-Tellabs Treatment of Confidential Witnesses in Federal Securities Litigation*, 2 J. Sec. Law, Reg. and Compliance 205 (3d ed. 2009).

BRUCE W. LEPPLA, Admitted to practice in California, New York, Ninth Circuit Court of Appeals, California District Courts (Northern, Central, Eastern), New York District Courts (Southern, Eastern), District of Colorado. *Education*: University of California (J.D., Boalt Hall School of Law, M.G. Reade Scholarship Award); University of California at Berkeley (M.S., Law and Economics, Quantitative Economics); Yale University (B.A., *magna cum laude*, Highest Honors in Economics). *Prior Employment*: California-licensed Real Estate Broker (2009-present); FINRA and California-licensed Registered Investment Adviser (2008-present); Chairman, Leppla Capital Management LLC (2008-present); Chairman, Susquehanna Corporation (2006-present); Partner, Lieff Cabraser Heimann & Bernstein, LLP (2004-2008), Counsel (2002-2003); CEO and President, California Bankers Insurance Services Inc., 1999-2001; CEO and President, Redwood Bank (1985-1998), CFO and General Counsel (1981-1984); Brobeck, Phleger & Harrison (1980); Davis Polk & Wardwell (1976-80). *Publications*: Author or co-author of 11 different U.S. and International patents in electronic commerce and commercial product design, including "A Method for Storing and Retrieving Digital Data Transmissions," United States Patent No. 5,659,746, issued August 19, 1997; "*Stay in the Class or Opt-Out? Institutional Investors Are Increasingly Opting-Out of Securities Class Litigation*," Securities Litigation Report, Vol. 3, No. 8, September 2006, West LegalWorks; reprinted by permission of the author in Wall Street Lawyer, October 2006, Vol. 10, No. 10, West LegalWorks; "*Selected Waiver: Recent Developments in the Ninth Circuit and California, Part 1*;" Elizabeth J. Cabraser, Joy A. Kruse and Bruce W. Leppla; Securities Litigation Report, May 2005, Vol. I, No. 9, pp. 1, 3-7; "*Selected Waiver: Recent Developments in the Ninth Circuit and California, Part 2*;" Elizabeth J. Cabraser, Joy A. Kruse and Bruce W. Leppla; Securities Litigation Report, June 2005, Vol. I, No. 10, pp. 1, 3-9; Author, *"Securities Powers for Community Banks,"* California Bankers Association Legislative Journal (Nov. 1987). *Teaching Positions*: Lecturer, University of California at Berkeley, Haas School of Business, Real Estate Law and Finance (1993-96); Lecturer, California Bankers Association General Counsel Seminars, Lending Documentation, Financial Institutions Litigation and similar topics (1993-96). *Panel Presentations*: Union Internationale des Avocats, Spring Meeting 2010, Frankfurt, Germany, *"Recent Developments in Cross-Border Litigation;"* Union Internationale des Avocats, Winter Meeting 2010, Park City, Utah, *"Legal and Economic Aspects of Securities Class and Opt-out Litigation;"* EPI European Pension Fund Summit, Montreux, Switzerland, "*Legal and Global Economic Implications of the U.S. Subprime Lending Crisis*," May 2, 2008; Bar Association of San Francisco, "*Impact of Spitzer's Litigation and Attempted Reforms on the Investment Banking and Insurance Industries*," May 19, 2005; Opal Financial Conference, National Public

Fund System Legal Conference, Phoenix, AZ, "*Basic Principles of Securities Litigation*," January 14, 2005; American Enterprise Institute, "*Betting on the Horse After the Race is Over—In Defense of Mutual Fund Litigation Related to Undisclosed After Hours Order Submission*," September 30, 2004. *Member*: American Association for Justice; Bar Association of San Francisco, Barrister's Club, California Bankers Association, Director, 1993 – 1999, California State Small Business Development Board, 1989 – 1997, Community Reinvestment Institute, Founding Director, 1989 – 1990, National Association of Public Pension Attorneys, New York State Bar Association, San Francisco Chamber of Commerce, Leadership Council, 1990 – 1992, State Bar of California, Union Internationale des Avocats, Winter Corporate Governance Seminar, Seminar Chairman, 2012; University of California at Berkeley, Boalt Hall Alumni, Board of Directors, 1993 – 1996, *Wall Street Lawyer*, Member, Editorial Board, Yale University Alumni Board of Directors, Director, 2001 - 2005.

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Association San Francisco; American Association for Justice; YWCA San Francisco and Marin County (Board of Directors 2014-2016).

ANNIKA K. MARTIN, Admitted to practice in New York, 2005; U.S. District Court, Southern District of New York, 2005; U.S. District Court Eastern District of New York. *Education:* Law Center, University of Southern California (J.D., 2004); Review of Law & Women's Studies; Jessup Moot Court; Medill School of Journalism, Northwestern University (B.S.J., 2001); Stockholm University (Political Science, 1999). *Publications & Presentations*: "Stick a Toothbrush Down Your Throat: An Analysis of the Potential Liability of Pro-Eating Disorder Websites," *Texas Journal of Women & the Law* (Volume 14 Issue 2, Spring 2005); "Welcome to Law School," monthly column on www.vault.com (2001-2004). *Awards and Honors*: "New York Rising Star," Super Lawyers, 2013-2014; Wiley W. Manuel Award for Pro Bono Legal Services awarded by the State Bar of California for voluntary provision of legal services to the poor, 2005. *Member*: New York State Bar Association; Swedish American Bar Association; American Association for Justice; New York State Trial Lawyers Association; New York County Lawyer's Association; New York City Bar Association. *Languages*: Swedish (fluent); French (DFA1-certified in Business French); Spanish (conversational).

MICHAEL J. MIARMI, Admitted to practice New York, 2006; U.S. District Court, Eastern District of New York; U.S. District Court, Southern District of New York; U.S. Court of Appeals for the Second Circuit; U.S. Court of Appeals for the Third Circuit, 2007; U.S. Court of Appeals for the Sixth Circuit; U.S. Court of Appeals for the Eighth Circuit, 2007; U.S. Supreme Court. *Education*: Fordham Law School (J.D., 2005); Yale University (B.A., *cum laude*, 2000). *Awards & Honors:* "New York Rising Star," *Super Lawyers*, 2013-2014. *Publications & Presentations*: Co-Author with Steven E. Fineman, "The *Basic*s of Obtaining Class Certification in Securities Fraud Cases: U.S. Supreme Court Clarifies Standard, Rejecting Fifth Circuit's 'Loss Causation' Requirement," *Bloomberg Law Reports* (July 5, 2011). *Prior Employment*: Milberg Weiss LLP, Associate, 2005-2007. *Member:* State Bar of New York; New York State Trial Lawyers Association; Public Justice Foundation; American Bar Association; New York State Bar Association.

DANIEL E. SELTZ, Admitted to practice in New York, 2004; U.S. District Court, Southern District of New York; U.S. District Court, Eastern District of New York; U.S. Court of Appeals for the First Circuit; U.S. Court of Appeals for the Ninth Circuit. *Education*: New York University School of Law (J.D., 2003); *Review of Law and Social* Change, Managing Editor; Hiroshima University (Fulbright Fellow, 1997-98); Brown University (B.A., *magna cum laude*, Phi Beta Kappa, 1997). *Prior Employment*: Law Clerk to Honorable John T. Nixon, U.S. District Court, Middle District of Tennessee, 2003-04. *Publications & Presentations*: Co-Author with Jordan Elias, "The Limited Scope of the Ascertainability Requirement," American Bar Association, Section of Litigation, March 2013; Panelist, "Taking and Defending Depositions," New York City Bar, May 20, 2009; Contributing Author, *California Class Actions Practice & Procedures* (Elizabeth J. Cabraser, Editor-in-Chief, 2008); "Remembering the War and the Atomic Bombs: New Museums, New Approaches," in *Memory and the Impact of Political Transformation in Public Space* (Duke University Press, 2004), originally published in *Radical History Review*, Vol. 75 (1998); "Issue Advocacy in the 1998 Congressional Elections," with Jonathan S. Krasno (Urban Institute, 2001); *Buying Time: Television Advertising in the 1998*

Congressional Elections, with Jonathan S. Krasno (Brennan Center for Justice, 2000); "Going Negative," in *Playing Hardball*, with Kenneth Goldstein, Jonathan S. Krasno and Lee Bradford (Prentice-Hall, 2000). *Member*: American Association for Justice; State Bar of New York.

ANNE B. SHAVER, Admitted to practice in California, 2008; Colorado, 2008; U.S. District Court, Northern District of California, 2009; U.S. Court of Appeals for the Second Circuit, 2012; U.S. Supreme Court; U.S. Court of Appeals of the Ninth Circuit. *Education*: Boalt Hall School of Law, University of California (J.D., 2007), Order of the Coif; University of California, Santa Cruz (B.A. *cum laude*, 2003), Phi Beta Kappa. *Awards & Honors:* "Rising Star for Northern California," *Super Lawyers,* 2012-2014. *Prior Employment:* Law Clerk to Honorable Betty Fletcher, U.S. Court of Appeals for the Ninth Circuit, 2008-2009; Davis, Graham & Stubbs, LLP, Litigation Associate, 2008; Public Defender's Office of Contra Costa County, 2007; Davis, Cowell & Bowe, LLP, Summer Law Clerk, 2006; Centro Legal de la Raza, Student Director, Workers' Rights Clinic, 2005-2006; Human Rights Watch, Legal Intern, 2005. *Publications*: "Winning Your Class Certification Motion Post-Brinker," Consumer Attorneys of California, November 2013 (panelist); "Counseling HR on National Origin & Language Issues in the Workplace," ABA Labor & Employment Section, November 2012 (moderator); "*U.S. v. Fort* and the Future of Work-Product in Criminal Discovery," 44 Cal. W. L. Rev. 127, 12293 (Fall 2007); "Rule 23 Basics," Impact Fund Class Action Training Institue, May 2011; "A Place At The Table? Recent Developments in LBGT Rights," ABA Labor & Employment Section Conference, April 2012 (moderator); "Transgender Workplace Issues After the EEOC's Landmark Macy Ruling," Bar Association of San Francisco, September 2012 (moderator); CAOC, "Latest Developments in Employment and Wage and Hour Law," February 25, 2014 (speaker). *Member*: Bar Association of San Francisco; Consumer Attorneys of California; National Employment Lawyers Association; American Bar Association's Equal Employment Opportunity Committee (Programs Committee).

NICOLE D. SUGNET, Admitted to practice in California; U.S. Court of Appeals for the Ninth Circuit; U.S. District Court, Central District of California; U.S. District Court, Eastern District of California; U.S. District Court, Northern District of California, U.S. District Court, Eastern District of Wisconsin; U.S. District Court, Northern District of Illinois, April 1, 2014. *Education*: University of California, Hastings College of the Law (J.D., 2006); Moot Court Best Oral Advocate; Senior Articles Editor, *Hastings Law Journal*; Lewis & Clark College (B.A., *magna cum laude*, 2000). *Prior Employment*: Associate, Green Welling, P.C., 2006-2012; Law Clerk, Family Violence Law Center, 2005; Law Clerk, Law Offices of Waukeen Q. McCoy, 2004. *Publications & Presentations*: Co-author with Kirsten Gibney Scott, "Consumer Protection and Employment Cases after Concepcion," *ABA Section of Litigation*, *Class Action & Derivative Suits Committee Newsletter* (Summer 2011); Co-Author of the California Section of the ABA State Class Action Survey (2012). *Awards & Honors*: "Rising Star for Northern California," Super Lawyers, 2013-2014. *Member*: Antitrust and Unfair Competition Law Section of the California State Bar; Labor and Employment Law Section of the California State Bar; Consumer Attorneys of California; National Association of Consumer Advocates.

TODD A. WALBURG, Admitted to practice in California, 2001; U.S. District Court, Northern District of California, 2001; U.S. District Court, Eastern, Central and Southern Districts of California, 2006; U.S. Court of Appeals for the Ninth Circuit, 2001. *Education*:

University of San Francisco School of Law (J.D. 1999); Founder and President, USF Student Chapter, Association of Trial Lawyers of America (1997-1999); Investigation Intern, San Francisco Public Defender's Office; Mediation Intern, San Francisco Small Claims Court; Mediation Intern, U.S. Equal Employment Opportunity Commission; University of California at Los Angeles (B.A., 1995). *Community Service*: Pro Bono Trial Attorney, Eviction Defense Project, Volunteer Legal Services Program of the Bar Association of San Francisco (2012-present). *Honors & Awards*: Elected to the Board of Directors of the San Francisco Trial Lawyers Association, 2013-present; Appointed to the Board of Governors of the Alameda-Contra Costa Trial Lawyers Association, 2012-present; "Super Lawyer for Northern California," *Super Lawyers*, 2014; "Rising Star for Northern California," *Super Lawyers*, 2010-2013; Leesfield / Association of Trial Lawyers of America Scholarship, National Winner, 1998. *Prior Employment*: Partner, Emison Hullverson Bonagofsky, LLP (2007-2008); Associate, Lieff Cabraser Heimann & Bernstein, LLP, 2005-2007); Associate, Bennett, Johnson & Galler (2001-2005). *Publications and Presentations*: "Cutting Edge Damages," SFTLA/CAOC Webinar with NJP Litigation Consulting (February 2013); "Burn Injury Cases," SFTLA/CAOC Webinar (December 2012); "Toyota Unintended Acceleration Litigation," CAOC Annual Convention (November 2011); "Product Liability Strategies Before Trial," SFTLA Roundtable (October, 2008); "Powerful Mediation Briefs," in The Verdict (ACCTLA 2006). *Member*: Alameda-Contra Costa Trial Lawyers Association (Board of Governors 2012 - Present, 2003 - 2005); American Association for Justice (Attorneys Information Exchange Group; Motor Vehicle Collision, Highway and Premises Liability Section; Products Liability Section; Section on Toxic, Environmental, and Pharmaceutical Torts); Bar Association of San Francisco (Pro Bono Trial Attorney; Eviction Defense Project; Volunteer Legal Services); Consumer Attorneys Association of Los Angeles; Consumer Attorneys of California; The Melvin M. Belli Society; San Francisco Trial Lawyers Association (Co-Chair, Membership Committee; Board of Directors, 2013 - Present; Experts Committee, 2012; Education Committee, 2005 - 2007, 2012; Carlene Caldwell Scholarship Committee, 2005 - 2007); State Bar of California; Western Trial Lawyers Association.

OF COUNSEL

ROBERT L. LIEFF, Admitted to practice in California, 1966; U.S. District Court, Northern District of California and U.S. Court of Appeals, Ninth Circuit, 1969; U.S. Supreme Court, 1969; U.S. Court of Appeals, Seventh Circuit, 1972; U.S. Tax Court, 1974; U.S. District Court, District of Hawaii, 1986. *Education*: Columbia University (M.B.A., 1962; J.D., 1962); Cornell University; University of Bridgeport (B.A., 1958). Member, Columbia Law School Dean's Council; Member, Columbia Law School Board of Visitors (1992-2006); Member, Columbia Law School Center on Corporate Governance Advisory Board (2004). *Awards & Honors*: AV Preeminent Peer Review Rated, Martindale-Hubbell; *The Best Lawyers in America*, based on peer and blue ribbon panel review, selected for list of "*San Francisco's Best Lawyers*," 2015; "Northern California Super Lawyers," *Super Lawyers*, 2005-2009, "*Lawdragon* Finalist," *Lawdragon*, 2005. *Member*: Bar Association of San Francisco; State Bar of California (Member: Committee on Rules of Court, 1971-74; Special Committee on Multiple Litigation and Class Actions, 1972-73); American Bar Association (Section on Corporation, Banking and Business Law); Lawyers Club of San Francisco; San Francisco Trial Lawyers

Association; California Trial Lawyers Association; Consumer Attorneys of California; Fight for Justice Campaign.

LYDIA LEE, Admitted to practice in Oklahoma 1983; U.S. District Court, Western and Eastern Districts of Oklahoma; U.S. Court of Appeals, 10th Circuit. *Education*: Oklahoma City University, School of Law (J.D., 1983); University of Central Oklahoma (B.A., 1980). *Prior Employment*: Partner, Law Office of Lydia Lee (2005-2008); Partner, Oklahoma Public Employees Retirement System (1985-2005); Associate, law firm of Howell & Webber (1983-1985). *Publications & Presentations*: "QDROs for Oklahoma's Public Pension Plans," *Oklahoma Family Law Journal*, Vol. 13, September, 1998; Co-Author, "Special Problems in Dividing Retirement for Employees of the State of Oklahoma," *OBA/FLS Practice Manual*, Chapter 27.3, 2002; Featured Guest Speaker, *Saturday Night Law*, KTOK Radio; Contributor and Editor, INFRE Course Books for CRA program. *Member*: Central Edmond Urban Development Board (2006-present); Oklahoma Bar Association (1983–present), Member OBA Women in Law Committee (2007-present); National Association of Public Pension Attorneys (1988-present), President (2002-2004), Vice-President (2001-2002), Executive Board member (1998-2004), Chair of Benefits Section, Emeritus Board member, (2004-present); Edmond Neighborhood Alliance Board of Directors (2005-present), President (2006-2007), Past President and Director (2007-present); Central Edmond Urban Development Board (2006-present); Midwest City Regional Hospital, Board of Governors (1992-1996), Served on Physician/Hospital Organization Board, Pension and Insurance Trust Committees, and Chairman of Woman's Health Committee; City of Midwest City, Planning Commission (1984-1998), Chairman (1990-1995), Vice-Chairman (1987– 1990), Served on Capital Improvement Committee, Airport Zoning Commission (Tinker AFB), and Parkland Review Board, served on Midwest City Legislative Reapportionment Committee (1991).

DAVID RUDOLPH, Admitted to practice in California, 2004; U.S. District Court, Northern District of California, 2008; U.S. District Court, Southern District of California, 2008; U.S. Court of Appeals for the Ninth Circuit, 2009; U.S. Court of Appeals for the Federal Circuit, 2012. *Education*: Boalt Hall School of Law, University of California, Berkeley (J.D. 2004); Moot Court Board; Appellate Advocacy Student Advisor; *Berkeley Technology Law Journal; Berkeley Journal of International Law*; Rutgers University (Ph.D. Program, 1999-2001); University of California, Berkeley (B.A. 1998). *Prior Employment*: Associate, Quinn Emanuel Urquhart & Sullivan, LLP, 2008-2012; Law Clerk to the Honorable Saundra Brown Armstrong, U.S. District Court for the Northern District of California, 2007-2008.

JORDAN ELIAS, Admitted to practice in California, 2003; U.S. Court of Appeals, Second Circuit, 2014; U.S. Court of Appeals, Sixth Circuit, 2014; U.S. Court of Appeals, Seventh Circuit, 2010; U.S. District Court, District of Arizona, 2009; U.S. District Court, District of Colorado, 2009; U.S. District Court, Southern District of Florida, 2009; U.S. District Court, District of Minnesota, 2009; U.S. District Court, District of Nevada, 2009; U.S. District Court, Eastern District of Pennsylvania, 2008; U.S. Court of Appeals for the Eleventh Circuit. *Education*: Stanford Law School (J.D., 2003); Member, *Stanford Law Review*; *Streetlaw Program; East Palo Alto Community Law Project*. Yale University (B.A., Phi Beta Kappa, *magna cum laude*, 1998); Phi Beta Kappa; awarded the Field Prize, Yale University's highest writing award, for best senior thesis or dissertation in the humanities; awarded the White Prize

for best Yale College essay in American History. *Prior Employment*: Associate, Wilson Sonsini Goodrich & Rosati, 2004-2008; Law Clerk to the Honorable Cynthia Holcomb Hall, U.S. Court of Appeals for the Ninth Circuit, 2003-2004; Law Clerk, City Attorney of San Francisco, Summer 2002; Judicial Extern to the Honorable Charles R. Breyer, U.S. District Court, Northern District of California, Summer 2001; Website Editor, Public Agenda, 1999-2000. *Awards & Honors:* "Super Lawyer for Northern California," Super Lawyers, 2014; "Trial Lawyer of the Year Finalist," Public Justice, 2012; "Rising Star for Northern California," *Super Lawyers*, a publication of Thomson Reuters, 2012-2013. *Member*: State Bar of California; Arbitrator, Bar Association of San Francisco, Attorney-Client Fee Disputes Program; Member, Committee on *Iqbal v. Ashcroft*, Public Justice. *Publications & Presentations:* Co-Author with Jordan Elias, "The Limited Scope of the Ascertainability Requirement," American Bar Association, March 18, 2013.

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KEVIN R. BUDNER, Admitted to practice in California; Northern District of California, 2014; Central District of California, 2014; U.S. District Court of Colorado, February 25, 2014. *Education:* University of California, Berkeley, Boalt Hall School of Law (J.D., 2012); American Jurisprudence Award in Advanced Legal Research (first in class); Prosser Prize in Negotiation (second in class); Edwin A. Heafey, Jr. Trial Fellowship Recipient; Board of Advocates Trial Team Member; American Association of Justice Trial Competition, 2012 National Semi-finalist, 2011 Regional Finalist; *Berkeley Journal of International Law,* Senior Editor. University of California Hastings College of the Law (2009-2010); Class Rank 13/461 (top 3%); Legal Writing and Research (A+); CALI and Witkins Awards (first in class); Wesleyan University (B.A., Political Science, 2005). *Prior Employment:* Judicial Clerk to U.S. District Judge Barbara M.G. Lynn, 2012-2013; Certified Student Counsel, East Bay Community Law Center, 2011-2012; Research Assistant, Duckworth Peters Lebowitz Olivier, LLP, 2011-2012; Summer Associate, Lieff Cabraser Heimann & Bernstein, LLP , 2011-2012; Judicial Extern to U.S. District Judge Phyllis J. Hamilton, 2010; Homeless Policy Assistant, Office of Mayor Gavin Newsom, 2009; Project Manager, Augustyn & Co. 2007-2009; Visiting Professor, University of Liberal Arts Bangladesh, 2006-2007; Researcher, Rockridge Institute, 2005, 2006. *Languages:* Spanish (proficient), Portuguese (proficient), Bengali (basic). *Member*: American Association for Justice, Bar Association of San Francisco, Consumer Attorneys of California, State Bar of California, San Francisco Trial Lawyers Association.

LIN Y. CHAN, Admitted to practice in California; U.S. District Court, Northern District of California; U.S. District Court, Central District of California; U.S. Court of Appeals for the Fifth Circuit; U.S. Court of Appeals for the Ninth Circuit; U.S. Court of Appeals for the Tenth Circuit. *Education:* Wellesley College (B.A., *summa cum laude*, 2001); Stanford Law School (J.D., 2007); Editor-in-Chief, *Stanford Journal of Civil Rights and Civil Liberties*; Fundraising Chair, *Shaking the Foundations Progressive Lawyering Conference*. *Prior Employment:* Associate, Goldstein, Borgen, Dardarian & Ho (formerly Goldstein, Demchak Baller Borgen & Dardarian), 2008-2013; Law Clerk to Judge Damon J. Keith, Sixth Circuit Court of Appeals, 2007-2008; Clinic Student, Stanford Immigrants' Rights Clinic, 2006-2007; Union Organizer, SEIU and SEIU Local 250, 2002-2004; Wellesley-Yenching Teaching Fellow, Chinese University of Hong Kong, 2001-2002. *Presentations & Publications*: Author, "Do Federal *Associated General Contractors* Standing Requirements Apply to State *Illinois Brick* Repealer Statutes?," Business Torts & Rico News, Winter 2015; Panelist, "Federal and State Whistleblower Laws: What You Need to Know," Asian American Bar Association (November 2014); Author, "California Supreme Court Clarifies State Class Certification Standards in *Brinker*," American Bar Association Labor & Employment Law Newsletter (April 2013); Presenter, "Rule 23 Basics in Employment Cases," Impact Fund's 11th Annual Employment Discrimination Class Action Conference (February 2013); Chapter Author, The Class Action Fairness Act: Law and Strategies; Co-Author, "Clash of the Titans: Iqbal and Wage and Hour Class/Collective Actions," BNA, Daily Labor Report, 80 DLR L-1 (April 2010); Chapter Co-Chair, Lindemann & Grossman, Employment Discrimination Law Treatise, Fifth Edition; Chapter Monitor, Lindemann & Grossman, Employment Discrimination Law Treatise 2010 Cumulative Supplement. *Member:* Asian Americans Advancing Justice - Asian Law Caucus, Board Member, 2013 – Present, Annual Dinner Committee Co-Chair, 2015;
Asian American Bar Association, Civil Rights Committee Co-Chair, 2011 - Present;
American Bar Association, Fair and Impartial Courts Committee Vice-Chair, 2014 – Present;
Bar Association of San Francisco; Public Justice; State Bar of California.

DOUGLAS CUTHBERTSON, Admitted to practice in New York, 2008; U.S. District Court, Eastern District of New York (2008); U.S. District Court, Southern District of New York (2008); U.S. District Court, District of Colorado (2013); U.S. District Court, Northern District of Illinois (2014). *Education*: Fordham University School of Law (J.D. *cum laude* 2007); President, Fordham Law School Chapter of Just Democracy; Senior Articles Editor, *Fordham Urban Law Journal;* Fordham University School of Law Legal Writing Award, 2004-2005; Legal Writing Teaching Assistant, 2005-2006; Dean's List, 2004-2007; *Alpha Sigma Nu Jesuit Honor Society*. Bowdoin College (B.A. *summa cum laude*, 1999), Sarah and James Bowdoin Scholar for Academic Excellence (1995-1999). *Prior Employment*: Associate, Debevoise & Plimpton, LLP, 2009-2012; Law Clerk to Honorable Magistrate Judge Andrew J. Peck, U.S. District Court, Southern District of New York, 2007-2009. *Awards & Honors:* "Rising Star for New York Metro," *Super Lawyers*, 2013-2014. *Member:* Federal Bar Council; New York Civil Liberties Union, Board of Directors; New York State Bar Association.

MELISSA GARDNER, Admitted to practice in California, 2013; New York, 2013; U.S. District Court, Northern District of California, 3/28/2013. *Education*: Harvard Law School (J.D. 2011); Student Attorney, Harvard Prison Legal Assistance Project and South Brooklyn Legal Services; Semi-Finalist, Harvard Ames Moot Court Competition; *Harvard International Law Journal*. Western Washington University (B.A. *magna cum laude,* 2005). *Prior Employment*: Associate, Emery Celli Brinckherhoff & Abady (2012); Law Clerk, South Brooklyn

Legal Services (2011-2012); Peace Corps Volunteer, China (2005-2008). *Member*: American Association for Justice; American Bar Association; Bar Association of San Francisco; Consumer Attorneys of California; New York State Bar Association; State Bar of California.

KELLY MCNABB, Admitted to practice in Minnesota; New York, 2015; U.S. District Court, District of Minnesota. *Education:* University of Minnesota Law School (J.D., *cum laude*, 2012); Managing/Research Editor, *Minnesota Law Review*, 2010 – 2012; University of Minnesota Twin Cities College of Liberal Arts (B.A. 2008). *Publications*: What "Being a Watchdog" Really Means: Removing the Attorney General from the Supervision of Charitable Trusts, *Minnesota Law Review*, 2012. *Prior Employment*: Pritzker Olsen, P.A., Attorney, 2012 – 2014. *Member:* American Association for Justice, Minnesota Association for Justice, Minnesota Women Lawyers.

ROSEMARIE MALIEKEL, Admitted to practice in California, 2011. *Education:* Northwestern University School of Law (J.D., 2010); Co-Captain, Regional Champion, and National Champion, Bartlit National Trial Team, 2008 – 2010. The University of Illinois at Chicago (Pre-Medicine, BS in Biology, 2006); GPPA Scholar; graduated with distinction from the Honors College. *Prior Employment:* Trial Lawyer, Federal Defenders of San Diego, Inc., 2010-2014; Criminal Defense Legal Assistant and International Extern, International Criminal Court, 2009; Summer Associate, Kaye Scholer, LLP, 2009.

JEROME MAYER-CANTÚ, Admitted to practice in New York; California; U.S. District Court, Northern District of California; U.S. District Court, Central District of California; U.S. District Court, Southern District of New York; U.S. District Court, Eastern District of New York; U.S. Court of Appeals, Sixth Circuit, 2014; U.S. Court of Appeals 11th Circuit. *Education:* Stanford Law School (J.D., 2010); top 30% of class (based on honors/pass system); *Stanford Law Review* (Executive Board, Senior Notes Editor); Stanford Latin-American Law Students Association. Georgetown University Law Center (1st year curriculum) 2007-2008; Dean's List; Recipient of Everett Merit Scholarship. University of California, Berkeley (B.A., 2005); Honors Thesis: *A Legal Analysis of the Darfur Crisis*. *Prior Employment:* Law Clerk to Honorable Rudolph Contreras, U.S. District Court, District of Columbia, 2012; Law Clerk to Honorable Ricardo M. Urbina, U.S. District Court, District of Columbia, 2011-2012; Litigation Associate, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 2010-2011; Intern to Chambers of Justice Carlos Moreno, Supreme Court of California, 2009; Intern to U.S. Department of Justice, Criminal Division, 2009; Summer Associate, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 2009; Intern to Chambers of Judge Milan D. Smith, Jr., U.S. Court of Appeals, 9th Circuit, 2008; Research Assistant to Professor Mariano-Florentino Cuellar, Stanford Law School, 2006-2007; Reporter, *Daily Star*, 2006; Researcher, Danish Refugee Council, 2006; Research Assistant, East-West Center, 2005; Legal Advisor, African & Middle Eastern Refugee Assistance, 2005. *Member:* New York State Bar Association, State Bar of California. *Languages:* Spanish (fluent), French (fluent), Portuguese (proficient), Arabic (proficient - Egyptian and Lebanese dialects).

PHONG-CHAU G. NGUYEN, Admitted to practice in California, 2012; U.S. District Court, Northern District of California, 2013; U.S. District Court, Central District of California, 2013; U.S. Court of Appeals for the Ninth Circuit, 2013. *Education:* University of San Francisco

School of Law (J.D., 2012); Development Director, USF Moot Court Board; Merit Scholar; Zief Scholarship Recipient; University of California, Berkeley (B.A., Highest Honors; Distinction in General Scholarship, 2008). *Prior Employment:* Attorney, Minami Tamaki, 2013; Post-Bar Law Clerk, Velton Zegelman PC, 2012; Law Clerk, Minami Tamaki, 2011-2012; Housing and Economic Rights Advocates, 2011; Greenlining Institute, 2008-2009, 2012. *Member:* State Bar of California; Asian American Bar Association for the Greater Bay Area; San Francisco Trial Lawyers Association.

MARC A. PILOTIN, Admitted to practice in California, 2009; U.S. Court of Appeals for the Ninth Circuit, U.S. District Court, Northern District of California; U.S. District Court, Southern District of California; U.S. District Court, Central District of California; U.S. District Court, Eastern District of California. *Education*: Boalt Hall School of Law, University of California, Berkeley (J.D., 2009); Supervising Editor, *California Law Review*; Executive Editor, *Berkeley Journal of Employment and Labor Law*; University of California, Los Angeles, Graduate School of Education and Information Studies (M.Ed., 2005); University of California, Los Angeles, College of Letters and Science (B.A., *cum laude* and College Honors, 2001). *Publications & Presentations*: "Finding a Common Yardstick: Implementing a National Student Assessment and School Accountability Plan Through State-Federal Collaboration," 98 Calif. L. Rev. 545 (2010). *Prior Employment*: Law Clerk to the Honorable Claudia Wilken, U.S. District Court for the Northern District of California, 2009-2011; Graduate Student Instructor for Professor Goodwin Liu, Constitutional Law, 2008; Summer Associate, O'Melveny & Myers, LLP, 2008; Judicial Extern to the Honorable Edward M. Chen, U.S. District Court for the Northern District of California, 2007; Law Clerk, ACLU Foundation of Southern California, 2007; Teacher and Grade-Level Chairperson, Ninety-Sixth Street Elementary School, 2004-2006; Administrative Director, UCLA Center for American Politics and Public Policy, 2001-2003. *Awards & Honors:* "Rising Star for Northern California," Super Lawyers, 2013-2014; "Consumer Attorney of the Year Finalist," Consumer Attorneys of the Year, 2013. *Member*: American Civil Liberties Union of Northern California (Board of Directors, 2015 - Present); Bar Association of San Francisco (Mentoring Circle Leader); Filipino Bar Association of Northern California (Board Member, 2013-present).

MARTIN D. QUIÑONES, Admitted to practice in California. *Education:* University of California, Berkeley, School of Law (J.D., 2013); First Year High Distinction (Top 10% of Class); First Prize: Mercer University 2011 Adam A. Milani Disability Law Writing Competition; Jurisprudence Award (Highest Grade in Course): Complex Civil Litigation, Spring 2012; Best Brief Award: Written and Oral Advocacy, Spring 2011; *California Law review* (Supervising Editor, Volume 101); *Berkeley Journal of Gender, Law, and Justice* (Marketing Editor, 2011-2012); Boalt Hall Queer Caucus (Treasurer, 2011-2012); Law Students for Reproductive Justice (Chapter Board Member, 2010-2013); Brown University (B.A., 2008). *Prior Employment*: Summer Associate, Lieff Cabraser Heimann & Bernstein, 2012; Spring Semester Law Clerk, Gender Equity and LGBT Rights Program, Legal Aid Society – Employment Law Center, 2012; Judicial Extern for the Honorable William Dorsey, U.S. Dept. of Labor, Office of Administrative Law Judges, 2011; Clinic Director (2011-2012), Volunteer Counselor (2010-2011), East Bay Workers' Rights Clinic, 2010-2012; Development Associate, Planned Parenthood League of Massachusetts, 2008-2010. *Member*: Pride Law Fund, Board of Directors; State Bar of California

JOHN T. SPRAGENS, Admitted to Practice in Tennessee, 2012; U.S. District Court, Middle District of Tennessee, 2014. *Education:* Vanderbilt University Law School, Nashville, Tennessee (J.D., 2012); Executive Editor, Environmental Law and Policy Annual Review. Kenyon College (B.A., *magna cum laude*, International Studies, 2004); Phi Beta Kappa. *Prior Employment:* Associate, Bass, Berry & Sims, 2013-14; Law Clerk, United States District Judge Kevin H. Sharp, 2012-13; Legal Intern, Metropolitan Nashville Public Defender's Office, 2011; Summer Associate, Lieff Cabraser Heimann & Bernstein, 2011; Legal Clerk, New Orleans Workers' Center for Racial Justice, 2010; Strategic Advisor, Center for Charter School Excellence, 2010; Communications Director and Legislative Assistant to U.S. Congressman Jim Cooper, 2006-09; Staff Writer, *Nashville Scene*, 2004-06. *Member:* Tennessee Bar Association; Tennessee Association for Justice.

JEREMY TROXEL, Admitted to practice in New York; New Jersey. *Education:*Harvard Law School (J.D., 2012); Harvard Civil Rights-Civil Liberties Law Review, Member; Prison Legal Action Program, Student Attorney; Problem Solving Workshop Case Study: *Early Stages of the Vioxx Injuries and MDL Litigation*. University of Hong Kong (Fall 2011); Visiting Scholar. New York University (B.A., Politics, minors in Writing and History, 2009); Martin Luther King Jr. Social Justice Scholar; Sir Harold Acton Fellow; Catherine Reynolds Social Entrepreneurship Grant. New York University in Ghana (Fall 2007). New York University in Prague (Fall 2006). *Prior Employment:* Associate, Morelli Ratner, P.C. (later known as Morelli Alters Ratner, P.C.), 2012-2013; Summer Associate, Lanier Law Firm, P.C., 2011; Student Attorney, Harvard Law Predatory Lending-Consumer Protection Clinic, 2010; Summer Associate, Beasley, Allen, Crow, Methvin, Protis & Miles, P.C., 2010; Animal Caregiver, Comunidad Inti Wara Yassi, Parque Ambue Ai Animal Refuge, 2009; Tutor & Assistant Teacher, America Reads, 2007; Assistant to Campaign Manager, Mark Green for Attorney General, 2006.

Notice on the Firm's AV Rating: AV is a registered certification mark of Reed Elsevier Properties, Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies. Martindale-Hubbell is the facilitator of a peer review process that rates lawyers. Ratings reflect the confidential opinions of members of the Bar and the Judiciary. Martindale-Hubbell Ratings fall into two categories—legal ability and general ethical standards.

EXHIBIT B

In re Bank of New York Mellon Corp. Forex Transactions Litigation

FIRM NAME: Lieff, Cabraser, Heimann & Bernstein, LLP
REPORTING PERIOD: Inception through August 12, 2015

Categories:
(1) Investigation, Factual Research
(2) Plaintiffs' Document Review
(3) Defendants' and Third Party Document Review
(4) Discovery, including witness memo preparation
(5) Depositions and preparation for same
(6) Pleadings, Briefs, Class Certification, and Legal Research
(7) Court Appearances
(8) Litigation Strategy and Case Management
(9) Mediation and Settlement
(10) Experts

Status:
(A) Associate
(CA) Contract Attorney
(OC) Of Counsel
(P) Partner
(SA) Staff Attorney
(I) Investigator
(PL) Paralegal
(PS) Professional Staff

Name	Status	1	2	3	4	5	6	7	8	9	10	Rate	Cumulative Hours	Cumulative Lodestar
ELIZABETH CABRASER	P	1.00	0.80		10.60	0.30	181.10	61.20	140.70	30.80	4.00	$975	430.50	419,737.50
DANIEL CHIPLOCK	P	144.40	96.60	71.80	908.55	1,140.60	1,169.70	121.30	1,251.20	547.25	291.50	$650	5,742.90	3,732,885.00
NICHOLAS DIAMAND	P	0.50	112.00	1.00	79.80	84.80	2.50		223.40	0.70		$600	504.70	302,820.00
STEVEN FINEMAN	P	21.90			0.60		13.90	0.30	19.10	5.60		$850	61.40	52,190.00
RICHARD HEIMANN	P	1.60			13.30	188.80	9.20	11.20	3.20			$975	227.30	221,617.50
ROBERT LIEFF	OC	1.20	3.10	0.20	20.90	31.70	25.70	84.30	440.70	165.20	16.80	$975	789.80	770,055.00
MICHAEL MIARMI	P		15.00	0.20	37.30	26.50	475.40	4.00	30.40	17.60	21.80	$550	628.20	345,510.00
DANIEL SELTZ	P	0.50	128.35		810.10	610.20	501.55	11.40	54.00	23.00	12.40	$580	2,151.50	1,247,870.00
LISA CISNEROS	A				16.00	0.10	10.30		1.70			$465	28.10	13,066.50
TANYA ASHUR	CA		452.00	1,694.00	252.50				16.00			$425	2,414.50	1,026,162.50
JOSHUA BLOOMFIELD	CA		608.00	1,531.00	30.00		6.00		8.00			$425	2,183.00	927,775.00
JESSICA CHIA	CA				100.10				12.60			$395	112.70	44,516.50
JAMES GILYARD	CA		422.00	2,027.00	149.50				16.00			$425	2,614.50	1,111,162.50
KELLY GRALEWSKI	CA			280.50	21.00							$425	301.50	128,137.50
CHRISTOPHER JORDAN	CA			791.70	767.30				13.90			$425	1,572.90	668,482.50
JASON KIM	CA		542.50	1,434.00	664.00	1.50					17.00	$415	2,659.00	1,103,485.00
MARISSA LACKEY	CA		578.80	1,990.20	6.70							$425	2,575.70	1,094,672.50
JAMES LEGGETT	CA		473.70	1,554.50	414.60	21.50			11.90			$375	2,476.20	928,575.00
ANDREW MCCLELLAND	CA			889.00	886.00				24.00			$415	1,799.00	746,585.00
SCOTT MILORO	CA		703.30	2,341.00	56.10	10.60			33.80		2.00	$425	3,146.80	1,337,390.00
LEAH NUTTING	CA		553.20	1,934.45	604.95	0.30			35.50			$425	3,128.40	1,329,570.00
VIRGINIA WEISS	CA			598.60	811.80				35.40			$425	1,445.80	614,465.00
JONATHAN ZAUL	CA		1,392.55	571.55	151.50	8.20			74.10			$415	2,197.90	912,128.50
SUBTOTAL ATTORNEYS		171.10	6,081.90	17,710.70	6,813.20	2,125.10	2,395.35	293.70	2,445.60	790.15	365.50		39,192.30	19,078,859.00
PROFESSIONAL STAFF														
TODD CARNAM	PL	7.20					4.20		1.50	0.70	2.30	$325	15.90	5,167.50
DAN SCHUMAN	PL			5.70			8.70		6.70			$350	21.10	7,385.00
JLE TARPEH	PL		0.60		1.50	234.00			479.00	40.80		$325	755.90	245,667.50
RICHARD TEXIER	PL	0.80	29.40		156.50	64.60	27.20	2.10	354.90	3.20	1.00	$325	639.70	207,902.50
WILLOW ASHLYNN	PS					14.60			22.60			$340	37.20	12,648.00
MARGIE CALANGIAN	PS				22.30	7.70			372.40		0.40	$340	402.80	136,952.00
KIRTI DUGAR	PS	183.00	25.00	16.50	160.00	18.45	25.00	26.00	204.50	4.00	92.05	$430	754.50	324,435.00
ANTHONY GRANT	PS		2.00		14.00	2.00			44.00			$340	62.00	21,080.00
NEHA GUPTA	PS						47.50					$330	47.50	15,675.00
ARRA KHARARJIAN	PS	38.30										$270	38.30	10,341.00
MAJOR MUGRAGE	PS		14.00	9.60	43.80				133.20			$320	200.60	64,192.00
RENEE MUKHERJI	PS	4.50					2.20		1.40		3.50	$290	11.60	3,364.00
ANIL NAMBIAR	PS	122.00		7.50	10.00			8.00	18.00			$330	165.50	54,615.00
ERWIN OCAMPO	PS		1.00	8.00	6.70	3.50			124.20		1.00	$340	144.40	49,096.00

In re Bank of New York Mellon Corp. Forex Transactions Litigation

FIRM NAME: Lieff, Cabraser, Heimann & Bernstein, LLP
REPORTING PERIOD: Inception through August 12, 2015

Categories:
(1) Investigation, Factual Research
(2) Plaintiffs' Document Review
(3) Defendants' and Third Party Document Review
(4) Discovery, including witness memo preparation
(5) Depositions and preparation for same
(6) Pleadings, Briefs, Class Certification, and Legal Research
(7) Court Appearances
(8) Litigation Strategy and Case Management
(9) Mediation and Settlement
(10) Experts

Status:
(A) Associate
(CA) Contract Attorney
(OC) Of Counsel
(P) Partner
(SA) Staff Attorney
(I) Investigator
(PL) Paralegal
(PS) Professional Staff

Name	Status	1	2	3	4	5	6	7	8	9	10	Rate	Cumulative Hours	Cumulative Lodestar
CYRUS YAMAT	PS			2.50	9.50				48.00	0	0	$320	60.00	19,200.00
SUBTOTAL PROFESSIONAL STAFF		355.80	72.00	49.80	424.30	344.85	114.80	36.10	1,810.40	48.70	100.25		3,357.00	1,177,720.50
TOTALS		526.90	6,153.90	17,760.50	7,237.50	2,469.95	2,510.15	329.80	4,256.00	838.85	465.75		42,549.30	20,256,579.50

EXHIBIT C

In re Bank of New York Mellon Corp. Forex Transactions Litigation
Master File No. 12-MD-2335 (LAK)
EXPENSE REPORT

FIRM NAME: Lieff Cabraser Heimann & Bernstein, LLP
REPORTING PERIOD: INCEPTION TO AUGUST 12, 2015

DESCRIPTION	CUMULATIVE TOTAL
External Reproduction	$179.50
Internal Reproduction/Printing	$98,112.80
Court Fees (Filing costs etc.)	$2,644.80
Court Reporters/Transcripts	$26,084.30
Computer Research	$34,819.62
Electronic Database	$338,942.16
Teleconferences/Fax	$9,368.19
Postage/Express Delivery/Messenger	$7,257.64
Experts/Consultants	$152,956.17
Witness/Service Fees	
Meals, Hotels and Transportation	$152,616.09
MDL Litigation Fund Contributions/Assessments	$473,467.00
TOTAL EXPENSES	**$1,296,448.27**

EX. 187

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	No. 12-MD-2335 (LAK) (JLC)
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3066 (LAK) (JLC)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3067 (LAK) (JLC)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3470 (LAK) (JLC)
Carver, et al. v. The Bank of New York Mellon, et al.	No. 12-CV-9248 (LAK) (JLC)
Fletcher v. The Bank of New York Mellon, et al.	No. 14-CV-5496 (LAK) (JLC)

DECLARATION OF MICHAEL A. LESSER IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF THORNTON LAW FIRM, LLP

I, Michael A. Lesser, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner of the law firm Thornton Law Firm, LLP (formerly "Thornton & Naumes, LLP"). I submit this declaration in support of Lead Settlement Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would testify competently thereto.

2. Thornton Law Firm, LLP ("TLF") has its office in Boston, Massachusetts. The Firm has litigated class actions in the Southern District of New York and in other courts around the country. A copy of the Firm's resume, as well as a brief biography of all Firm attorneys and support staff that billed time in this Action, is attached hereto as Exhibit A.

3. I personally rendered legal services and was responsible for coordinating and supervising the activity carried out by attorneys and professional staff at TLF in this Action. In its capacity as a member of the Plaintiff's Steering Committee and as counsel for International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund ("IUOE Local 39"), TLF substantially contributed to the prosecution of this Action and performed work on behalf of and for the benefit of the Class. TLF has been actively involved in the prosecution of this Action since its inception. Prior to the centralization of this Action in this Court, TLF and others investigated and evaluated IUOE Local 39's and the putative Class's claims and damages, participated in the drafting of the initial and amended complaints, participated in the briefing of the opposition to the motion to dismiss and the motion for class certification, and conducted merits, class certification, and defensive discovery. TLF also worked closely with testifying and non-testifying experts retained in the Action. Subsequent to the centralization of this Action in this Court, TLF worked under the direction of Co-Lead Class Counsel and participated in the drafting of the Master Customer Class Complaint, and participated in the planning of and conducted merits and class certification discovery. In addition, TLF attended nearly all of the depositions of the Defendant, including three depositions where TLF served as leading questioner, and frequently asked questions in other depositions of the Defendant. The three depositions led by TLF were all of BNYM employees who either priced or transacted standing instruction FX trades for the Bank. Their testimony was integral to Plaintiffs' theory of the case

and relied upon by the Plaintiffs' experts in rendering their opinions. Finally, TLF, located in Boston, Massachusetts, also hosted the depositions of ten (10) Massachusetts-based Defendant depositions, also providing logistical and deposition support on each occasion.

4. Prior to the filing of this Action, TLF was the lead counsel representing FX Analytics, a Delaware general partnership serving as a qui tam Relator in several actions brought on behalf of government funds that used BNYM's standing instruction service. TLF has represented FX Analytics throughout the litigation of the Action, both prior to and after the centralization of this Action before this Court. Beginning in October 2009, the Relator filed sealed false claim qui tam actions in a number of states. The Relator's actions in Florida and Virginia were unsealed in January of 2011, publicly revealing the Relator's original complaints. The Relator's unsealed complaints publicly revealed for the first time that BNYM was engaged in a practice of systemically charging its custodial clients undisclosed spreads by allegedly manipulating the foreign exchange rates assigned to their clients' custodial foreign exchange transactions.

5. Prior to representing FX Analytics in actions involving BNYM, TLF undertook representation of different Relators in actions against a different custodial bank—State Street—also related to the pricing of standing instruction FX rates. More than a month before the State Street whistleblower complaint was unsealed by the intervention of the California Attorney General ("California AG") in October 2009, TLF met with the individual who would come to serve as the whistleblower against BNYM. Immediately after the California AG's intervention in the State Street action, TLF filed whistleblower complaints under seal against BNYM in eight jurisdictions (Lieff, Cabraser, Heimann & Bernstein, LLP ("LCHB") served as co-counsel in

three jurisdictions). Three of TLF's whistleblower complaints (Florida, Virginia, and New York) would eventually be intervened in by the relevant state Attorney General and unsealed.

6. Between September 2009 and October 2011, TLF developed the case against BNYM and educated the attorneys general who ultimately intervened. TLF's nearly two dozen disclosures to the government consisted of hundreds of pages and included numerous internal BNYM documents and e-mails (a number of which were quoted in almost every successive complaint brought against BNYM, including complaints filed in 2011 by the Department of Justice and the New York Attorney General's Office).

7. TLF also met with representatives from the Department of Justice ("DOJ") and the United States Securities and Exchange Commission ("SEC") several months after the unsealing of the Virginia and Florida actions in January 2011 regarding Relator's then-public allegations against BNYM. Months after these meetings, the DOJ filed its own Action in October 2011. The same day, after many meetings and disclosures over the preceding two years, the NYAG also intervened in the qui tam case TLF had filed under seal in New York.

8. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by attorneys and paraprofessionals at TLF in this Action ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit B hereto. This chart (i) identifies the names and positions (*i.e.*, titles) of the firm's Timekeepers who undertook litigation activities in connection with the Action and who expended 10 hours or more on the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through August 10, 2015; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of

the work by each Timekeeper and the entire firm.[1] For Timekeepers who are no longer employed by the Firm, the hourly rate used is the billing rate in his or her final year of employment by the Firm. The Firm's billing records, which are regularly prepared from contemporaneous daily time records, are available at the request of the Court. Time expended in preparing any papers for this motion for fees and reimbursement of expenses has not been included in this request. Additionally, time expended in preparing any papers for prior motions for reimbursement of expenses has not been included in this request.

9. The hourly rates charged by the Timekeepers are the Firm's regular rates for contingent cases and those generally charged to clients for their services in non-contingent/hourly matters.[2] Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in their respective cities by attorneys and paraprofessionals of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements.

10. The total number of hours expended by TLF on this Action, from investigation through August 10, 2015, is 2,640.2. The total lodestar for the Firm is $1,600,683, consisting of $1,583,568 for attorney time and $17,115 for professional support staff time. TLF's lodestar in this Action does not reflect any attorney or staff time spent in the furtherance of any related false claims act qui tam claims. The TLF lodestar described herein is related solely to this Action. In my judgment, the number of hours expended and the services performed by the attorneys and paraprofessionals at TLF were reasonable and expended for the benefit of the Settlement Class in this Action.

[1] The information concerning each Timekeeper's hours and hourly rate is not based on my personal knowledge, but on the information reported by each such Timekeeper or the files and records of TLF, as well as my familiarity with the work undertaken by TLF in the Action.

[2] On occasion and for a specific type of representation, the Firm may offer a discount on its hourly rates to longstanding clients.

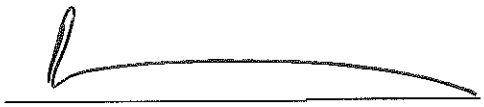
11. TLF's lodestar figures are based on the Firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the Firm's billing rates.

12. As set forth in Exhibit C, TLF has incurred a total of $95,361.95 in unreimbursed expenses in connection with this Action from investigation to August 10, 2015. TLF's costs in this Action, as described herein, are related solely to this Action. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.

13. These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of TLF's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

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

Executed this 15th day of August, 2015 in Boston, Massachusetts.



Michael A. Lesser

EXHIBIT A

THORNTON LAW FIRM, LLP

THORNTON LAW FIRM, LLP, was founded in 1978, and was in the forefront of the battle to bring justice to asbestos victims in New England. It has since grown to be the largest plaintiffs' personal injury firm in New England. In addition to representing more than 10,000 workers and their families injured by dangerous products and toxic materials, the firm handles complex fraud litigation, including class actions involving violations of federal securities, consumer-protection and whistleblower laws in federal and state courts throughout the country.

The firm's efforts have focused on cutting edge litigation involving public health and corporate misconduct. For example, Thornton Law Firm, LLP led a team of lawyers representing the Commonwealth of Massachusetts in a landmark lawsuit against the Tobacco industry that resulted in a settlement which will pay Massachusetts hundreds of millions of dollars each year for over two decades. In addition, the firm represents other states and municipalities against the lead industry, children with birth defects caused by chemical exposure, owners of property damaged by toxic waste, and individuals killed or injured in work related incidents. Thornton Law Firm, LLP has also been active in class action litigation involving medical monitoring for tobacco users, insurance fraud, securities litigation on behalf of public authorities, credit card data security, automotive design, and litigation on behalf of public and private pension funds against the banking industry.

Currently, Thornton Law Firm, LLP is co-counsel in *Donovan, et.al. v. Phillip Morris USA Inc*., (USDC, Mass.); *Cashman v. Travelers Insurance Company*, (Sup. Ct. MA); *Kaiten and Geoffrion v. National Real Estate Information Services, Inc., et.al*. (USDC, Mass.); *Arkansas Teachers Retirement System v. State Street Bank and Trust Company* (USDC, Mass); *International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al. (USDC, SDNY);*

Thornton Law Firm, LLP is active in supporting pioneering medical research to treat and cure environmentally caused cancer, and in promoting legislation to protect workers and their legal rights.

THE FIRM'S ATTORNEYS APPEARING IN THIS MATTER

MICHAEL P. THORNTON Michael Thornton is managing partner and co-founder of Thornton Law Firm, LLP. A nationally recognized expert on toxic tort litigation, Mr. Thornton graduated from Dartmouth College and Vanderbilt Law School. In the 1970's he successfully undertook the representation of a number of shipyard and construction workers who had developed asbestos-related diseases. Over the years, the firm has grown to become the largest firm in the Northeast representing victims of asbestos and other toxic materials.

Mr. Thornton practices in the areas of class actions, Attorney General litigation, benzene, toxic substance and occupational disease claims, birth defects linked to chemicals, childhood lead poisoning, construction and jobsite accidents, Mesothelioma and asbestos claims,

pharmaceutical drug and medical device litigation, product liability and personal injury, toxic tort and environmental litigation, wage and hour, and whistleblower litigation.

During the past decade, Mr. Thornton has led the firm to support many charitable causes; the most visible and important project involves cancer research. Mr. Thornton was approached by clinicians and researchers at Brigham and Women's Hospital who were interested in studying mesothelioma, a then untreatable and invariably fatal form of asbestos related cancer. After making a multiyear commitment from his own firm, Mr. Thornton helped to recruit several other donors. The program, now in its seventh year, has made groundbreaking strides in cancer research generally, and has helped to revolutionize the treatment of mesothelioma, leading to longer survival and better quality of life for victims of this disease.

Mr. Thornton also responded to a call to help establish a place for the families of mesothelioma victims to stay, as the financial impact of staying in hotels can be devastating. The Thornton House was opened in 2008 and houses up to nine families at a time.

Mr. Thornton is a member of the Massachusetts, New Hampshire, and Maine bars. He has published a number of articles on legal subjects and has lectured at the Harvard School of Public Health, Harvard Medical School, and Yale Law School.

GARRETT J. BRADLEY Mr. Bradley is a graduate of Boston College and Boston College Law School and is a Partner in Thornton Law Firm, LLP. Prior to joining Thornton Law Firm, LLP, Mr. Bradley worked as an Assistant District Attorney in the Plymouth County D.A.'s office. Mr. Bradley practices in the areas of class actions, construction and jobsite accidents, mesothelioma and asbestos claims, and workers compensation. Mr. Bradley is a member of the Massachusetts and the New York Bar.

MICHAEL A. LESSER Mr. Lesser is Partner in the Firm, joining as an associate in 1995. He heads the firm's False Claims Act / Whistleblower litigation section, representing individuals that report fraud on the Federal and State governments. While practicing in traditional areas of False Claims litigation, including Medicare and Medicaid fraud, Mr. Lesser also handles False Claims Act litigation involving finance and bank fraud.

During his time at Thornton Law Firm, Mr. Lesser has represented clients in all of the firm's practice areas, including victims of exposure to asbestos, glycol ethers, and lead. Mr. Lesser was also part of the firm's litigation team that represented the Commonwealth of Massachusetts in its claims against the tobacco industry. Mr. Lesser was appointed Special Assistant Attorney General representing the Commonwealth from 1996 through 1999 for this purpose.

EVAN R. HOFFMAN Mr. Hoffman is an associate at Thornton Law Firm, LLP, which he joined in 2010 after previously clerking for the Firm beginning in 2008. Mr. Hoffman's practice areas include qui tam, class action litigation, complex financial fraud, and asbestos and

mesothelioma claims. Since joining Thornton Law Firm, LLP, Mr. Hoffman has represented whistleblowers and pension funds asserting claims in state and federal courts throughout the country against several large global custodial banks for foreign exchange fraud. Mr. Hoffman also represents individuals making claims under the SEC's Dodd-Frank and the DOJ's FIRREA whistleblowing statutes. A graduate of American University and Suffolk University Law School, Mr. Hoffman is admitted to the Massachusetts Bar and the United States District Court for the District of Massachusetts.

JOTHAM C. KINDER Mr. Kinder is an associate at Thornton Law Firm, LLP and joined the Firm in 2011. He practices in the Firm's birth defects, qui tam, false claims, and whistleblower areas, as well as worker's compensation and asbestos and mesothelioma claims. Mr. Kinder is a graduate of the Royal Holloway College at the University of London and of Northeastern University Law School. He is a member of the Massachusetts and New York Bar.

EXHIBIT B

In re Bank of New York Mellon Corp. Forex Transactions Litigation

FIRM NAME: Thornton Law Firm LLP
REPORTING PERIOD: Inception through August 10, 2015

Categories:
(1) Investigation, Factual Research
(2) Plaintiffs' Document Review
(3) Defendants' and Third Party Document Review
(4) Discovery, including witness memo preparation
(5) Depositions and preparation for same
(6) Pleadings, Briefs, Class Certification and Legal Research
(7) Court Appearances
(8) Litigation Strategy and Case Management
(9) Mediation and Settlement
(10) Experts

Status:
(A) Associate
(CA) Contract Attorney
(OC) Of Counsel
(P) Partner
(SA) Staff Attorney
(I) Investigator
(PL) Paralegal
(LC) Law Clerk
(PS) Professional Staff

Name	Status	1	2	3	4	5	6	7	8	9	10	Rate	Cumulative Hours	Cumulative Lodestar
Michael P. Thornton	P	19.9	0	0	6	0	1	17.4	191.6	42.3	0	$850	278.20	$236,470
Garrett J. Bradley	P	0	0	0	0	0	0	0	0	28.5	0	$800	28.50	$22,800
Michael A. Lesser	P	78.4	18	25.7	71.7	1025.6	46.2	34.7	102.5	1	8.8	$650	1,412.60	$918,190
Evan R. Hoffman	A	115.5	77.1	115.9	16	371.5	95.1	14	15.5	0	4.4	$485	824.00	$399,640
Jotham Kinder	A	0	8	6	1.4	0	0	0	0	0	0	$420	15.40	$6,468
Andrea Caruth	PL	10.2	0	31.5	1.4	0	0	0	0	0	0	$210	43.10	$9,051
Katherine Brendel	PL	38.4	0	0	0	0	0	0	0	0	0	$210	38.40	$8,064
Totals:		**262.40**	**103.10**	**179.10**	**96.50**	**1397.10**	**142.30**	**66.10**	**309.60**	**71.80**	**13.20**		**2640.20**	**$1,600,683**

EXHIBIT C

In re Bank of New York Mellon Corp. Forex Transactions Litigation
Master File No. 12-MD-2335 (LAK)
EXPENSE REPORT

FIRM NAME: [Insert]
REPORTING PERIOD: INCEPTION TO AUGUST 1, 2015

DESCRIPTION	CUMULATIVE TOTAL
External Reproduction	
Internal Reproduction/Printing	
Court Fees (Filing costs etc.)	
Court Reporters/Transcripts	
Computer Research	
Electronic Database	
Teleconferences/Fax	
Postage/Express Delivery/Messenger	
Experts/Consultants	$20,000.00
Witness/Service Fees	
Meals, Hotels and Transportation	$75,361.95
MDL Litigation Fund Contributions/Assessments	
TOTAL EXPENSES	**$95,361.95**

EX. 188

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	No. 12-MD-2335 (LAK) (JLC)
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3066 (LAK) (JLC)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3067 (LAK) (JLC)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3470 (LAK) (JLC)
Carver, et al. v. The Bank of New York Mellon, et al.	No. 12-CV-9248 (LAK) (JLC)
Fletcher v. The Bank of New York Mellon, et al.	No. 14-CV-5496 (LAK) (JLC)

DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF KELLER ROHRBACK L.L.P.

I, Lynn Lincoln Sarko, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Managing Partner of the law firm, Keller Rohrback L.L.P. I submit this declaration in support of Lead Settlement Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would testify competently thereto.

2. Keller Rohrback L.L.P. has offices in New York, Seattle, Phoenix and Santa Barbara. The Firm has litigated many class actions in the Southern District of New York and in

other courts around the country. A copy of the Firm's resume, as well as a brief biography of all Firm attorneys and support staff that billed time in this Action, is attached hereto as Exhibit A.

Work Performed for the Benefit of the Settlement Class

3. I personally rendered legal services and was responsible for coordinating and supervising the activity carried out by attorneys and professional staff at Keller Rohrback L.L.P. in this Action. In its capacity as counsel in *Carver v. The Bank of New York Mellon, et al.* ("*Carver*"), No. 12-cv-9248 (S.D.N.Y.) and *Fletcher v. Bank of New York Mellon et al.* ("*Fletcher*"), Case No. 14-cv-05496 (S.D.N.Y) and in conjunction with the efforts of Lead Counsel, Keller Rohrback L.L.P. contributed to this Action and performed work on behalf of and for the benefit of the Class.

4. The accompanying declarations of Lead Settlement Counsel describe the enormous amount of work performed on behalf of the class as a whole. Without repeating that recitation, Keller Rohrback's specific work in this case can be summarized as including:

- Prefiling investigation of ERISA claims;
- Filing the *Carver* action; amending the *Carver* Complaint;
- Negotiating a briefing schedule for BNYM's motion to dismiss in *Carver*;
- Conducting extensive jurisdictional discovery in *Carver* (two sets of interrogatories, two sets of requests for production, in order to respond to that motion, subpoenas to six third parties, a motion to compel compliance with one of the third party subpoenas, responding BNYM's requests for production, reviewing approximately 300,000 pages of documents produced by BNYM and third parties, and deposing two BNYM witnesses);

- Seeking leave to file a Second Amended Complaint in *Carver*; filing the Second Amended *Carver* Complaint (to the extent leave was given by the Court);
- Briefing BNYM's motion to dismiss in part the *Carver* Second Amended Class Action Complaint;
- Filing the *Fletcher* action;
- Successfully opposing BNYM's Emergency Motion for Pre-Trial Order Governing Jurisdictional Discovery and Briefing on Motion to Dismiss in *Fletcher*;
- Filing an Amended *Fletcher* Complaint;
- Negotiating a briefing schedule for BNYM's motion to dismiss in *Fletcher*;
- Briefing BNYM's motion to dismiss in part the *Fletcher* Amended Complaint;
- Participating in class-wide merits discovery (written interrogatories and requests for production, preparation of ESI requests, attending multiple depositions of BNYM employees and, on a narrowly targeted basis, searching the database of documents produced by BNYM for information related to the *Carver* and *Fletcher* ERISA claims);
- Participating in discovery specific to the *Carver* and *Fletcher* cases (in addition to the jurisdictional discovery noted above, issuing case-specific interrogatories and requests for production to BNYM, and responding to BNYM's case-specific interrogatories, requests for admission, and requests for production);
- Identifying expert witnesses to rebut BNYM's class certification expert reports, to the extent BNYM's experts raised *Carver/Fletcher*-specific issues; submitting rebuttal class certification expert reports from Dr. Craig Schulman, an economist,

and Professor David Pratt, an ERISA scholar and expert; jointly identifying (along with counsel for the Customer Class) Dr. David DeRosa as a rebuttal expert on class certification; and jointly working with Customer Class Counsel and Dr. DeRosa in the preparation and submission of his expert report.

- Identifying affirmative merits experts including Professor David Pratt on fundamental ERISA issues, Dr. David DeRosa on a specific ERISA prohibited transaction issue, Steve Pomerantz on ERISA damages issues, and G. William Brown, Jr. as an additional damages expert; and
- Preparing a motion for class certification and supporting materials (the case settled before the motion was filed).

5. In addition, Keller Rohrback L.L.P., and myself personally, played an instrumental role in settlement negotiations on behalf of the ERISA plaintiffs in the consolidated MDL proceedings. At the request of Lead Counsel, and in partnership with them and the mediator, Hon. Layn Phillips (Ret.), I facilitated negotiations between BNYM *Class Counsel*, the United States Department of Labor, the United States Attorney for the Southern District of New York, and the New York Attorney General's Office with respect to ERISA matters. Any multi-party negotiation is complex, and this process was especially challenging. During the entire settlement negotiation process I spent substantial time on the phone and in face-to-face meetings, day and night, to complete settlement negotiations. I can attest that this was amongst the most complex negotiations that I have seen. I am proud of the results we obtained for the benefit of the entire class. Throughout this process, I have been careful to ensure that the interests of the *Carver/Fletcher* class were fully protected.

6. At the end of the day, we succeeded in obtaining a global settlement that is, in my experience and professional judgment, a fair, adequate, and reasonable resolution of the claims against BNYM in this complex and very hard-fought action.

Attorneys' Fees

7. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by attorneys and paraprofessionals at Keller Rohrback L.L.P. in this Action ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit B hereto. This chart (i) identifies the names and positions (*i.e.*, titles) of the firm's Timekeepers who undertook litigation activities in connection with the Action and who expended 10 hours or more on the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through May 31, 2015; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of the work by each Timekeeper and the entire firm.[1] For Timekeepers who are no longer employed by the Firm, the hourly rate used is the billing rate in his or her final year of employment by the Firm. The Firm's billing records, which are regularly prepared from contemporaneous daily time records, are available at the request of the Court. Time expended in preparing this motion for fees and reimbursement of expenses has not been included in this request. Additionally, time expended in preparing any papers for prior motions for reimbursement of expenses has not been included in this request.

8. The hourly rates charged by the Timekeepers are the Firm's regular rates for contingent cases and those generally charged to clients for their services in non-

[1] The information concerning each Timekeeper's hours and hourly rate is not based on my personal knowledge, but on the information reported by each such Timekeeper or the files and records of Keller Rohrback L.L.P., as well as my familiarity with the work undertaken by Keller Rohrback L.L.P. in the Action.

contingent/hourly matters.[2] Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in their respective cities by attorneys and paraprofessionals of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements.

9. The total number of hours expended by Keller Rohrback L.L.P. on this Action, from investigation through May 31, 2015, is 4,362. The total lodestar for the Firm is $2,979,540.50, consisting of $2,791,382.00 for attorney time and $188,158.50 for professional support staff time.

10. In my judgment, the number of hours expended and the services performed by the attorneys and paraprofessionals at Keller Rohrback L.L.P. were reasonable and expended for the benefit of the Settlement Class in this Action.

11. Keller Rohrback L.L.P. lodestar figures are based on the Firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the Firm's billing rates.

Unreimbursed Expenses

12. As set forth in Exhibit C, Keller Rohrback L.L.P. has incurred a total of $230,993.07 in unreimbursed expenses in connection with this Action from investigation through July 31, 2015. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.

13. These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of Keller Rohrback L.L.P.'s work in

[2] On occasion and for a specific type of representation, the Firm may offer a discount on its hourly rates to longstanding clients.

connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

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

Executed this 12th day of August, 2015 in Santa Barbara, California.

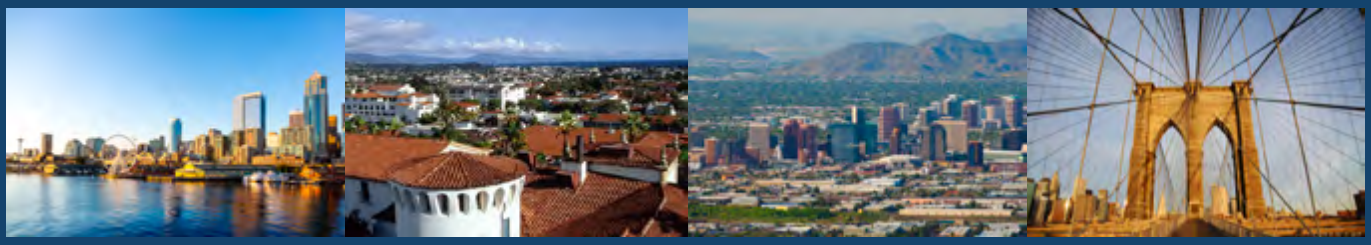
Lynn Lincoln Sarko

EXHIBIT A

KELLER ROHRBACK L.L.P.

LAW OFFICES

ERISA Litigation



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Our Firm

Founded in 1919, today Keller Rohrback has more than 60 attorneys and more than 100 staff members who provide expert legal services to clients nationwide. We use cutting-edge technology and case management techniques in the preparation and trial of complex cases. Our excellent support staff includes in-house programming personnel and experienced paralegals who contribute significantly to our ability to effectively and efficiently litigate complex class action cases nationwide. The firm's Complex Litigation Group regularly calls on firm attorneys in other practice areas for expertise in bankruptcy, contracts, employment law, executive compensation, corporate transactions, financial institutions, insurance coverage, mergers and acquisitions, professional malpractice, and securities transactions. The firm's in-house access to these resources distinguishes Keller Rohrback from other plaintiffs' class action firms and also contributes to the firm's success.

Leaders in ERISA Class Action Litigation

KELLER ROHRBACK L.L.P. is one of the nation's leading law firms committed to helping employees and retirees protect their employment, retirement, and benefits under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

Keller Rohrback helped pioneer the development of breach of fiduciary duty law under ERISA and is a nationally recognized leader in this area. Our efforts have resulted in numerous published decisions upholding plaintiffs' ERISA claims, granting class certification, and approving several multi-million dollar settlements. To date, Keller Rohrback has recovered monetary and equitable relief valued at over $1 billion for employees and retirees.

Based on our extensive ERISA experience, Keller Rohrback's attorneys are frequently invited to speak at ERISA continuing legal education seminars and conferences and have written numerous ERISA-related amicus briefs and articles.

As a full-service law firm, Keller Rohrback regularly advises employees, retirees, health care subscribers, businesses, and independent fiduciaries concerning their rights and duties under ERISA.

Federal courts throughout the country have recognized Keller Rohrback's qualifications to vigorously pursue ERISA class action claims. Thus, Keller Rohrback has served in a leadership position in several major ERISA breach of fiduciary duty cases involving retirement and health care plans, including ERISA litigation against the following corporations:

AIG
Bear Stearns Cos., Inc.
Beazer Homes USA
BellSouth
CIGNA
CMS Energy
Colonial BancGroup, Inc.
Countrywide Financial
Delphi
Dynegy
Enron
Fremont General Corp.
Global Crossing
Goodyear Tire & Rubber Co.
HealthSouth
Household International
IndyMac
Krispy Kreme Doughnut
Lucent Technologies
Marsh & McLennan
Merck
Merrill Lynch
Mirant
Pfizer
Polaroid
Providian
Regions Financial Corp.
Southern Company
State Street
Stiefel Laboratories, Inc.
Syncor
The Bank Of New York Mellon
Transamerica Life Ins. Co.
UnitedHealth Group, Inc.
Visteon
Wachovia Corp.
Wal-Mart Stores, Inc.
Washington Mutual, Inc.
Williams Companies
WorldCom
Xerox

ERISA Cases

Retirement Plans

Keller Rohrback is one of America's leading law firms handling retirement plan litigation. We are committed to helping employees and retirees protect their retirement savings. Keller Rohrback is recognized as one of the premier firms litigating ERISA breach of fiduciary duty claims against employers for losses to defined contribution plans caused by imprudent investment in company stock. In addition, our attorneys have extensive experience litigating cases involving excessive fees related to the management and administration of plan investment funds, conversions to cash balance plans, and losses under defined benefit pension plans.

Private Company ESOPs

An Employee Stock Ownership Plan ("ESOP") is a tax-qualified defined contribution employee benefit program intended to invest primarily in the stock of the plan sponsor company. Both private and public companies offer ESOPs.

Keller Rohrback has a growing private ESOP practice, which focuses on business practices and fiduciary conduct in ESOP-owned companies. Keller Rohrback attorneys are very familiar with applicable ESOP stock valuation techniques and methodologies and work closely with valuation experts.

Health Care Benefits

In addition to retirement plans, ERISA also governs how employee health care plans are administered. Health care plans must be operated with particular standards that were designed to protect the interests of employees, retirees, and other plan beneficiaries, such as family members. ERISA creates fiduciary responsibilities for those who manage and control health plans, requires that plans provide participants with accurate plan information, and gives plan participants the right to sue for benefits and breaches of fiduciary duty.

Recognition

We are honored that courts nationwide have repeatedly praised Keller Rohrback's leadership and successful results in this highly complex and rapidly developing area of law.

"[Keller Rohrback] has performed an important public service in this action and has done so efficiently and with integrity . . . [Keller Rohrback] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions….[Keller Rohrback] should be appropriately rewarded as an incentive for the further protection of employees and their pension plans not only in this litigation but in all ERISA actions." *In re WorldCom, Inc. ERISA Litig*., 59 Fed. R. Serv. 3d 1170, 33 Empl. Benefits Cas. (BNA) 2291 (S.D.N.Y. Oct. 18, 2004).

"The Court finds that [Keller Rohrback] is experienced and qualified counsel who is generally able to conduct the litigation as Lead Counsel on behalf of the putative class. Keller Rohrback has significant experience in ERISA litigation, serving as Co-Lead Counsel in the Enron ERISA litigation, the Lucent ERISA litigation, and the Providian ERISA litigation, and experience in complex class action litigation in other areas of the law. Mr. Sarko's presentation at the August 26, 2002 hearing before the Court evidences Keller Rohrback's ability to adequately represent the class." *In re Williams Cos. ERISA Litig.*, No. 02-153 (N.D. Okla. Oct. 28, 2002) (order appointing Lead Counsel).

"Keller Rohrback presents the most compelling case for appointment as interim lead class counsel based on . . . its extensive experience handling ERISA class actions…." *In re Wachovia Corp. ERISA Litig*., No. 08-5320 (S.D.N.Y. Dec. 24, 2008).

Pioneering ERISA Cases

In re Enron Corp. ERISA Litigation, MDL No. 1446 (S.D. Tex.). Keller Rohrback served as Co-Lead Counsel in this class action filed in the Southern District of Texas. On September 30, 2003, Judge Melinda Harmon denied defendants' numerous motions to dismiss in a landmark decision that addressed in detail defendants' obligations as ERISA fiduciaries, and upheld plaintiffs' core ERISA claims. Plaintiffs achieved four partial settlements totaling more than $264 million in cash to the Enron plans against Enron directors, officers and plan fiduciaries.

In re Lucent Technologies, Inc. ERISA Litigation, No. 01-3491 (D. N.J.). Keller Rohrback was appointed Co-Lead Counsel in this class action brought on behalf of participants and beneficiaries of the Lucent defined contribution plans that invested in Lucent stock. The complaint alleged that the defendants withheld and concealed material information from participants, thereby encouraging participants and beneficiaries to continue to make and to maintain substantial investments in company stock and the plans. The settlement provided for, among other relief, the payment of $69 million in cash and stock to the plan. Judge Joel Pisano of the New Jersey federal court approved the settlement on December 12, 2003.

Whetman v. IKON Office Solutions, Inc., MDL No. 10-1318 (E.D. Pa.). The current wave of 401(k) company stock cases began with Whetman v. IKON Office Solutions, Inc. In a first-of-its-kind complaint, we alleged that company stock was an imprudent investment for the plan, that the fiduciaries of the plan failed to provide complete and accurate information concerning company stock to the participants, and that they failed to address their conflicts of interest. This case resulted in ground-breaking opinions in the ERISA 401(k) area of law on motions to dismiss, class certification, approval of securities settlements with a carve-out for ERISA claims, and approval of ERISA settlements.

In re WorldCom, Inc. ERISA Litigation, No. 02-4816 (S.D.N.Y.). Keller Rohrback served as Lead Counsel in this class action filed in the Southern District of New York on behalf of participants and beneficiaries of the WorldCom 401(k) Salary Savings Plan. On June 17, 2003, Judge Denise Cote denied in part defendants' motions to dismiss and on October 4, 2004, granted plaintiffs' motion for class certification. Settlements providing for injunctive relief and payments of over $48 million to the plan were approved on October 26, 2004 and November 21, 2005.

Groudbreaking ERISA Settlements

Keller Rohrback's qualifications to lead ERISA 401(k) and ESOP class actions is nowhere more evident than in the highly favorable settlements it has achieved for the benefit of employees in several of its nationally prominent cases. In addition to the Enron, Lucent, IKON, and WorldCom settlements discussed above, these settlements include:

In re AIG ERISA Litigation, No. 04-09387 (S.D.N.Y.). On December 12, 2006, the late Judge John E. Sprizzo denied defendants' motion to dismiss. On October 8, 2008, Judge Kevin T. Duffy, for Judge Sprizzo, issued final approval of the $25 million settlement negotiated by the parties.

Alvidres v. Countrywide Financial Corp., No. 07-5810 (C.D. Cal.). On November 16, 2009, Judge John F. Walter granted final approval of the $55 million settlement.

In re Bear Stearns Cos., Inc. ERISA Litigation, No. 08-02804 (S.D.N.Y.). On September 20, 2012, the Honorable Robert W. Sweet granted final approval of the $10 million Settlement in the ERISA action.

In re Beazer Homes USA, Inc. ERISA Litigation, No. 07-952 (N.D. Ga.). On November 15, 2010, Judge Richard W. Story granted final approval of the $5.5 million settlement.

Groudbreaking ERISA Settlements (cont.)

In re Bakery & Confectionery Union & Industry Int'l Pension Fund Pension Plan, No. 11-1471 (S.D.N.Y.). The Honorable Vincent L. Briccetti ruled that the July 1, 2010 amendment to the Bakery & Confectionery Union & Industrial Pension Fund Pension Plan violated ERISA's anti-cutback provisions. The amendment changed the rule that permitted participants to "age into" eligibility for the Golden 80 and Golden 90 plans. Defendants appealed this ruling to the Second Circuit Court of Appeals and on May 1, 2014, the Court of Appeals Affirmed Judge Bricetti's ruling. Defendants are implementing adjustments to reinstate the benefits due to eligible employees.

In re BellSouth Corporation ERISA Litigation, No. 02-02440 (N.D. Ga.). On March 4, 2004, Judge J. Owen Forrester denied defendants' motion to dismiss. On December 5, 2006, Judge Forrester approved a settlement that provided structural relief for the plans valued at up to $90 million, plus attorneys fees and costs.

Braden, et al. v. Wal-Mart Stores, Inc., et al., No. 08-3109 (W.D. Mo.). On December 5, 2011 the Court preliminarily approved a $13.5 million settlement of all claims and conditionally approved and appointed Keller Rohrback as Lead Counsel in this class action lawsuit. The complaint alleged that certain fees and expenses charged to Wal-Mart's 401(k) plan and individual plan participant accounts by mutual fund companies, as well as revenue sharing and other fees collected by Merrill Lynch, were excessive in light of the size of the plan and that these excessive fees were charged without properly disclosing them to Wal-Mart, the plan, or plan participants. The settlement, which includes significant injunctive relief in addition to the cash amount, followed the successful appeal in the Eight Circuit Court of an order dismissing the action. Following a fairness hearing on March 7, 2012, the Court entered its final order and judgment on March 19, 2012, approving the settlement and plan of allocation.

Buus, et al. v. WaMu Pension Plan, et al., No. 07-903 (W.D. Wash.). The parties to the litigation negotiated and executed a settlement agreement on June 29, 2010. On October 29, 2010, the Court held a fairness hearing and approved the settlement of $20 million as fair, reasonable and adequate, approved the notice and publication notice and method of dissemination of such notices, approved the application for attorneys' fees and expenses, and approved the proposed plan of allocation and the case contribution awards for the Named Plaintiffs.

In re CMS Energy ERISA Litigation, No. 02-72834 (E.D. Mich.). On March 31, 2004, Judge George Caram Steeh denied defendants' motions to dismiss. On December 27, 2004, Judge Steeh granted plantiffs' motion for class certification and subsequently approved the $28 million settlement negotiated by the parties.

In re Colonial BancGroup, Inc. ERISA Litigation, No. 09-00792 (M.D. Ala.). On October 12, 2012, the Honorable Myron H. Thompson granted final approval of the $2.5 million Stipulation of Settlement and certified the Class for settlement purposes.

In re Dynegy, Inc. ERISA Litigation, No. 02-3076 (S.D. Tex.). On March 5, 2004, the Court denied, in part, defendants' motions to dismiss. Subsequently, the parties reached a settlement that provided for the payment of $30.75 million in cash to the plan. On December 10, 2004, Judge Sim Lake approved the settlement.

In re Fremont General Corporation Litigation, No. 07-02693 (C.D. Cal.). On August 17, 2007, Judge Florence-Marie Cooper appointed Keller Rohrback sole Interim Lead Counsel, and on May 29, 2008, Judge Cooper denied defendants' motion to dismiss. The parties reached an agreement to settle the litigation for $21 million. On April 26, 2011, the Honorable Jacqueline Nguyen granted preliminary approval of the Stipulation and Agreement of Settlement. On August 10, 2011, Judge Nguyen granted final approval of the Settlement.

In re Global Crossing, Ltd. ERISA Litigation, No. 02-7453 (S.D.N.Y.). The Global Crossing ERISA Litigation settlement provided for, among other relief, the payment of $79 million to the plan. Judge Gerard Lynch approved the settlement on November 10, 2004.

In re The Goodyear Tire & Rubber Company ERISA Litigation, No. 03-02180 (N.D. Ohio). On July 6, 2006, Judge John R. Adams denied defendants' motions to dismiss. On October 22, 2008, the Court issued final approval of the $8.375 million settlement.

Groudbreaking ERISA Settlements (cont.)

Hans v. Tharaldson, No. 05-115 (D. N.D.). This lawsuit, brought on behalf of the Tharaldson Motels, Inc. Employee Ownership Plan ("ESOP"), provided for a $15 million settlement fund, including a $4 million cash payment to all current and former participants and beneficiaries of the ESOP, and an $11 million credit against the principal owed by the ESOP to the company. Chief Judge Ralph Erikson approved the settlement on February 25, 2013.

In re HealthSouth Corp. ERISA Litigation, No. 03-01700 (N.D. Ala.). On June 28, 2006, Judge Karon Bowdre approved a settlement in the amount of $28.875 million.

In re Household International, Inc. ERISA Litigation, No. 02-7921 (N.D. Ill.). On March 31, 2004, Judge Samuel Der-Yeghiayan denied, in part, defendants' motions to dismiss. The case subsequently settled for $46.5 million in cash to the plan. The court approved the settlement on November 22, 2004.

In re IndyMac ERISA Litigation, No. 08-4579 (C.D.Cal.). On January 19, 2011, Judge Dean Pregerson granted final approval of the $7 million settlement.

Lilly, et al. v. Oneida Ltd. Employee Benefits Admin. Committee, et al., No. 07¬00340 (N.D.N.Y.). On May 8, 2008, Judge Neal P. McCurn issued an order in which he denied defendants' motion to dismiss. On October 4, 2010, the Court granted approval of a $1.85 million settlement and entered an Order and Final Judgment.

In re Marsh ERISA Litigation, No. 04-8157, (S.D.N.Y.). On December 14, 2006, the Honorable Shirley Wohl Kram issued an order in which she granted in part and denied in part the defendants' motions to dismiss. The parties subsequently reached a settlement in the amount of $35 million, which was approved by the Court on January 29, 2010.

In re Merck & Co., Inc. "ERISA" Litigation, MDL No. 1658 (D.N.J.). On July 11, 2006, the Honorable Stanley R. Chesler granted in part and denied in part defendants' motions to dismiss. On February 9, 2009, the Court granted in part and denied in part plaintiffs' motion for class certification. On November 29, 2011, Judge Chesler granted final approval of the $49.5 million settlement negotiated by the parties.

In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, No. 07-10268 (S.D.N.Y.). On August 21, 2009, Judge Jed S. Rakoff granted final approval of the $75 million settlement in the ERISA action.

In re Mirant Corporation ERISA Litigation, No. 03-01027 (N.D. Ga.). On November 16, 2006, the Court approved the settlement, including a payment of $9.7 million in cash to the plan for losses suffered by the certified settlement class.

In re Polaroid ERISA Litigation, No. 03-08335 (S.D.N.Y.). On March 31, 2005, Judge William H. Pauley III granted in part and denied in part defendants' motion to dismiss. On September 29, 2006, Judge Pauley granted plaintiffs' motion for class certification. The parties subsequently reached a settlement in the amount of $15 million, which was approved by the Court on June 25, 2007.

In re Providian Financial Corp. ERISA Litigation, No. 01-5027 (N.D. Cal.). The Providian ERISA Litigation settlement provided for structural changes to the plan, as well as the payment of $8.6 million in cash to the plan. The court approved the settlement on June 30, 2003.

In re Regions Morgan Keegan ERISA Litigation, No. 08-2192 (W.D. Tenn.). Keller Rohrback is Co-Lead Class Counsel in this ERISA breach of fiduciary duty class action brought on behalf of participants and beneficiaries in the company's retirement plans as well as customer plans for which Regions served as a fiduciary. On December 24, 2014, Judge Samuel H. Mays, Jr. approved the settlement.

Smith v. Krispy Kreme Doughnut Corporation, No. 05-06187 (M.D.N.C.). The Krispy Kreme ERISA Litigation settlement provided for structural changes to the plan, as well as the payment of $4.75 million in cash. On January 10, 2007, Judge William L. Osteen approved the settlement.

Groudbreaking ERISA Settlements (cont.)

Spivey v. Southern Co., et al., No. 04-01912 (N.D. Ga.). On August 14, 2007, the Court granted final approval of the settlement, including a payment of $15 million in cash to the plan for losses suffered by the certified settlement class.

In re State Street Bank and Trust Co. ERISA Litigation, No. 07-08488 (S.D.N.Y.). On February 19, 2010, Judge Richard J. Holwell granted final approval of the $89.75 million settlement in the ERISA action.

In re Syncor ERISA Litigation, No. 03-02446 (C.D. Cal.). On August 23, 2004, Judge Baird denied, in part, defendants' motions to dismiss. Judge Baird subsequently granted plaintiffs' motion for class certification on March 28, 2005. The case settled, but was dismissed on summary judgment before the settlement could be approved. On February 19, 2008, the Ninth Circuit Court of Appeals reversed the district court's decision and remanded the case for further proceedings consistent with the Court's order. On October 22, 2008, Judge R. Gary Klausner granted final approval of the settlement, including a payment of $4 million in cash to the plan for losses suffered by the certified class.

In re Visteon Corporation ERISA Litigation, No. 05-71205 (E.D. Mich.). On March 9, 2007, Judge Avern Cohn approved a settlement in the amount of $7.6 million.

In re Wachovia Corp. ERISA Litigation, No. 09-00262 (W.D.N.C.). On October 24, 2011, the Honorable Martin Reidinger granted final approval of the $12.35 million settlement.

In re Washington Mutual, Inc. ERISA Litigation, No. 07-1874 (W.D. Wash.). On January 7, 2011, the Honorable Marsha J. Pechman granted final approval of the $49 million settlement in the ERISA action.

In re Williams Companies ERISA Litigation, No. 02-00153 (N.D. Okla.). On November 16, 2005, the Court approved the settlement for $55 million in cash, plus equitable relief in the form of a covenant that Williams will not take any action to amend the plan to (i) reduce the employer match thereunder below four percent prior to January 1, 2011, or (ii) require that the employer match be restricted in company stock prior to January 1, 2011.

Wool v. Sitrick, No. 10-2741 (C.D. Cal.). On April 23, 2012, the Honorable Jacqueline Nguyen granted final approval of a $6.25 million settlement.

In re Xerox Corporation ERISA Litigation, No. 02-01138 (D. Conn.). Since 2007, Judge Alvin Thompson has issued two opinions denying in significant part defendants' motions to dismiss. On April 14, 2009, Judge Thompson approved the $51 million settlement negotiated by the parties.

Pending ERISA Cases

In addition to the cases listed above, Keller Rohrback has been appointed to a leadership position in numerous other ongoing ERISA retirement and health care benefits class actions. Through these cases, Keller Rohrback has again and again demonstrated its expertise in ERISA law, and its ability to vigorously, creatively, and successfully pursue employees' rights under ERISA. Keller Rohrback's leading role in the development of this law is unique and distinguishes the firm from any other in the country. Notable pending cases include:

Andover Cos. Emp. Savings & Profit Sharing Plan v. State Street Bank & Trust Co., No. 12-11698 (D. Mass.). This Complaint was filed on behalf of a class of all qualified ERISA plans, and the participants, beneficiaries, and named fiduciaries of those plans who suffered losses as a result of State Street Bank and Trust Company's alleged deceptive acts and practices concerning charges for foreign currency ("FX") transactions at any time between January 2, 1998 and December 31, 2009. Plaintiffs allege that State Street breached its fiduciary duties to clients when it improperly marked up or marked down currency transactions, and engaged in ERISA-prohibited transactions when it failed to disclose fully the details of the relevant FX trading transactions it was undertaking on behalf of the Plans. A stay of proceedings is presently in place in this matter while the parties engage in informational exchanges, including formal document discovery.

Pending ERISA Cases (cont.)

In re American International Group, Inc. ERISA Litigation II, No. 08-05722 (S.D.N.Y.). On March 19, 2009 Keller Rohrback L.L.P. was appointed Interim Co-Lead Counsel to represent the proposed class of participants and beneficiaries of the AIG Incentive Savings Plan. After surviving two rounds of motions to dismiss, and after full fact discovery, the parties entered into a settlement agreement with the assistance of an experienced mediator. On June 5, 2015, the court granted preliminary approval of the settlement and scheduled a final approval hearing for September 18, 2015.

Carver v. Presence Health Network, et al., Case No. 15-2905 (N.D. Ill.). In this pension plan lawsuit filed by Keller Rohrback L.L.P. and Co-Counsel, Plaintiff alleges that Defendants are violating ERISA by, among other things, underfunding the defined benefit pension plans referred to as the Resurrection Health Care Defined Benefit Plan and the Provena Employees' Pension Plan. Plaintiff further alleges that Defendants' claim that this pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, Presence Health Network is not a church or a convention or association of churches, and the Pension Plans were not established by a church or a convention or association of churches.

Carver v. The Bank of New York Mellon, No. 12-9248 (S.D.N.Y.), and the companion case, *Fletcher v. The Bank of New York Mellon*, No. 14-5496 (S.D.N.Y). The complaints in these matters were filed on behalf of participants and beneficiaries of ERISA plans who suffered losses as a result of the Bank of New York Mellon's alleged deceptive acts and practices concerning charges for Standing Instruction Foreign Currency ("SI FX") transactions. Plaintiffs allege that from January 12, 1999 to the present, Bank of New York Mellon breached its fiduciary duties by failing to prudently and loyally manage the Plan's foreign currency transactions in the best interests of the participants, failing to disclose fully the details of the relevant SI FX transactions it was undertaking on behalf of the Plans, and engaging in prohibited transactions.

Chavies, et al. v. Catholic Health East, et al., Case No. 13-01645 (E.D. Pa.). In this pension plan lawsuit filed by Keller Rohrback L.L.P. and Co-Counsel, Plaintiffs allege that Defendants are violating ERISA by, among other things, underfunding the defined benefit pension plans referred to as the CHE Pension Plans by approximately $438.5 million. Plaintiffs further allege that Defendants' claim that this pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, Catholic Health East is not a church or a convention or association of churches, and the CHE Pension Plans were not established by a church or a convention or association of churches.

In re Citigroup ERISA Litigation II, No. 11-7672 (S.D.N.Y.). The third amended consolidated complaint was filed on behalf of Plaintiffs and a proposed class of all persons who were participants in or beneficiaries of the Citigroup 401(k) Plan or the Citibuilder 401(k) Plan for Puerto Rico at any time between January 16, 2008 through March 5, 2009 and whose accounts included investments in Citigroup stock. Plaintiffs allege that during the Class Period Defendants breached their ERISA fiduciary duties to Plaintiffs and the Class members by: failing to prudently and loyally manage the Plans and assets of the Plans based on both public and non-public information; failing to properly monitor the performance of their fiduciary appointees and remove and replace those whose performance was inadequate; and failing to disclose necessary information to co-fiduciaries; and co-fiduciary liability. On May 13, 2015, the Court granted Defendants' motion to dismiss. Plaintiffs intend to appeal this ruling.

Griffith, et al. v. Providence Health & Servs., et al., Case No. 14-1720 (W.D. Wash.). In this pension plan lawsuit filed by Keller Rohrback L.L.P. and Co-Counsel, Plaintiffs allege that Defendants are violating ERISA by, among other things, underfunding the defined benefit pension plan referred to as the Providence Health & Services Cash Balance Retirement Plan. Plaintiffs further allege that Defendants' claim that this pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, Providence Health & Services is not a church or a convention or association of churches, and the Providence Health & Services Cash Balance Retirement Plan was not established by a church or a convention or association of churches.

Pending ERISA Cases (cont.)

Kaplan v. Saint Peter's Healthcare Sys., et al., No. 13-02941 (D. N.J.). In this pension plan lawsuit filed by Keller Rohrback L.L.P. and Co-Counsel, Plaintiff alleges that Defendants are violating ERISA by, among other things, underfunding the defined benefit pension plan known as the Saint Peter's Healthcare System Retirement Plan by over $70 million. Plaintiff further alleges that Defendants' claim that this pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, Saint Peter's Healthcare System is not a church or a convention or association of churches, and the Saint Peter's Healthcare System Retirement Plan was not established by a church or a convention or association of churches.

Lann, et al. v. Trinity Health Corp., et al., No. 14-02237 (D. Md.). In this pension plan lawsuit filed by Keller Rohrback L.L.P. and Co-Counsel, Plaintiffs allege that Defendants are violating ERISA by, among other things, underfunding the defined benefit pension plans referred to as the Trinity Plans by more than $600 million. Plaintiffs further allege that Defendants' claim that this pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, Trinity Health Corporation is not a church or a convention or association of churches, and the Trinity Plans were not established by a church or a convention or association of churches.

Medina v. Catholic Health Initiatives, et al., No. 13-01249 (D. Colo.). In this pension plan lawsuit filed by Keller Rohrback L.L.P. and Co-Counsel, Plaintiff alleges that Defendants are violating ERISA by, among other things, underfunding the defined benefit pension plan known as the Catholic Health Initiatives Retirement Plan by over $892 million. Plaintiff further alleges that Defendants' claim that this pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, Catholic Health Initiatives is not a church or a convention or association of churches, and the Catholic Health Initiatives Retirement Plan was not established by a church or a convention or association of churches.

Overall v. Ascension Health, et al., No. 13-11396 (E.D. Mich.). In this pension plan lawsuit filed by Keller Rohrback L.L.P. and Co-Counsel, Plaintiff alleges that Defendants are violating ERISA by, among other things, underfunding the defined benefit pension plans referred to as the Ascension Pension Plans by over $444.5 million. Plaintiff further alleges that Defendants' claim that this pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, Ascension Health is not a church or a convention or association of churches, and the Ascension Pension Plans were not established by a church or a convention or association of churches.

Owens, et al. v. St. Anthony Medical Center, Inc., et al., No. 14-04068 (N.D. Ill.). In this pension plan lawsuit filed by Keller Rohrback L.L.P. and Co-Counsel, Plaintiffs allege that Defendants are violating ERISA by, among other things, underfunding the defined benefit pension plan known as the St. Anthony Medical Center Retirement Plan by over $32 million. Plaintiffs further allege that Defendants' claim that this pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, St. Anthony Medical Center is not a church or a convention or association of churches, and the St. Anthony Medical Center Retirement Plan was not established by a church or a convention or association of churches.

Potter v. ConvergEx Group LLC, No. 13-9150 (S.D.N.Y). The amended complaint in this matter was filed on behalf of participants and beneficiaries of ERISA Plans who suffered losses as a result of alleged deceptive acts and practices of ConvergEx Group and related Defendants concerning charges for brokerage and transaction management services. Plaintiffs allege that from October 2006 to December 2011, Defendants breached their fiduciary duties by failing to prudently and loyally manage the Plan's brokerage and transition management transactions in the best interests of participants, failing to disclose fully the details of the relevant transactions is was undertaking on behalf of the Plans, and engaging in prohibited transactions.

Rollins v. Dignity Health, et al., No. 13-01450 (N.D. Cal.). In this pension plan lawsuit filed by Keller Rohrback L.L.P. and Co-Counsel, Plaintiff alleges that Defendants are violating ERISA by, among other things, underfunding the defined benefit pension plans referred to as the Dignity Health Pension Plans by over $1.2 billion. Plaintiff further alleges that Defendants' claim that this pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, Dignity Health is not a church or a convention or association of churches, and the Dignity Health Pension Plans not established by a church or a convention or association of churches.

Pending ERISA Cases (cont.)

Santomenno, et. al. v. Transamerica Life Insurance Company, et al., No. 12-2782 (C.D. Cal.) is currently pending in the United States District Court for the Central District of California. The class action complaint was filed on behalf of participants or beneficiaries of 401k plans to whom Transamerica Life Insurance Company ("TLIC") provided fiduciary services through one of its group annuity contracts ("GACs"). Plaintiffs allege that Defendants extracted impermissible fees from GACs issued by Transamerica to 401(k) plans created for small- and mid-sized businesses through the use of add-on or wrapper fees. On February 19, 2013, the Court issued an order denying Defendants' motions to dismiss in large part and upholding all of Plaintiffs' ERISA claims, finding that TLIC had fiduciary status with respect to these claims. The Court later denied a request to certify this order for interlocutory appellate review. On May 21, 2013, the Court denied Defendants' motion to strike Plaintiffs' class allegations, allowing the case to proceed as a putative class action.

Stapleton, et al. v. Advocate Health Care Network and Subsidiaries, et al., No. 14-01873 (N.D. Ill.). In this pension plan lawsuit filed by Keller Rohrback L.L.P. and Co-Counsel, Plaintiffs allege that Defendants are violating ERISA by, among other things, underfunding the defined benefit pension plan known as the Advocate Health Care Network Pension Plan. Plaintiffs further allege that Defendants' claim that this pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, Advocate Health Care Network is not a church or a convention or association of churches, and the Advocate Health Care Network Pension Plan was not established by a church or a convention or association of churches.

Wagner, et al. v. Stiefel Labs., Inc., et al., No. 12-3234 (N.D. Ga.). This ERISA case was filed by Plaintiffs on behalf of the Stiefel Labs., Inc. Employee Stock Bonus Plan. Plaintiffs allege that Defendants directed and approved the repurchase of Stiefel Labs., Inc. stock from ESOP participants and the ESOP at a fraction of the actual fair market value of Stiefel stock in violation of their duties under ERISA.

Representative Securities Fraud Cases

In addition to its work in the ERISA arena, Keller Rohrback also has served as Lead or Co-Lead Counsel in a number of securities fraud class action cases where it has represented purchasers of securities.

In re 2TheMart.com, Inc. Securities Litigation, No. 99-1127 (C.D. Cal.). Keller Rohrback served as Co-Lead Counsel in this securities fraud class action filed in the Central District of California, Southern Division. The class achieved settlements totaling $2.7 million.

In re Anicom, Inc. Securities Litigation, No. 00-4391 (N.D. Ill.). Keller Rohrback was one of three counsel representing the State of Wisconsin Investment Board in this securities fraud class action. Counsel achieved settlements on behalf of the class and other parties in excess of $39 million, including a payment of $12.4 million directly from one of the named defendants, described as "one of the largest payments obtained in connection with allegations of securities and accounting fraud in recent times." In all, over 80% of the total recovery was obtained from sources other than Anicom's insurance policy.

In re Apple, Inc. Derivative Litigation, No. 06-04128 (N.D. Cal.). Keller Rohrback served on the Plaintiffs' Management Committee in the federal derivative shareholder action against nominal defendant Apple Computer, Inc. and current and former officers and members of Apple's Board of Directors. Plaintiffs alleged, among other things, breach of fiduciary duty, unjust enrichment, and gross mismanagement arising from the practice of backdating stock options granted between 1993 and 2001, which practice diverted millions of dollars of corporate assets to Apple executives. Counsel achieved a settlement that awarded $14 million—one of the largest cash recoveries in a stock backdating case—and required Apple to adopt a series of unique and industry-leading corporate enhancements.

In re Foundry Networks, Inc. Derivative Litigation, No. 06-5598 (N.D. Cal.). Keller Rohrback was appointed Co-Lead Counsel in this federal derivative shareholder action against nominal Defendant Foundry Networks, Inc., and current and former officers and members of Foundry's Board of Directors. Plaintiffs alleged, among other things, breach of fiduciary duty, unjust enrichment, and gross mismanagement arising from the practice of backdating stock options granted between 2000 and 2003, diverting millions of dollars of corporate assets to Foundry executives. On February 20, 2009, the court entered an order approving settlement.

Getty, et al. v. Harmon, et al., No. 98-178 (W.D. Wash.). Keller Rohrback served as Lead Counsel in this securities fraud action filed in Western Washington federal court involving a "Ponzi" scheme. Plaintiffs allege that at least one key person responsible for this scheme was affiliated with SunAmerica Securities, which knew or should have known that securities laws were being violated. The class achieved settlements totaling $7 million.

In re IKON Office Solutions, Inc. Securities Litigation, MDL No. 10-1318 (E.D. Pa.). Keller Rohrback served as Co-Lead Counsel representing the City of Philadelphia and eight other Lead Plaintiffs in this certified class action alleging securities fraud. Class Counsel achieved the highest securities fraud settlement in the history of the Court by settling with defendant IKON Office Solutions, Inc. for $111 million. At that time, the settlement was listed as one of the "largest settlements in class-action securities-fraud lawsuits since Congress reformed securities litigation in 1995" by USA Today.

Lasky v. Brown, et al. (United Companies Financial Corp. Securities Litigation), No. 99-1035 (M.D. Fla.). Keller Rohrback served as Co-Lead Counsel in this class action lawsuit filed in the Middle District of Louisiana, on behalf of individual shareholders who purchased or otherwise acquired equity securities in United Companies Financial Corporation between April 30, 1998 and February 2, 1999, inclusive. The class recovered $20.5 million in settlements.

In re WorldPort Comm., Inc., et al., No. 99-1817 (N.D. Ga.). This shareholder class action was brought in Georgia federal court alleging securities fraud. Parties in this case reached a $5.1 million settlement.

Other Representative Cases

In re Carpet Antitrust Litigation, No. 95-193 (N.D. Ga.). This case was filed in the Northern District of Georgia and resulted in a $50 million settlement. United States District Judge Harold L. Murphy stated that the attorneys' "efforts in this case to date have demonstrated their great skill and ability" and that "the Court's own observations of Plaintiffs' counsel support a determination that Plaintiffs' counsel are highly reputable and responsible attorneys."

In re Commercial Tissue Products Antitrust Litigation, MDL No. 97-1189 (N.D. Fla.). This antitrust case filed in the Northern District of Florida involved allegations of a nationwide price-fixing conspiracy among the major manufacturers of facial tissue, toilet paper, paper towels, and related products used in "away from home" settings, such as office buildings, hotels, restaurants, and schools. The parties entered into a settlement agreement valued at $56.2 million in cash and coupons.

Cox, et al v. Microsoft Corp., et al., MDL No. 00-1332 (D. Md.). Keller Rohrback served on the Executive Committee of Plaintiffs' Counsel in this class action challenging Microsoft's monopolistic practices. A class of direct purchasers of operating system software achieved a settlement of $10.5 million in the United States District Court for the District of Maryland.

In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation, MDL No. 16-1203 (E.D. Pa.). These cases involved numerous plaintiffs in Washington and other states who were seeking medical monitoring and/or personal injury compensation in relation to their ingestion of the prescription diet drugs Pondimin and Phentermine (i.e. Fen-Phen) or Redux. Keller Rohrback served as class counsel for a certified medical monitoring class of Washington patients who ingested these diet drugs. In addition, the federal court judge in Philadelphia who supervised the national settlement and litigation appointed Lynn Lincoln Sarko, Keller Rohrback's managing partner, to serve as a member of the MDL 1203 Plaintiffs' State Liaison Counsel Committee. Keller Rohrback has represented numerous plaintiffs in pursuing individual personal injury claims through the American Home Products' Nationwide Class Action Diet Drug Settlement or through individual lawsuits brought in state or federal courts.

Erickson v. Bartell Drug Co., No. 00-1213 (W.D. Wash.). Keller Rohrback was proud to represent the plaintiff class in the landmarkopinion issued in this case. Judge Robert Lasnik held that when an otherwise extensive health plan covers almost all drugs and devices used by men, the exclusion of prescription contraceptives creates a "gaping hole in the coverage offered to female employees, leaving a fundamental and immediate healthcare need uncovered. . . . Title VII requires employers to recognize the differences between the sexes and provide equally comprehensive coverage, even if that means providing additional benefits to cover women-only expenses." Erickson v. Bartell Drug Co.,141 F.Supp.2d 1266, 1277 (W.D. Wash. 2001). This monumental decision has paved the way for implementation of non-discriminatory prescription coverage in employee benefit plans nationwide.

In re the Exxon Valdez, No. 89-95 (D. Alaska). Keller Rohrback represented fishermen, Alaska natives, municipalities, and other injured plaintiffs in this mass tort lawsuit arising out of the March 24, 1989, oil spill in Prince William Sound, Alaska. After a three-month jury trial, plaintiffs obtained a judgment of $5 billion in punitive damages—at the time the largest punitive damages verdict in U.S. history. Keller Rohrback played a leadership role during discovery and at trial, and was chosen to serve as administrator of both the Alyeska and Exxon Qualified Settlement Funds. The amount of punitive damages was subsequently reduced by the United States Supreme Court to $507.5 million, upon which interest was added.

Ferko, et al. v. NASCAR, et al., No. 02-50 (E.D. Tex.). Keller Rohrback was counsel for plaintiff in a lawsuit that charged NASCAR withbreach of contract, unlawful monopolization, and of conspiring with International Speedway Corporation ("ISC") to restrain trade in violation of the antitrust laws. Keller Rohrback represented the shareholders of Speedway Motorsports, Inc. ("SMI"), a publicly traded company that owns six motorsports facilities, including Texas Motor Speedway ("TMS"). In May 2004, the parties reached a settlement agreement, pursuant to which, among other things, ISC sold North Carolina Speedway to SMI for $100.4 million and NASCAR sanctioned the Nextel Cup Series race previously hosted by Rockingham at TMS in the 2005 season. The settlement was approved by the United States District Court for the Eastern District of Texas.

Lawrence, et al. v. Philip Morris Co., et al., No. 94-1494 (E.D.N.Y.). This shareholder class action was brought in New York federal court alleging misrepresentations regarding various inventory and trade loading practices used to distort the timing of sales. This case was settled as part of a $115 million settlement.

Other Representative Cases (cont.)

In re Linerboard Antitrust Litigation, MDL No. 1261 (E.D. Pa.). The class actions in this litigation were resolved with the recovery of more than $202 million for the benefit of a class of businesses that purchased corrugated boxes and sheets.

In re Monosodium Glutamate Antitrust Litigation, MDL No. 00-1328 (D. Minn.). Keller Rohrback represented the plaintiff class in this case in the United States District Court for the District of Minnesota. Over $123 million was recovered for the benefit of a class of businesses which purchased food flavor enhancers from suppliers in the U.S., Japan, Korea, and Taiwan. Businesses that participated in the recovery received nearly 200% of the amounts they were overcharged.

Rosted, et al. v. First USA Bank, No. 97-1482 (W.D. Wash.). This class action was filed on behalf of owners of credit cards issued by First USA Bank who signed up for "introductory rate" credit cards that were subject to false and deceptive "repricing." A settlement in this class action resulted in an automatic depricing benefit of over $50 million plus over $36 million in benefits from other settlement-related offers.

Salloway v. Malt-O-Meal Co., No. 27-98-008931 (Minn. Dist. Ct. 4th Cir.). This nationwide product liability class action arose out of a salmonella outbreak in the Malt-O-Meal plant in Northfield, Minnesota. It was brought on behalf of all people who became ill after eating cereal manufactured by Malt-O-Meal (under names such as "Toasty-Os"). A class settlement was granted final approval in this case filed in Hennepin County Court of Minnesota.

In re Vitamins Antitrust Litigation, MDL No. 1285 (D.D.C.). Keller Rohrback played an extensive role in trial preparation in this case, one of the largest and most successful antitrust cases in history. Chief Judge Thomas Hogan of the United States District Court for the District of Columbia certified two classes of businesses who directly purchased bulk vitamins and were overcharged as a result of a ten-year global price-fixing and market allocation conspiracy. Through settlement and verdict, recoveries were achieved, including four major settlements between certain vitamin defendants and class plaintiffs, including a landmark partial settlement of $1.1 billion.

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"Our litigation lawyers will write better briefs, make better arguments, and get our clients results in less time than our competitors. Our team's ability to quickly respond to clients' changing needs in litigation puts us a step above the rest."

Practice Emphasis

- Antitrust and Trade Regulation
- Appeals
- Class Actions
- Constitutional Law
- Commodities and Futures Contracts
- Consumer Protection
- Employment Law
- Environmental Contamination
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Institutional Investors
- Intellectual Property
- International Law
- Mass Personal Injury
- Medical Negligence
- Securities
- Whistleblower

Lynn Lincoln Sarko

Lynn Lincoln Sarko is a master strategist and litigator who leads Keller Rohrback's nationally recognized Complex Litigation Group. One of the nation's top attorneys in complex litigation, Lynn doesn't just help clients win – he helps them win what they want. Through smart, efficient strategy and tailored, creative problem solving, Lynn and his team accomplish the best outcomes while minimizing costs and maximizing value.

Lynn's diverse experience enables him to think outside the box to resolve complex cases. He regularly interacts with international business interests, representing sovereign nations and institutional clients seeking to recover investment losses caused by financial fraud and other malfeasance. He is currently involved in several matters involving complex derivatives and specialty investment products. Lynn is the driving force behind Keller Rohrback's membership with the Sovereign Wealth Fund Institute, a global organization of leading asset managers and service providers engaged in the public investor community. He represents clients with regard to regulatory investigations and issues involving state and federal supervisory agencies and has litigated actions involving several of the nation's largest accounting and investment firms.

Lynn has led the firm's securities and retirement fund practice for over 25 years and regularly serves as lead counsel in multi-party individual and class action cases involving ERISA, antitrust, securities, breach of fiduciary duty, and other investment fraud issues. Other law firms often hire him as settlement counsel in these and other complex cases because of his reputation as a skilled negotiator. His successes in this area include multi-million dollar settlements in the *IKON*, *Anicom*, *Scientific-Atlanta*, *United Companies Financial Corp.*, and *Apple* securities fraud and derivative cases and the *Enron*, *WorldCom*, *Global Crossing*, *Health South*, *Delphi*, *Washington Mutual*, *Countrywide*, *Lucent*, *Merrill Lynch*, and *Xerox* consolidated pension and retirement plan cases.

Courts and professional organizations have honored Lynn for his work on financial and fiduciary duty cases and numerous other high profile public cases. After serving as trial counsel in the *Exxon Valdez* oil spill case, which resulted in a $5 billion punitive damages verdict, Lynn was appointed by the court as Administrator for all funds recovered. He prosecuted the *Microsoft* civil antitrust case, *Vitamin* price-fixing cases, the MDL *Fen/Phen Diet Drug Litigation*, and notable public service lawsuits such as *Erickson v. Bartell Drug Co.*, establishing a woman's right to prescription contraceptive health coverage.

Prior to joining Keller Rohrback, Lynn was the Assistant United States Attorney for the District of Columbia, Criminal Division, an associate at the Washington, D.C. office of Arnold & Porter, and law clerk to the Honorable Jerome Farris, United States Court of Appeals for the Ninth Circuit, in Seattle. He has been the managing partner of Keller Rohrback L.L.P. since 1986. Lynn regularly appears in federal courts from coast to coast, maintaining an active national litigation practice.

KELLER ROHRBACK L.L.P.
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Education

University of Wisconsin - B.B.A., 1977

University of Wisconsin - M.B.A., 1978

University of Wisconsin - J.D., 1981,
Beta Alpha Psi, *Order of the Coif*

Honors & Awards

Super Lawyers List, *Washington Law & Politics*

Avvo Top Tax Lawyer, *Washington CEO Magazine*

Trial Lawyer of the Year

Salmon Dalberg Award

Professional & Civic Involvement

American Bar Association, *Member*

Bar Association of The District of Columbia, *Member*

Federal Bar Association, *Member*

King County Bar Association, *Member*

State Bar of Wisconsin, *Member*

Trial Lawyers for Public Justice, *Member*

Washington State Bar Association, *Member*

Washington State Trial Lawyers Association, *Member*

American Association for Justice, *Member*

Social Venture Partners of Santa Barbara, *Founding Partner*

The Association of Trial Lawyers of America, *Member*

American Academy of Trial Counsel, *Fellow*

Editorial Board, *Washington State Securities Law Deskbook*

Bar & Court Admissions

1981, Wisconsin
1981, U.S. District Court for the Western District of Wisconsin
1982, U.S. Court of Appeals for the Ninth Circuit
1983, District of Columbia
1983, U.S. Court of Appeals for the District of Columbia Circuit
1984, U.S. District Court for the District of Columbia
1984, U.S. Court of Appeals for the Seventh Circuit
1984, U.S. Court of Appeals for the Tenth Circuit
1984, U.S. Court of Appeals for the Fourth Circuit
1984, U.S. Supreme Court
1985, U.S. Tax Court
1986, Washington
1986, U.S. District Court for the Eastern District of Washington
1986, U.S. District Court for the Western District of Washington
1986, U.S. Court of Appeals for the First Circuit
1988, U.S. District Court for the Eastern District of Wisconsin
1997, U.S. District Court for the District of Colorado
1998, U.S. District Court for the District of Arizona
2001, U.S. Court of Appeals for the Third Circuit
2002, U.S. District Court for the District of Michigan
2003, U.S. Court of Appeals for the Fifth Circuit
2003, U.S. Court of Appeals for the Eleventh Circuit

Selected Publications

"Follow the Money: DOL Initiatives and Litigation," *Fiduciary Counselors Newsletter*, 2006

"Bank Holding Companies Enter a Forbidden Market," *Wisconsin Law Review*, 1981

Representative Speaking Engagements

- ERISA and Fiduciary Litigation, Practising Law Institute
- Annual ERISA Litigation Conference
- Real Estate Mortgage Market Litigation
- ABA Winter Meeting Employee Benefits Committee
- Newest Plaintiffs' Liability Theories & Trends In Defense Pleadings/Motions, Advanced Forum on Complex Litigation
- The Joint Opening Session in Mediation, Advanced Mediation & Advocacy Skills Training
- Officer & Director Liability Corporate Directors Series
- More Enron/Worldcom Fallout: Corporate Officers On the Fiduciary Hook, Section of Business Law Annual Meeting
- The Essentials of Civil Settlement Strategies Seminar

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Practice Emphasis

- Business Reorganizations
- Class Actions
- Constitutional Law
- Employee Benefits and Retirement Security
- Fiduciary Breach
- International Law

Education

University of California, San Diego - B.A., 1987, Economics

Arizona State University College of Law - J.D., 1990, *Order of the Coif*; Member, *Arizona State Law Journal*, 1988-1990; Note and Comment Editor, *Arizona State Law Journal*, 1989-1990; Student Instructor, Legal Research and Writing, 1989-1990.

Bar Admissions

1990, Arizona

1999, Colorado

2007, Washington, D.C.

Laurie Ashton

"Keller Rohrback lawyers are never afraid to think outside the box, which opens up numerous previously unseen pathways for our clients. It's very exciting to be a part of that collective mindset."

Laurie Ashton is Of Counsel to Keller Rohrback. She graduated in 1990 from Arizona State University College of Law, *Order of the Coif*, where she has twice returned as an Adjunct Professor to teach semester courses in Lawyering Theory and Practice and Advanced Business Reorganizations. Laurie served as a law clerk for the Honorable Charles G. Case, U.S. Bankruptcy Court, for the District of Arizona for two years.

In complex litigation, Laurie was the lead attorney for Keller Rohrback in a series of successful groundwater contamination suits brought against multiple international defendants and concerning chemical releases spanning over 60 years. She was also the lead attorney for Keller Rohrback in an ERISA class action suit on behalf of over 21,000 employees who lost a material percentage of their retirement assets at the hands of fiduciaries who maintained the investment of those assets in their own declining company stock—a case that was, at its time, amongst the largest of its kind in the nation. Laurie has led or been a member of the team leading numerous high profile business reorganizations, including a case in which the Court confirmed a reorganization plan over the strenuous objection of the international life insurance company's feasibility expert, based on Laurie's cross examination, as well as another case resulting in a tax advantaged roll up of over 50 syndicated limited partnerships into a REIT. In addition to the other areas of her practice, Laurie is currently focusing on the national and international legal implications of treaty breaches.

Laurie has been active in the State Bar of Arizona, where she served on the Ethics Committee for six years. She was also the co-author of a textbook on limited liability companies and partnerships, published by West. She is admitted to practice in Arizona, Colorado and Washington, D.C., and currently serves as a trustee of the Santa Barbara Foundation, and as a director of the Global Justice Center in New York.

KELLER ROHRBACK L.L.P.
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Professional & Civic Involvement

King County CASA, *Volunteer*

State Bar of Arizona, *Member*

Colorado Bar Association, *Member*

Washington, D.C. Bar Association, *Member*

Adjunct Professor of Law, *Advanced Chapter 11*, Arizona State University, 1996.

Adjunct Professor of Law, *Lawyering Theory & Practice*, Arizona State University, 1997.

Committee on the Rules of Professional Conduct ("Ethics Committee"), State Bar of Arizona, *Member*, 1997-2003.

Santa Barbara Foundation, *Trustee*

Global Justice Center, *Director*

Nuclear Age Peace Foundation, *Director*

Publications & Presentations

Author, Case Note, *Arizona Mortgage and Deed of Trust Anti-Deficiency Statutes: The Underlying Obligation on a Note Secured By Residential Real Property After Baker v. Gardner*, 21 Ariz. St. L.J. 465, 470 (1989).

Co-Author, *Arizona Legal Forms: Limited Liability Companies and Partnerships* (1996-2004).

Guest Lecturer, *Real Estate Transactions*, Harvard Law School, 1997, 1999, 2001-2002.

Guest Lecturer, *Real Estate Transactions*, Stanford Law School, 2003.

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Practice Emphasis

- Class Actions
- Commercial Litigation
- Employee Benefits and Retirement Security
- Fiduciary Breach

Education

Tulane University - B.A., 2003, History and Philosophy

Washington University in St. Louis School of Law - J.D., 2008, *cum laude*; Executive Editor, *Washington University Law Review*

James Bloom

"I make sure my clients understand every step of the process."

James Bloom works tirelessly to provide his clients with the best possible legal representation. As a member of Keller Rohrback's nationally recognized Complex Litigation Group, James has helped litigate numerous cases involving pension fund management, including *In re State Street Bank and Trust Co. ERISA Litigation* and *Alvidres v. Countrywide Financial Corp.*, which resulted in settlements of $89.7 million and $55 million on behalf of pension and 401(k) plan participants and beneficiaries. He also represents clients in commercial litigation, including contract disputes and corporate fiduciary matters. Prompt and forthright communication with his clients about their cases and a careful attention to detail are at the core of James's practice.

Professional & Civic Involvement

State Bar of Arizona, *Member*

Bar & Court Admissions

2008, Arizona

2009, U.S. District Court for the District of Arizona

Publications & Presentations

James A. Bloom, *Plurality and Precedence: Judicial Reasoning, Lower Courts, and the Meaning of United States v. Winstar Corp.*, 85 Wash. U. L. Rev. 1373 (2008).

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Practice Emphasis

- Class Actions
- Consumer Protection
- Employment Law
- Environmental Contamination
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Mass Personal Injury
- Municipal Law
- Whistleblower

Education

Dartmouth College - B.A., 1995, *magna cum laude*, Religion, Environmental Studies Certificate, Phi Beta Kappa

University of Washington School of Law - J.D., 1999, Executive Comments Editor, *Pacific Rim Law & Policy Journal*, 1998-1999

Bar & Court Admissions

1999, Washington

2000, U.S. District Court for the Western District of Washington

2008, U.S. Court of Appeals for the Eighth Circuit

2009, U.S. Court of Appeals for the Ninth Circuit

2009, U.S. Supreme Court

Gretchen Freeman Cappio

"Translating my clients' goals into a winning litigation strategy drives my practice."

Gretchen Cappio is a problem-solver who employs creativity, ingenuity, and hard work. As a member of Keller Rohrback's nationally recognized Complex Litigation Group, Gretchen's diverse practice includes cutting-edge consumer, environmental protection, and fiduciary breach matters. She achieves meaningful results for her clients who have suffered personal, environmental, and financial losses at the hands of wrongdoers.

Gretchen is committed to protecting the rights of children and others in harm's way. She is experienced in litigating consumer cases, from misleading advertising to the distribution and sale of dangerous children's products. Her successes include *In re Mattel, Inc.*, a multidistrict case involving lead-contaminated and hazardous magnetic toys, and *Herfert, et al. v. Crayola LLC, et al.* involving allegedly misleadingly labeled children's products.

Gretchen also served on the ground-breaking Plaintiffs' counsel team in *Erickson v. Bartell Drug Co.*, in which the court ruled that an employer violated Title VII of the Civil Rights Act when its coverage failed to cover prescription contraceptives on an equal basis as other prescription drugs.

Professional & Civic Involvement

The William L. Dwyer American Inn of Court, *Member*

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

Washington Women Lawyers, *Member*

Washington State Trial Lawyer's Association, *Member*

American Association for Justice, *Member*

Mother Attorneys Mentoring Association (MAMAS), *Member*; *Founding Board Member*, 2006-2008

Publications & Presentations

Gretchen Freeman Cappio, *Erosion of Indigenous Right to Negotiate in Australia*, 7 Pac. Rim L. & Pol'y J. 405 (1998).

Presenter, 20th Annual American Bar Association Tort Trial and Insurance Practice Section Spring CLE Meeting: Toxic Torts: Toxins In Everyday Products, Apr. 1, 2011.

Panelist, Chartis Security & Privacy Seminar, Oct. 20, 2011.

Presenter, Law Seminars International, Class Actions and Other Aggregate Litigation Seminar: Post-Certification Motion Issues in Class Actions, May 14, 2013.

Honors & Awards

Selected to Rising Stars list in *Super Lawyers - Washington*, 2002, 2009-2012

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Practice Emphasis

- Antitrust and Trade Regulation
- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Employment Law
- Fiduciary Breach
- Securities

Bar & Court Admissions

1985, Arizona

1985, U.S. District Court for the District of Arizona

1986, U.S. Court of Appeals for the Ninth Circuit

1986, U.S. District Court for the Northern District of California

1990, Washington

1990, U.S. District Court for the Western District of Washington

1990, U.S. District Court for the Eastern District of Washington

2000, U.S. Supreme Court

2003, U.S. District Court for the District of Nebraska

2009, U.S. Court of Appeals for the Sixth Circuit

T. David Copley

"Law is a profession in which, at its best, we inspire each other. I believe in the professional values modeled by my mentors: integrity, a passion for helping others, humor, and creativity."

David Copley helps his clients understand their options. David is a member of Keller Rohrback's nationally recognized Complex Litigation Group, where his practice is focused on class action and other complex litigation, including ERISA, employment, consumer protection and whistleblower cases. David takes a wholistic approach to litigation, with particular attention to understanding his clients' goals, understanding their concerns, and developing an effective legal strategy to maximize positive outcomes. David is a skilled advocate, with extensive experience briefing and arguing motions, appearing before Courts of Appeal, and trying cases. He enjoys working in a team with other talented lawyers, where his experience and passion bring value to large, complex cases.

David's representative cases include a $90 million settlement in *Ormond v. Anthem, Inc.* on behalf of plaintiffs who allegedly received inadequate cash compensation in connection with the demutualization of Anthem Insurance; ongoing representation of AutoZone store managers seeking unpaid overtime compensation; and multi-district Employee Retirement Income Security Act ("ERISA") litigation involving alleged financial fraud by Bank of New York Mellon Corp. related to foreign currency exchange transactions. He also worked on the Exxon Valdez Oil Spill Litigation, for which he was one of the lawyers named 1995 Trial Lawyer of the Year. Prior to joining Keller Rohrback in 1989, David practiced law in Phoenix, Arizona.

Education

University of Iowa - B.A., *with Honors and Distinction*, 1981, Political Science and English, Phi Beta Kappa, Pi Sigma Alpha

Northwestern University School of Law - J.D., 1984, Coordinating Executive Editor, *Northwestern University Law Review*

Professional & Civic Involvement

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

Washington State Trial Lawyers' Association, *Member*

Community Lunch on Capitol Hill, *Chair, Board of Directors* 2008-2013

Northwest Harvest, *Board of Directors* 2000-2009; *Chair, Board of Directors* 2005-2007

Honors & Awards

Selected as a Trial Lawyer of the Year by Trial Lawyers for Public Justice, 1995

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Practice Emphasis

- Antitrust and Trade Regulation
- Appeals
- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Securities
- Whistleblower

Education

Stanford University - B.A., 1982, English

Stanford Law School - J.D., 1987, Notes Editor, *Stanford Law Review*

Professional & Civic Involvement

King County Bar Association, *Member*

Loren Miller Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

Washington State Association for Justice, *Member*

American Bar Foundation, *Member*

Treehouse, *Member, Board of Directors*

Juli Farris

Juli Farris's clients count on her high quality work to meet their legal needs. Juli practices in Keller Rohrback's nationally recognized Complex Litigation Group, where her practice focuses on banking and securities litigation at the trial and appellate levels and also includes antitrust, ERISA fraud and other areas of financial misconduct. Juli has more than 15 years of experience representing both plaintiffs and defendants in complex multi-party litigation involving allegations of securities and bank regulatory law violations, financial fraud and breach of fiduciary duty. She has represented officers and directors of active and failed financial institutions in investigations and litigation regarding bank regulatory matters.

Juli served as a judicial law clerk for Judge E. Grady Jolly of the U.S. Court of Appeals, Fifth Circuit. Prior to joining Keller Rohrback in 1991, she practiced law at the Washington, D.C. office of Sidley Austin, where her practice included the defense of individuals, as well as national and multi-national corporations, in litigation involving a wide array of subject matters, including antitrust, financial fraud, environmental law, and civil and criminal appeals.

Bar & Court Admissions

1988, Washington

1989, California

1990, District of Columbia

1995, U.S. District Court for the Western District of Washington

1997, U.S. Court of Appeals for the Ninth Circuit

1999, U.S. District Court for the Central District of California

2000, U.S. District Court for the Northern District of California

2001, U.S. District Court for the Eastern District of California

2003, U.S. District Court for the Southern District of California

2003, U.S. Court of Appeals for the Fifth Circuit

2003, U.S. Court of Appeals for the Eleventh Circuit

Publications & Presentations

Andrew D. Freeman & Juli E. Farris, *Grassroots Impact Litigation: Mass Filing of Small Claims*, 26 U.S.F.L. Rev. 261 (1992).

Editorial Board, *Washington State Securities Law Deskbook*

Honors & Awards

Selected to Rising Stars list in *Super Lawyers - Washington*, 1991

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Practice Emphasis

- Class Actions
- Employee Benefits and Retirement Security
- Fiduciary Breach

Education

Swarthmore College - B.A., 2002, Linguistics and Languages (Spanish & Mandarin Chinese); McCabe Scholar

University of California, San Diego – M.A., 2007, Latin American Studies (International Migration)

University of Washington School of Law - J.D., 2012

Alison Gaffney

"I carefully assess facts and law to build the best cases for my clients."

Alison Gaffney leaves no stone unturned. A member of Keller Rohrback's nationally recognized Complex Litigation Group, Alison is a thorough researcher who stays on top of the latest legal developments in class action litigation. During law school, Alison represented clients in deportation proceedings through the Immigration Law Clinic and as an intern with the Northwest Immigrant Rights Project, where she continues to volunteer. She also served as a research assistant to Professor Mary D. Fan and interned with the Seattle Immigration Court. Prior to law school, Alison worked and studied in China, Cuba, England, Greece, and Guatemala.

Professional & Civic Involvement

King County Bar Association, *Member*

Washington State Bar Association, *Member*

Mother Attorneys Mentoring Association of Seattle (MAMAS), *Member*

Northwest Immigrant Rights Project, *Pro Bono Attorney*

Bar & Court Admissions

2012, Washington

2013, U.S. District Court for the Western District of Washington

2013, U.S. Court of Appeals for the Second Circuit

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Practice Emphasis

- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Institutional Investors

Education

Goshen College – B.A., 1994, History, Economics

University of Washington School of Law – J.D., 2003

Evans School of Public Affairs, University of Washington – M.P.A., 2003

Honors & Awards

Selected to Rising Stars list in *Super Lawyers - Washington*, 2009, 2013

Laura Gerber

"I help my clients evaluate their options and, if litigation is the best route, guide them through each step of the process."

Laura Gerber is a strong advocate for her clients. Laura practices in Keller Rohrback's Complex Litigation Group where she handles a variety of cases in federal courts across the United States. She maintains excellent relationships with her clients, who trust her to keep them informed and to diligently pursue their interests in litigation against powerful defendants.

Laura has a diverse practice with a focus on holding banks and other institutions accountable to their clients and employees. She has experience litigating mutual fund excessive fees cases, Ponzi scheme cases, breaches of fiduciary duty violating the Employee Retirement Income Security Act ("ERISA"), and consumer protection class actions. Laura's strategic persistence in complex cases has led to impressive results. Her current representative matters include an ERISA case against State Street Bank & Trust Co. involving foreign currency trading, and several cases against Northern Trust Investments, N.A. for fiduciary breach related to securities lending, as well as a case against Catholic Health Initiatives for violations of federal ERISA pension law in management of its employees' pension plan.

While in law school, Laura also received a Masters degree in Public Administration, and was a member of the Moot Court Honor Board.

Bar & Court Admissions

2004, Washington

2006, U.S. District Court for the Eastern District of Washington

2006, U.S. District Court for the Western District of Washington

Professional & Civic Involvement

Washington State Bar Association, *Member*

King County Bar Association, *Member*, Pro Bono Attorney

Washington Appleseed, *Board Member*

Northwest Immigrant Rights Project, *Pro bono Attorney*, 2004

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Matthew Gerend

"I want to help improve people's lives by holding wrongdoers accountable."

Matthew Gerend knows the importance of the security of your retirement. As a member of the firm's nationally recognized Complex Litigation Group, Matt protects the interests of retirees by helping his clients understand complex retirement plans and holding accountable retirement plan fiduciaries. Matt became interested in the laws protecting retirement and pension benefits when he clerked with AARP Foundation Litigation during law school, where he helped draft numerous *amicus curiae* briefs filed in the Supreme Court of the United States and the Courts of Appeals for the Second and Seventh Circuits on issues related to retirement security and investor protection. He also worked as an intern with the Community Development Project at the Lawyers' Committee for Civil Rights Under Law. Matt believes that lawyers have a unique ability to effect social change, an ethic he is guided by in his work representing individuals and investors against those engaged in divisive and fraudulent practices.

Practice Emphasis

- Class Actions
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Securities

Education

University of Wisconsin – B.A., *with distinction*, 2005, Political Science, Phi Beta Kappa

Georgetown University Law Center – J.D., *cum laude*, 2010; Executive Articles Editor, *Georgetown Journal on Poverty Law and Policy*

Professional & Civic Involvement

Washington State Bar Association, *Member*

Bar & Court Admissions

2010, Washington

2011, U.S. District Court for the Western District of Washington

2013, U.S. District Court for the Eastern District of Michigan

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Gary Gotto

Gary Gotto's diverse experience helps him meet his clients' diverse needs. Gary is a member of Keller Rohrback's nationally-recognized Complex Litigation Group. He has a broad range of practice experience and interests, including all aspects of corporate and real estate transactional work, securities issuance and compliance, Chapter 11 bankruptcy and workout matters, and general commercial and ERISA litigation. Gary speaks and teaches regularly on a number of topics, including an annual real estate bankruptcy case study presented at the Harvard Law School. He has practiced in Phoenix since 1982.

Practice Emphasis

- Class Actions
- Commercial Litigation
- Debtor-Creditor
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Institutional Investors
- Real Estate
- Securities

Education

University of Pennsylvania - B.A., *cum laude*, 1976

Arizona State University College of Law - J.D., *summa cum laude*, 1982, Order of the Coif

Bar & Court Admissions

1982, Arizona

1982, U.S. District Court for the District of Arizona

2005, U.S. Court of Appeals for the Second Circuit

Professional & Civic Involvement

State Bar of Arizona, *Member*; *Chair*, Subcommittee on Revising the Limited Partnership Act, Business Law Section, 1991

Adjunct Professor of Law, Arizona State University College of Law, 1989

Publications & Presentations

Co-Author, Arizona Legal Forms: *Limited Liability Companies and Partnerships* (1996-2002).

Co-Author, *Limited Liability Companies and Partnerships* (1996-1997).

Guest Lecturer, *Chapter 11 Reorganizations*; Harvard Law School, 1996-1997, 1999, 2001, 2002; Stanford Law School, 2003.

Speaker, National Business Institutes: *Negotiating and Drafting Acquisition Agreements in Arizona*, 1997; *Choice of Business Entity in Arizona*, 1996; *Limited Liability Companies*, 1994; *Arizona Limited Liability Company Legislation*, 1993.

Speaker, Professional Education Systems, Inc., *Non-Corporate Business Forms*, 1994.

Speaker, State Bar of Arizona, *Limited Liability Companies*, 1994.

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Practice Emphasis

- Appeals
- Class Actions
- Constitutional Law
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Institutional Investors
- Securities

Education

Yale University - B.A., *summa cum laude*, 2002, English, Phi Beta Kappa

Yale Law School - J.D., 2006, Editor, *Yale Law Journal*, Editor-in-Chief, *Yale Journal of Law and the Humanities*

Professional & Civic Involvement

King County Bar Association, *Member*; Appellate Law Section

Washington State Bar Association, *Member*

Washington State Association for Justice, *Member*

Honors & Awards

Selected to Rising Stars list in *Super Lawyers - Washington*, 2013

*Recipient of the 2010 Burton Award for Legal Achievement

Benjamin Gould

"As soon as I meet with a client, I begin to think of a persuasive way to communicate their case."

Benjamin Gould makes the law work for you. Ben, a Seattle native, practices in Keller Rohrback's nationally recognized Complex Litigation Group. His ability to clearly and efficiently communicate factual and legal issues to his clients and the courts allows him to adeptly serve the interest of clients who have been harmed by others' conduct.

Ben has extensive experience in appellate litigation and has active appeals pending in state and federal courts throughout the nation. His successes include an 8th Circuit ruling in *Braden v. Wal-Mart Stores, Inc.* upholding a complaint alleging excessive fees charged to 401(k) plan participants and a 2012 Texas Supreme Court opinion holding that a class of indigent criminal defendants had standing to challenge the constitutionality of certain pretrial procedures.

Before joining the firm, Ben worked as a Legal Fellow of the ACLU Drug Law Reform Project, litigating cases related to drug policy and civil rights. He has also served as a clerk to two federal appellate judges: the Honorable Betty B. Fletcher of the U.S. Court of Appeals for the Ninth Circuit and the Honorable Diana E. Murphy of the U.S. Court of Appeals for the Eighth Circuit.

Bar & Court Admissions

2007, California

2010, District of Columbia

2010, U.S. Court of Appeals for the Ninth Circuit

2011, Washington

2011, U.S. District Court for the Western District of Washington

2012, U.S. District Court for the Eastern District of Washington

2012, U.S. Court of Appeals for the Third Circuit

2013, U.S. Court of Appeals for the Second Circuit

Publications & Presentations

Derek W. Loeser & Benjamin Gould, *Point/Counterpoint: Is Rule 23(b)(1) Still Applicable to ERISA Class Actions?*, ERISA Compliance and Enforcement Library of the Bureau of National Affairs, Inc. (May 1, 2009).

Derek W. Loeser & Benjamin Gould, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty*, Pension & Benefits Reporter, Bureau of National Affairs, Inc. (Sept. 1, 2009).*

Derek W. Loeser, Erin M. Riley & Benjamin Gould, *2010 ERISA Employer Stock Cases: The Good, the Bad, and the In Between-Plaintiffs' Perspective*, Pensions & Benefits Daily, Bureau of National Affairs, Inc. (Jan. 28, 2011).

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Christopher Graver

Chris is a member of Keller Rohrback's Complex Litigation and Bankruptcy Groups, representing debtors, creditors, Court-appointed committees, and asset purchasers in Chapter 11 reorganization proceedings and out-of-court workouts. Chris also has wide-ranging experience in complex commercial litigation from corporate reorganizations to matters of breach of fiduciary duty, commercial real estate, contracts, patent infringement, and environmental insurance coverage. Together with colleagues he has represented clients as diverse as the committee of victims of clergy sexual abuse in the Chapter 11 reorganization of a Catholic diocese, a developer restructuring a portfolio of real property interests nationwide, and a national company acquiring a competitor's assets in a bankruptcy-court-approved sale in California.

A graduate of the great books liberal arts program at St. Johns' College in Santa Fe, Chris earned his law degree from the University of New Mexico Law School magna cum laude in 1990. While his practice is centered in the Southwest, Chris represents clients in federal courts coast to coast.

Practice Emphasis

- Business Litigation
- Bankruptcy and Creditors' Rights

Education

St. John's College - B.A., 1976

University of New Mexico - J.D., *magna cum laude*, 1990, Order of the Coif

Bar & Court Admissions

Arizona, 1990

United States Bankruptcy Appellate Panel of the Ninth Circuit

United States Court of Appeals for the Ninth Circuit

United States District Court for the District of Arizona, 1990

Professional & Civic Involvement

American Bankruptcy Institute, *Member*

Arizona State Bar Association, *Member*

Maricopa County Bar Association, *Member*

Selected Publications & Presentations

"Confirming the Catholics: The Diocese of Tucson Experience, Norton Bankruptcy Law Advisor," 2005.

"Representing the Tort Claimants' Committee in the Chapter 11 Case Filed by the Roman Catholic Diocese of Tucson, prepared for the National Conference of Bankruptcy Judges," 2005.

"Decoding the Code," *AzBusiness Magazine*, 2005.

Speaker, Maricopa County Bar Association presentation, *New Bankrtupcy Code: Changing the Way Creditors are Treated*, 2006.

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Practice Emphasis

- Antitrust and Trade Regulation
- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Mass Personal Injury

Education

University of Minnesota - B.A., *summa cum laude*, 1995, Economics and Political Science

University of Wisconsin Law School - J.D., 1998

Bar & Court Admissions

1998, Wisconsin

1998, Washington

1998, U.S. District Court for the Western District of Washington

2000, U.S. District Court for the Eastern District of Washington

2003, U.S. Court of Appeals for the Ninth Circuit

2005, U.S. District Court for the Eastern District of Michigan

Amy Hanson

"I am skilled at showing parties when they have a shared interest in changing harmful practices that prioritize short-term profits over long-term relationships and reputations."

Amy Hanson helps her clients work past disputes so they can refocus on personal and business goals. As a member of Keller Rohrback's nationally recognized Complex Litigation Group, Amy's practice is focused on class action and other complex litigation, including antitrust, dangerous pharmaceuticals, and ERISA cases. Amy is a practical problem-solver who enjoys rolling up her sleeves to obtain evidence and achieve solutions. She became interested in complex litigation because she wanted to help level the playing field for hard-working people and small businesses that were similarly harmed by large businesses and groups of businesses acting together. In her more than 15 years as a litigator Amy has represented patients who experienced serious medical problems after consuming prescription drugs, small business owners challenging alleged nationwide price-fixing conspiracies, and certified classes of employees challenging the prudence of allowing their employers' 401(k) plans to hold and acquire company stock. She has helped achieve settlements in the millions and billions of dollars.

Prior to joining Keller Rohrback, Amy was a Student Advocate at the University of Wisconsin Law School's Consumer Litigation Clinic and a judicial law clerk intern for Judge Deininger at the State of Wisconsin Court of Appeals. She is currently honored to serve on the Vioxx Consumer Purchase Claims Subcommittee of the Plaintiffs' Steering Committee in *In re: Vioxx Prods. Liab. Litig.*, MDL No. 1657 (E.D. La.) and the WSAJ Consumer Protection Section Deskbook Editorial Board.

Professional & Civic Involvement

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

American Association for Justice, *Member*

Publications & Presentations

Co-author, Handbook for Washington Seniors: Legal Rights and Resources, Legal Voice (Oct. 15, 2012). Available at *nwwlc.ejoinme.org/MyPages/HandbookOrderform/tabid/399633/Default.aspx#!*

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Practice Emphasis

- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Mass Personal Injury
- Securities

Education

University of California, Riverside - B.A., *cum laude*, History and Political Science, 2007

University of California, Hastings College of the Law - J.D., 2011

Kash Karmand

"By identifying and focusing on the key facts and issues at an early stage of the litigation, I am able to provide clients with a strategic advantage to obtain a favorable resolution in the case."

Kash Karmand's practice focuses on the representation of clients in class action and multi-district litigation. Kash practices in Keller Rohrback's California office and is a member of the firm's nationally recognized Complex Litigation Group.

Kash's litigation experience includes consumer, retirement plan, securities, and financial services litigation. He has significant experience with motions practice and briefing in complex cases. For example, he drafted the motion for class certification and several oppositions to motions for summary judgment in a recent multi-district litigation case involving claims for breach of contract and violations of state consumer protection laws.

During law school, Kash was a law clerk to California's Chief Assistant Attorney General David Chaney and an extern to the Honorable Maria-Elena James in the U.S. District Court for the Northern District of California. He also worked in the legal department of a Fortune 200 company where he handled high-stakes business and employment disputes, and represented low-income clients in disability benefits and wage-and-hour cases in the UC Hastings Civil Justice Clinic.

Bar & Court Admissions

2011, California

2013, Minnesota

2013, U.S. District Court for the Central District of California

2013, U.S. District Court for the Northern District of California

2013, U.S. District Court for the Eastern District of California

2013, U.S. District Court for the Southern District of California

2014, District of Columbia

Professional & Civic Involvement

State Bar of California, *Member*

California Minority Counsel Program, *Member*

Los Angeles County Bar Association, *Member*

Bar of the State of Minnesota, *Member*

District of Columbia Bar, *Member*

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Practice Emphasis

- Appeals
- Class Actions
- Constitutional Law
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Private Judge & Special Master

Education

Harvard College - B.A., *cum laude*, 1973, History

Harvard Divinity School - M.T.S., 1975, Old Testament

Arizona State University College of Law - J.D., *magna cum laude*, 1979, Editor-in Chief, *Arizona State Law Journal*, Armstrong Award (outstanding graduate)

Honors & Awards

Best Lawyers in America (19th ed.) – ERISA practice

Professional & Civic Involvement

State Bar of Arizona, *Member*

District of Columbia Bar, *Member*

New York State Bar Association, *Member*

Ron Kilgard

"In practicing law, whether with clients, opposing counsel, or the Court, and in life generally, I try to keep mind, as William James said, that *other people have insides of their own*."

Ron Kilgard is a seasoned lawyer who understands that yesterday's rule changes are just as important as the landmark cases decided decades ago. Ron has thirty-five years of experience in civil litigation. He knows that the substantive law changes slowly (at least most of the time!), but that the relevant rules and judges' individual practices change almost daily. And they vary enormously from jurisdiction to jurisdiction and judge to judge. Balancing all this – the past and the present – is, for Ron, one of the many challenges and pleasures of law practice.

Ron's practice is focused primarily on commercial and financial matters. For the last 15 years, he has extensively litigated pension plan class actions, involving both plans regulated by the Employee Retirement Income Security Act ("ERISA") and non-ERISA plans such as public plans and so-called "church plans." Ron helped Keller Rohrback pioneer company stock ERISA litigation in the late 1990's and early 2000's. More recently, Ron was part of the team that obtained settlements of over $265 million (in cash) in the Enron 401(k) litigation. In 2012, Ron was selected for inclusion in Best Lawyers in America (19th ed.) for ERISA practice. Ron is currently class counsel in a case on behalf of all sitting state court, general jurisdiction, judges in Arizona, *Hall v. Elected Officials' Retirement Plan*.

Ron is a Phoenix native. He began law practice with Martori, Meyer, Hendricks & Victor, P.A., clerked for the Hon. Mary M. Schroeder, U. S. Court of Appeals for the Ninth Circuit, and in 1995 was one of the founders of Dalton Gotto Samson & Kilgard, P.L.C. – Martori Meyer lawyers who left to do plaintiffs' work on their own in a small firm environment. He joined most of the Dalton Gotto lawyers in forming the Phoenix affiliate of Keller Rohrback L.L.P. in November 2002.

Bar & Court Admissions

1979, Arizona

2009, District of Columbia

2011, New York

1979, U.S. District Court for the District of Arizona

1982, U.S. Court of Appeals for the Ninth Circuit

1995, U.S. Supreme Court

2005, U.S. Court of Appeals for the Second Circuit

2005, U.S. Court of Appeals for the Fifth Circuit

2006, U.S. Court of Appeals for the Eleventh Circuit

2007, U.S. District Court for the Eastern District of Michigan

2010, U.S. District Court for the District of North Dakota

2012, U.S. District Court for the Southern District of New York

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Publications & Presentations

- Author, Client Newsletter, Arbitration vs. the "Expensive Endless Law," 1991
- Speaker, Arthur Andersen Seminar on Intellectual Property, *Restrictive Covenants and Trade Secrets*, 1992
- Speaker, Viasoft Annual Meeting, *Wrongful Termination Law*, 1992
- Author, Client Newsletter, Alter Ego et in Arcadia Ego, 1992
- Author, Client Newsletter, Interest and the St. Crispin's Day Speech, 1992
- Author, Client Newsletter, Suing The Other Side's Lawyer, 1992
- Author, Client Newsletter, The Twilight of Arizona RICO and the March of the Ten Thousand, 1993
- Author, Client Newsletter, Why Some Statutes Age Well, 1993
- Chairman, MCBA Seminar on Attorney Fees, 1994
- Speaker, MCBA Seminar on Guaranties, 1994
- Author, Client Newsletter, Commenting on the Evidence and the Trial of Richard Savage, 1994
- Author, Client Newsletter, Do Emma Wodehouse and Bathsheba Everdene Need the Protection of the Community Property Laws?, 1994
- Author, *Recent Developments in the Law of Guaranties*, ARIZ. ATTY., 1995
- Author, *Lord Jim Faces Up to the Employee Retirement Income Security Act of 1974*, ARIZ. ATTY., 1995
- Speaker, Supreme Court Update, 1995-2000
- Author, Client Newsletter, Arizona Punitive Damages and Senator Sumner's Speech Against the Kansas-Nebraska Act, 1996
- Author, Client Newsletter, Arizona Special Action Practice and "the Merit of the Common Law," 1996
- Author, Client Newsletter, Community Property Traps for the Unwary and Spenser's Epithalamion, 1996
- Author, Client Newsletter, The Dark Satanic Mills and the Law of Workers' Compensation, 1996
- Author, Client Newsletter, Death and Duty on the Party Train, 1996
- Author, Client Newsletter, Departing Employees, Non-Competition Agreements, and Ludwig Wittgenstein, 1996
- Author, Client Newsletter, E.F. Hutton in the Cave of Despair, 1996
- Author, Client Newsletter, *Jane Eyre* and the Palimony Cases, 1996
- Author, Client Newsletter, Legal Ethics and Real Ethics, 1996
- Author, Client Newsletter, Mandatory Disclosure and Planetary Astronomy, 1996
- Author, Client Newsletter, Pudd'nhead Wilson Sizes Up the Dog Bite Cases, 1996
- Author, Client Newsletter, State and Federal Court in Arizona and What William James Said About the "Tough-Minded" and the "Tender-Minded," 1996
- Author, Client Newsletter, Why Some Cases Age Well, 1996
- Author, Client Newsletter, Mistake in the Law of Contracts and in Translation, 1997
- Speaker, State Bar Seminar on Motor Vehicle Accidents, *Multiple Tortfeasor Issues*, 1998
- Author, *Cleaning Up After Multiple Tortfeasors*, ARIZ. ATTY., 1999
- Speaker, Judicial Education Day, 1999
- Speaker, Federal Bar Association, *Multiple Tortfeasors*, 2000
- Speaker, New Judge Orientation, 2000-2002
- Speaker, Arizona Attorney General's Office Seminar of Expert Witnesses, 2001
- Speaker, Arizona Judicial Conference Seminar on Law and Literature, 2001
- Speaker, Maricopa County Superior Court Seminar, *Multiple Tortfeasors*, 2003
- Speaker, MCBA Seminar on Punitive Damages After *Campbell*, 2003
- Speaker, Arizona Attorney General's Office Seminar, *Legal Problem Solving*, 2004
- Speaker, ABA Seminar, *After Enron*, 2006
- Speaker, Chicago Bar Association, *Company Stock Litigation*, 2006
- Speaker, Arizona Trial Lawyers Association, *Communications with Witnesses*, 2006
- Speaker, West LegalWorks ERISA Litigation Conference, 2007
- Speaker, National Center for Employee Ownership, *Fiduciary Implications of Company Stock Lawsuits*, 2012
- Speaker, National Center for Employee Ownership, *Fiduciary Implications of Company Stock Lawsuits*, 2013

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Practice Emphasis

- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Securities

David Ko

"I help my clients make informed decisions about their cases."

David Ko holds wrongdoers accountable. David practices in the firm's nationally recognized Complex Litigation Group, where he represents individuals, retirement plans, and institutional investors in federal and state courts across the country. David has experience litigating cases against corporate defendants for consumer protection violations, investment mismanagement, breaches of fiduciary duty under the Employee Retirement Income Security Act of 1974 (ERISA), and general corporate malfeasance. He has made substantial contributions to multi-million dollar settlements including those against Fremont General Corp., Intelius, Inc., Sitrick and Co., and Tharaldson Motels, Inc.

Prior to joining the firm, David completed a two year clerkship for the Honorable Ricardo S. Martinez, U.S. District Judge in the Western District of Washington.

David is immediate past President of the Korean American Bar Association of Washington and coordinates KABA's pro bono clinic. He is also a 2014 Fellow of the Washington Leadership Institute.

Bar & Court Admissions

2006, Washington

2010, U.S. District Court for the Western District of Washington

2010, U.S. District Court for North Dakota

2011, U.S. Court of Appeals for the Ninth Circuit

Professional & Civic Involvement

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Korean American Bar Association, *Board Member*

Asian American Bar Association, *Member*

Education

University of Washington - B.A., 2002, History and Political Science

Seattle University School of Law - J.D., *cum laude*, 2006; National Order of the Barristers

University of Washington School of Law - LL.M., 2007, Taxation

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Practice Emphasis

- Antitrust and Trade Regulation
- Appeals
- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services

Education

University of California, San Diego - B.A., 1993, Art History

University of Washington - M.A., 1998, Public Administration

University of Washington School of Law - J.D., 2003

Bar & Court Admissions

2003, Washington

2004, U.S. District Court for the Western District of Washington

2006, U.S. District Court for the Eastern District of Michigan

2006, U.S. Court of Appeals for the Eleventh Circuit

2011, U.S. Court of Appeals for the Seventh Circuit

2013, U.S. Court of Appeals for the Eighth Circuit

Cari Campen Laufenberg

"I am proud to be part of a dynamic team that is willing to take calculated risks and envision innovative solutions for our clients."

Cari Laufenberg keeps client goals in focus. As a member of Keller Rohrback's nationally recognized Complex Litigation Group, Cari is involved in representing plaintiffs in federal courts across the United States. She represents individuals and institutions in class action litigation involving breach of fiduciary duty, investment fraud and mismanagement, retirement plan litigation and consumer protection. Cari's background in nonprofit management and public administration makes her skilled at organizing and strategizing complex cases to achieve short-term goals and long-term successes.

Cari has litigated fiduciary breach issues for 10 years and has played a key role in many of the firm's large and complex fiduciary breach cases, including a $90 million settlement against Anthem Inc. in a case alleging fiduciary breach related to Anthem Insurance's demutualization of membership interests. Cari has also successfully litigated alleged violations of the Employee Retirement Income Security Act ("ERISA"), with multi-million dollar settlements against companies including Countrywide Financial Corp., Marsh & McLennan Companies, Inc., and Williams Companies, Inc.

Prior to joining Keller Rohrback in 2003, Cari served as a judicial extern for Judge Barbara Jacobs Rothstein of the U.S. District Court for the Western District of Washington.

Professional & Civic Involvement

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

King County Washington Women Lawyers, *Member*; *Member of the Board of Directors* (2003-2005)

Washington Women Lawyers, *Member*

William L. Dwyer Inn of Court, *Founding Student Member* (2002-2003)

Federal Bar Association, *Member*

American Association for Justice, *Member*

Washington State Association for Justice, *Member*

Northwest Immigrant Rights Project, *Volunteer Attorney*

Honors & Awards

Selected to Rising Stars list in *Super Lawyers - Washington*, 2008-2009, 2011

King County Washington Women Lawyers Chapter Member of the Year, 2005

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Practice Emphasis

- Class Actions
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Intellectual Property
- Securities

Michael Licata

"I enjoy developing creative strategies to ensure maximum results for my clients."

Michael Licata is a problem solver. Mike is a member of Keller Rohrback's nationally recognized Complex Litigation Group. His relentless focus, creativity, and attention to detail allow him to provide his clients high-quality and dynamic representation.

Mike has experience litigating cases involving securities fraud, consumer protection claims, intellectual property infringement, and violations under federal labor laws.

Before joining the firm, Mike served as a law clerk in the Trial Unit of the U.S. Securities and Exchange Commission's Enforcement Division, where he worked on behalf of investors in litigation involving accounting fraud, Ponzi schemes, and other violations of the Securities and Exchange Acts. Mike also worked as a Legislative Policy extern for the ACLU of Washington.

Education

University of Puget Sound – B.A., International Political Economy

University of Washington School of Law – J.D., 2011

Professional & Civic Involvement

Federal Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

Bar & Court Admissions

Washington, 2011

U.S. District Court for the Western District of Washington, 2013

U.S. Court of Appeals for the Eleventh Circuit, 2013

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Practice Emphasis

- Appeals
- Class Actions
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Institutional Investors
- Securities

Education

Middlebury College - B.A., *summa cum laude*, 1989, American Literature (highest departmental honors), Stolley-Ryan American Literature Prize, Phi Beta Kappa

University of Washington School of Law - J.D., *with honors*, 1994

Professional & Civic Involvement

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member; Employment Benefits Committee Member; Labor & Employment Law Section Member*

National Employment Lawyers Association, *Member*

American Civil Liberties Union of Washington, *Cooperating counsel*

Derek Loeser

"We win by being more persuasive. It's a simple formula that combines our strengths - outstanding writing and courtroom skill, together with passion and integrity."

Derek Loeser is a senior member of Keller Rohrback's nationally recognized Complex Litigation Group and a member of the firm's Executive Committee. He maintains a national practice prosecuting individual and class action securities, Employee Retirement Income Security Act ("ERISA"), breach of fiduciary duty and investment mismanagement cases.

Derek has been working in plaintiffs' litigation for over twenty years. Through all stages of litigation, including trial, he has helped recover hundreds of millions of dollars for institutions, retirement plans, retirees, and employees. Notable cases include mortgage-backed securities cases on behalf of the Federal Home Loan Banks of Chicago, Indianapolis and Boston, and ERISA class cases representing employees in cases against Enron, WorldCom, Countrywide, and Washington Mutual. Derek regularly serves as lead counsel in large scale fraud and mismanagement cases for both institutional and individual clients. Recent successes include the decision following an eight week bench trial in New York in which the court found that the trustee "acted unreasonably or beyond the bounds of reasonable judgment" by releasing claims potentially worth billions of dollars "without investigating their potential worth or strength."

Before joining Keller Rohrback, Derek served as a law clerk for the Honorable Michael R. Hogan, U.S. District Court for the District of Oregon, and was a trial attorney in the Employment Litigation Section of the Civil Rights Division of the U.S. Department of Justice in Washington, D.C., where he prosecuted individual and class action employment discrimination cases. He is a frequent speaker at national conferences on class actions, ERISA and other litigation topics.

Honors & Awards

U.S. Department of Justice Honors Program Hire, 1994

U.S. Department of Justice Award for Public Service, 1996

U.S. Department of Justice Achievement Award, 1996

Selected to Rising Stars list in Super Lawyers - Washington, 2005-2007

Selected to Super Lawyers list in Super Lawyers - Washington, 2007-2012, 2014

Recipient of the 2010 Burton Award for Legal Achievement for the article, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty*, Pension & Benefits Reporter, Bureau of National Affairs, Inc. (Sept. 1, 2009).

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Bar & Court Admissions

1994, Washington

1997, U.S. District Court for the Western District of Washington

1997, U.S. District Court for the Eastern District of Washington

1997, U.S. Court of Appeals for the Ninth Circuit

2002, U.S. District Court for the Eastern District of Michigan

2004, U.S. District Court for the Northern District of Illinois

2007, U.S. Court of Appeals for the Second Circuit

2009, U.S. Court of Appeals for the Eighth Circuit

2009, U.S. Court of Appeals for the Eleventh Circuit

2010, U.S. Court of Appeals for the Fourth Circuit

2012, U.S. Court of Appeals for the Third Circuit

Publications & Presentations

Derek W. Loeser, Erin M. Riley & Benjamin B. Gould, *2010 ERISA Employer Stock Cases: The Good, the Bad, and the In Between-Plaintiffs' Perspective*, Pension & Benefits Daily, Bureau of National Affairs, Inc. (Jan. 28, 2011).

Speaker, *Post-Certification: Motion Issues in Class Actions*, Litigating Class Actions, Seattle, WA, 2012.

Speaker, *Investment Litigation: Fees & Investments in Defined Contribution Plans*, ERISA Litigation, Washington, D.C., 2012.

Derek W. Loeser & Benjamin B. Gould, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty*, Pension & Benefits Reporter, Bureau of National Affairs, Inc. (Sept. 1, 2009).

Derek W. Loeser & Erin M. Riley, *The Case Against the Presumption of Prudence*, Pension & Benefits Daily, Bureau of National Affairs, Inc. (Sept. 10, 2010).

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Practice Emphasis

- Class Actions
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Institutional Investors
- Securities

Education

Wesleyan University – B.A., 2002, Romance Literatures (French & Italian), Phi Beta Kappa

University of Washington – J.D., 2007, Executive Comment Editor, *Pacific Rim Law and Policy Journal*

Ian Mensher

"The value I bring to each client is my ability to listen well and provide efficient and effective recommendations to resolve even the thorniest dispute."

Ian Mensher understands that different clients have different goals. Ian practices in Keller Rohrback's nationally recognized complex litigation group. He represents both institutional and individual investors in cases involving financial fraud and investment mismanagement. Whether Ian is advising an employee class representative or discussing strategy with an institutional investor, Ian provides frank and honest guidance that is tailored to meet the specific needs of his clients.

During law school at the University of Washington School of Law Ian participated in the Berman Environmental Law Clinic. After graduating, he clerked for the Honorable Jerome Farris on the Ninth Circuit Court of Appeals. Ian then joined Keller Rohrback's complex litigation group for one year before spending the next three clerking for the Honorable Marsha J. Pechman on the U.S. District Court for the Western District of Washington. Ian's rich experience in the federal court system brings a unique and important perspective to guide the important strategic decisions in litigation.

Bar & Court Admissions

2007, Washington

2008, U.S. District Court for the Western District of Washington

2008, U.S. Court of Appeals for the Ninth Circuit

2013, U.S. District Court for the Eastern District of Washington

Professional & Civic Involvement

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Federal Bar Association, *Member*

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Practice Emphasis

- Appeals
- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Whistleblower

Education

University of Nebraska - Lincoln - B.S., *with distinction*, 1999, Women's Studies, UNL Honors Program

University of Nebraska - Lincoln, College of Law - J.D., *with high distinction*, 2005, Order of the Coif, Editor-in-Chief, *Nebraska Law Review*, 2004–2005

Honors & Awards

Recipient of the 2004 Robert G. Simmons Law Practice Award (first place).

Theodore C. Sorensen Fellow, 2004–2005

National Association of Women Lawyers Outstanding Law Student Award, 2005

Selected to Rising Stars list in *Super Lawyers - Washington*, 2010

Gretchen Obrist

> **"I am skilled at translating my clients' stories of injustice into persuasive legal claims to present to the courts."**

Gretchen Obrist is ready to answer your questions. A member of Keller Rohrback's nationally recognized Complex Litigation group, Gretchen works closely with clients to help them understand the processes of litigation and negotiation. Her hands-on approach to legal strategy helps her identify and achieve her clients' unique goals and right the wrongs they have experienced.

Gretchen has nearly a decade of experience litigating complex federal cases from start to finish, including extensive motions practice and discovery. Her practice focuses on Employee Retirement Income Security Act ("ERISA") fiduciary breach and excessive fee cases, as well as consumer protection and financial fraud claims. She also has experience litigating civil rights issues. Gretchen has played a key role in cases arising out of the collapse of the mortgage securities industry and the residential mortgage modification and foreclosure crisis, including actions against Bear Stearns and JPMorgan Chase. Her ERISA experience includes a successful appeal to the Eighth Circuit in *Braden v. Wal-Mart Stores, Inc.* reversing dismissal of the lead plaintiff's case. She also made significant contributions to cases against Procter & Gamble and Merrill Lynch and to the *Washington Mutual* and *JPMorgan ERISA Pension Plan* (cash balance conversion) litigations.

Prior to joining Keller Rohrback, Gretchen served as a law clerk to the Honorable John C. Coughenour, U.S. District Judge for the Western District of Washington. Before obtaining her law degree, she worked at a public defender's office, the Nebraska Domestic Violence Sexual Assault Coalition, and the Nebraska Appleseed Center for Law in the Public Interest.

Professional & Civic Involvement

The William L. Dwyer American Inn of Court, *Member*

American Constitution Society, Puget Sound Lawyer Chapter, *Member*

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*, Litigation / Labor and Employment Sections

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Bar & Court Admissions

2005, Washington

2007, U.S. District Court for the Western District of Washington

2008, U.S. District Court for the Eastern District of Michigan

2008, U.S. Court of Appeals for the Eighth Circuit

2010, U.S. Court of Appeals for the Ninth Circuit

2011, U.S. District Court for the Eastern District of Washington

2011, U.S. Court of Appeals for the Second Circuit

2011, U.S. Court of Appeals for the Sixth Circuit

Publications & Presentations

Gretchen S. Obrist, Note, *The Nebraska Supreme Court Lets Its Probation Department Off the Hook in Bartunek v. State: "No Duty" as a Non-Response to Violence Against Women and Identifiable Victims*, 83 Neb. L. Rev. 225 (2004).

Speaker, ABA Section of Labor and Employment Law, Employee Benefits Committee – Mid-Winter Meeting, Savannah, GA, 2011 (Update on ERISA Fee Litigation and the Impact of the Regulations).

Speaker, ABA Section of Labor and Employment Law, Employee Benefits Committee – Mid-Winter Meeting, Charleston, SC, 2013 (ERISA 408(b)(2) and 404(a) Disclosures and the Ongoing Fee Litigation).

Gretchen S. Obrist, "ERISA Fee Litigation: The Impact of New Disclosure Rules, and What's Next in Pending Cases," *Pension & Benefits Daily*, Bloomberg BNA (Feb. 21, 2013).

Gretchen S. Obrist, "ERISA Fee Litigation: Overview of Developments in 2012 and What to Expect in 2013," *Benefits Practitioners' Strategy Guide*, Bloomberg BNA (Mar. 26, 2013).

Speaker, ABA Joint Committee on Employee Benefits - 23rd Annual National Institute on ERISA Litigation, Chicago, IL, 2013 (Fiduciary Litigation Part 1: Disclosure & Investment; Fiduciary Litigation Part 2: Cutting Edge Issues).

Contributing Editor and Writer, *Foreclosure Manual for Judges: A Reference Guide to Foreclosure Law in Washington State*, A Resource by Washington Appleseed (2013).

Gretchen S. Obrist, "'Class of Plans' Actions Could Be Next Wave of ERISA Litigation, Gretchen Obrist Says," *ERISA Litigation Tracker: Litigator Q&A*, Bloomberg BNA (June 19, 2013).

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Practice Emphasis

- Class Actions
- Employee Benefits and Retirement Security
- Fiduciary Breach

Education

Rutgers University - B.A., 1969, Mathematics

New York University School of Law - J.D., 1972, *New York University Journal of International Law and Politics*, 1970-1971

Professional & Civic Involvement

The Association of the Bar of the City of New York, *Member*; Committee on Employee Benefits, 1993-1996, 1996-1999, 2002-2005; Committee on Legal Problems of the Aging, 1985-1988

New York State Bar Association, *Member*

American Bar Association, *former Co-Chair*, Fiduciary Responsibility Subcommittee; Committee on Employee Benefits, Labor and Employment Section; *former Co-Chair*, Subcommittee on ERISA Preemption and the Subcommittee on ERISA Reporting and Disclosure

American College of Employee Benefits Counsel, *Member* and *Charter Fellow*

David Preminger

"The interdisciplinary nature of ERISA litigation requires that I work well with actuaries, accountants, investment experts, co-counsel and defense attorneys, all the while placing my clients' interests first."

David Preminger is a practiced advocate for employees, retirees, and beneficiaries. The resident partner in the firm's Complex Litigation Group New York office, David focuses on Employee Retirement Income Security Act ("ERISA") fiduciary breach class action cases as well as individual benefit claims. He has been litigating ERISA cases for nearly 40 years, since the Act's passage in 1974. David has been the lead counsel or co-counsel on numerous ERISA cases alleging misconduct in connection with the investment of retirement plan assets, including Hartman et al. v. Ivy Asset Management et al., a case involving fiduciary breach related to Madoff investments that resulted in a $219 million settlement with consolidated cases. He has been involved in ERISA cases against Bear Stearns, Merrill Lynch, Colonial BancGroup and Marsh & McLennan resulting in multi-million dollar settlements on behalf of class members.

David's familiarity with the changes to and nuances of ERISA law allows him to expertly and efficiently interpret the statute and regulations and analyze issues on behalf of his clients. He has handled over 100 trials and in addition to his ERISA experience has extensive experience litigating and negotiating antitrust, real estate, civil rights, family law, and general commercial and corporate matters.

Prior to joining Keller Rohrback, David was a partner at Rosen Preminger & Bloom LLP where his successes included the In re Masters Mates & Pilots Pension Plan and IRAP Litigation. He was previously a Supervisory Trial Attorney for the Equal Employment Opportunity Commission, a Senior Attorney with Legal Services for the Elderly Poor, and a Reginald Heber Smith Fellow with Brooklyn Legal Services. He is a charter fellow of the American College of Employee Benefits Counsel and a senior editor of Employee Benefits Law (Bloomberg BNA).

KELLER ROHRBACK L.L.P.
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Bar & Court Admissions

1973, New York

1973, U.S. District Court for the Eastern District of New York

1974, U.S. District Court for the Southern District of New York

1974, U.S. Court of Appeals for the Second Circuit

1976, United States Supreme Court

1991, U.S. District Court for the Western District of New York

1993, U.S. Court of Appeals for the Ninth Circuit

1995, U.S. District Court for the Northern District of New York

2001, U.S. Court of Appeals for the District of Columbia Circuit

2006, U.S. Court of Appeals for the Seventh Circuit

2010, U.S. Court of Appeals for the Fourth Circuit

Publications & Presentations

Mr. Preminger regularly speaks at conferences on ERISA and employee benefits litigation and lectures at New York University School of Law, Saint John's University School of Law, and Rutgers University, and has testified before Congress on proposed amendments to ERISA and participated in New York State Attorney General's hearings on protection of pension benefits.

Senior Editor, *Employee Benefits Law* (BNA), Chapter 10, *Fiduciary Responsibility* (Chapter or Senior Editor, 1998 – present).

Preminger & Clancy, *Aspects of Federal Jurisdiction Under Sections 301(c)(5) and 302(e) of The Taft-Hartley Act – The "Sole and Exclusive Benefit Requirement,"* 4 Tex. S. U. L. Rev. 1 (1976).

David S. Preminger, E. Judson Jennings & John Alexander, *What Do You Get With the Gold Watch? An Analysis of the Employee Retirement Income Security Act of 1974*, 17 Ariz. L. Rev. 426 (1975).

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Practice Emphasis

- Appeals
- Class Actions
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services

Education

Gonzaga University - B.A., *cum laude*, 1992, French & History

University of Wisconsin Law School - J.D., *cum laude*, 2000, *Wisconsin Law Review*

Erin Riley

"A good case begins by listening closely to clients to carefully assess their legal needs."

Erin Riley knows that strong relationships are key in complex cases. Erin joined Keller Rohrback's complex litigation group in 2000. Since the Fall of 2001, her practice has focused on representing employees and retirees in ERISA actions involving defined contribution, defined benefit, and health benefit plans. She has successfully litigated a number of ERISA breach of fiduciary duty cases including cases filed against Washington Mutual, Merrill Lynch and WorldCom. She has worked on ERISA-related articles and amicus briefs, and has spoken at ERISA-related conferences. Erin is the Plaintiffs' Co-Chair of the Civil Procedure Subcommittee for the ABA Employee Benefits Committee. She earned her J.D. from the University of Wisconsin, where she served as an editor of the Wisconsin Law Review. She received her undergraduate degree from Gonzaga University.

Professional & Civic Involvement

Wisconsin State Bar Association, *Member*

King County Bar Association, *Member*

Washington State Bar Association, *Member*

Civil Procedure Sub-Committee for the ABA Employee Benefits Committee, *Plaintiffs' Co-Chair*

Bar & Court Admissions

2000, Wisconsin

2000, Washington

2001, U.S. District Court for the Western District of Washington

2010, U.S. Court of Appeals for the Fourth Circuit

2011, U.S. Court of Appeals for the Second Circuit

2011, U.S. Court of Appeals for the Ninth Circuit

Honors & Awards

Selected to Rising Stars list in *Super Lawyers - Washington*, 2009

KELLER ROHRBACK L.L.P.
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Publications & Presentations

Chapter Editor, Employee Benefits Law (BNA), Chapter 12, *Civil Procedure*

Lynn L. Sarko, Erin M. Riley, and Gretchen S. Obrist, *Brief for Law Professors as Amici Curiae in Support of the Petitioners, Tibble, et al. v. Edison International, et al. ,* No. 13-550 (U.S.2014).

Erin M. Riley and Gretchen S. Obrist, Contributors,"Attorneys Reflect on 40 Years of ERISA's Biggest Court Rulings" Pension & Benefits Daily, Bloomberg BNA, *discussing CIGNA Corp. v. Amara*, 131 S.Ct. 1866, 50 EBC 2569 (U.S. 2011) (95 PBD, 5/17/11; 38 BPR 990, 5/24/11) (http://www.bna.com)

Erin M. Riley and Gretchen S. Obrist, "The Impact of Fifth Third Bancorp v. Dudenhoeffer: Finally, a Court Gets it Right!" *Pension & Benefits Daily*, Bloomberg BNA (154 PBD, 8/11/2014; 41 BPR 1658, 8/12/2014) (http://www.bna.com)

Lynn L. Sarko and Erin M. Riley, *Brief for Law Professors as Amici Curiae in Support of the Respondents, Fifth Third Bancorp v. Dudenhoeffer ,* No. 12-751 (U.S. March 5, 2014).

Erin M. Riley, E*rin M. Riley Explores the Pro-Plaintiff Aspects of the Citigroup Ruling ,* ERISA Litigation Tracker: Litigator Q&A, Bloomberg BNA (Dec. 1, 2011). Reproduced with permission from ERISA Litigation Tracker Litigator Q & A (Dec. 5, 2011). Copyright 2011 by The Bureau of National Affairs, Inc. (800-372-1033)

Sarah H. Kimberly, Erin M. Riley, *Court Declines to Limit Damages in Neil v. Zell* , ABA Employee Benefits Committee Newsletter (Spring, 2011).

Derek W. Loeser, Erin M. Riley and Benjamin Gould, *2010 ERISA Employer Stock Cases: The Good, the Bad, and the In-Between Plaintiffs' Perspective ,* Bureau of National Affairs, Inc. (Jan. 28, 2011).

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kswope@kellerrohrback.com

Practice Emphasis

- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Employment Law
- Fiduciary Breach
- Intellectual Property
- Securities

Education

Amherst College – B.A., *magna cum laude*, 1987; Phi Beta Kappa.

Columbia Law School - J.D., 1993, Harlan Fiske Stone Scholar; Executive Articles Editor, *Columbia Human Rights Law Review*; Paul Bernstein Scholarship Recipient.

Honors & Awards

Selected to Rising Stars list in *Super Lawyers - Washington*, 2006

Karin Swope

Karin Swope is focused on client success. As a member of the firm's nationally recognized Complex Litigation Group, Karin practices intellectual property litigation and counseling, consumer protection and ERISA law, and business litigation, with a particular emphasis in federal court litigation. Karin has been in practice for 20 years, representing a variety of clients in matters involving trademark and copyright litigation as well as misappropriation of trade secrets, unfair business practices, employment, and business litigation.

Following her graduation from Columbia Law School, Karin served as a law clerk to the Honorable John C. Coughenour in the U.S. District Court for the Western District of Washington, and as a law clerk to the Honorable Robert E. Cowen of the U.S. Court of Appeals, Third Circuit. She has been an Adjunct Professor of Intellectual Property Law at Seattle University School of Law since 2008.

Bar & Court Admissions

1994, Washington

1997, U.S. District Court for the Western District of Washington

1997, U.S. Court of Appeals for the Ninth Circuit

2006, U.S. District Court for the Northern District of California

2006, U.S. District Court for the Central District of California

2007, U.S. Court of Appeals for the Second Circuit

2009, Western District of Tennessee

2010, U.S. Court of Appeals for the Eleventh Circuit

2010, U.S. Supreme Court

Professional & Civic Involvement

Adjunct Professor, Seattle University School of Law, Intellectual Property Law

National Employment Lawyers Association, *ERISA Amicus Committee Member* and *Amicus Brief Writer*

ABA Tort, Trial and Insurance Law Journal, *Associate Editor*

Washington State Bar Association, *Member*

American Bar Association, *Member*, Tort Trial & Insurance Practice and Intellectual Property sections

King County Bar Association, *Member*, Intellectual Property section

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Publications & Presentations

Speaker, Federal Court Practice Bootcamp, 2011 - 2014.

Speaker, National Employment Lawyers Association Annual Convention, Atlanta, GA, *ERISA Hot Topics*, 2008.

Co-Chair and Speaker, WSBA CLE, *IP For the Rest of Us*, 2007-2009.

Speaker, WSBA CLE, 11th Annual Intellectual Property Institute, *The Year in Trademark Law*, 2006.

Speaker, King County Bar Association CLE, *Electronic Discovery*, 2006.

Speaker, WSBA CLE, *Hot Trends in Intellectual Property Damages*, 2005.

Karin B. Swope, 5K2.0 Departures: *A Backdoor out of the Federal Sentencing Guidelines*, 24 Colum. Hum. Rts. L. Rev. 135 (1993).

KELLER ROHRBACK L.L.P.
LAW OFFICES

1129 State Street, Suite 8
Santa Barbara, CA 93101
(805) 456-1496
hunrein@kellerrohrback.com

Practice Emphasis

- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Environmental Contamination
- Fiduciary Breach
- Financial Products and Services
- Mass Personal Injury
- Securities
- Whistleblower

Havila Unrein

"I honor my clients' courage by trying to bring about results that balance the scales of power."

Havila Unrein gives her clients a voice in the legal system. Havila practices in Keller Rohrback's nationally recognized Complex Litigation Group, where she is dedicated to helping clients who have been harmed by others engaged in fraud, cutting corners, and abuses of power.

Havila made significant contributions to H*artman et al. v. Ivy Asset Management et al.*, a case involving fiduciary breach related to Madoff investments that resulted in a $219 million settlement with consolidated cases. She currently represents plaintiffs in multiple cases alleging violations of the Employee Retirement Income Security Act of 1974 ("ERISA") by healthcare institutions attempting to claim exempt "church plan" status under ERISA.

During law school, Havila provided tax and business advice to low-income entrepreneurs and high-tech start-ups as a student in the Entrepreneurial Law Clinic. She also served as an extern to the Honorable Stephanie Joannides of the Anchorage Superior Court. Prior to law school, Havila worked and studied abroad in Russia, Azerbaijan, and the Czech Republic.

Education

Dartmouth College - B.A., *magna cum laude*, 2003, Russian Area Studies

University of Washington School of Law - J.D./LL.M. (Tax), *with honors*, 2008

Bar & Court Admissions

1999, Washington

2000, U.S. District Court for the Western District of Washington

2008, U.S. Court of Appeals for the Eighth Circuit

2009, U.S. Court of Appeals for the Ninth Circuit

2009, U.S. Supreme Court

Professional & Civic Involvement

California State Bar Association, *Member*

Santa Barbara County Bar Association, *Member*

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Montana State Bar Association, *Member*

KELLER ROHRBACK L.L.P.
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mwetherald@kellerrohrback.com

Practice Emphasis

- Class Actions
- Employee Benefits and Retirement Security
- Environmental Contamination
- Fiduciary Breach
- Financial Products and Services
- Institutional Investors
- Insurance Coverage Analysis and Litigation

Education

Mount Holyoke College - B.A., *cum laude*, 1980, Politics and International Relations; Phi Beta Kappa

Cornell University Law School - J.D., 1983

Bar & Court Admissions

1983, Washington

1985, U.S. District Court for the Eastern District of Washington

1985, U.S. District Court for the Western District of Washington

1986, U.S. Court of Appeals for the Ninth Circuit

1988, U.S. Supreme Court

2003, Oregon

Margaret Wetherald

"I take client relationships seriously and do whatever it takes to meet my clients' goals."

Margaret Wetherald finds solutions. Margie is adept at project management, providing organization and structure to complex projects. As a partner practicing in the firm's Complex Litigation Group, she strives to peel apart layers of legal analysis and factual nuance to get to the heart of the decisive issues in a case. Margie has over 28 years of experience in insurance coverage and bad faith analysis and litigation, with successes including a $44 million dollar settlement in *Jerry Cooper, Inc. v. Lifequotes of America, Inc.* She currently provides in-house insurance coverage consulting services to the firm.

Margie's practice also includes ERISA class action litigation on behalf of retirement and pension plan participants, particularly involving financial fraud. She has also handled mass tort litigation involving drug, chemical and disease exposure. She taught for two years at the Columbus School of Law in Washington, D.C. and practiced there before moving to the Northwest.

Professional & Civic Involvement

King County Bar Association, *Member*

Washington State Bar Association, *Member*

Northwest Environmental Claims Association, *Founding Member and Past Chair*

Woodland Park Zoological Society, *Board Member*

Washington State Trial Lawyers Association, *Member*

New Beginnings, *Past Board Member and Board President*

American Bar Association, *Member*; *Past Vice-Chair* Insurance Coverage Subcommittee of the Tort and Insurance Practice Section

Honors & Awards

Selected to the Super Lawyer list by *Super Lawyers - Washington*, 2000-2011

Publications & Presentations

Margaret E. Wetherald & C. Tompkins, *A Primer on the Use of Experts in the Defense of Third Party Toxic Tort Litigation*, Pollution Liability, American Bar Association Tort and Insurance Practice Section and Bureau of National Affairs, National Institute on Pollution Liability.

Margaret E. Wetherald & Jeffrey Grant, *When Actions of the Insured Excuse the Carrier's Duty to Defend and to Pay*, Insurance Law, Washington State Trial Lawyers Association (1988).

Margaret E. Wetherald & Jeffrey Grant, *Attorney-Client and Work Product Privileges and the Relationship Between Insurer and Insured in the Context of Hazardous Waste/ Toxic Litigation*, ABA Monograph (May 1989; rev. 1996, 2004).

Margaret E. Wetherald, Washington *Underground Storage Tank Regulations*, ABA Monograph (1991).

Digest of Washington Environmental Coverage Law, 1997.

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awilliams-derry@kellerrohrback.com

Practice Emphasis

- Class Actions
- Consumer Protection
- Environmental Contamination
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Institutional Investors
- Securities
- Whistleblower

Education

Brown University - B.A., *with honors*, 1993, Sociology

University of Virginia School of Law - J.D., 1998; Editor-in-Chief, *Virginia Environmental Law Journal*, 1997-1998

Bar & Court Admissions

1998, Washington

1998, U.S. District Court for the Western District of Washington

1998, U.S. District Court for the Eastern District of Washington

1999, U.S. Court of Appeals for the Ninth Circuit

2007, U.S. District Court for the Eastern District of Michigan

2007, U.S. Court of Appeals for the Second Circuit

Amy Williams-Derry

"I position my cases for success by taking steps to move them forward every day."

Amy Williams-Derry sees the big picture. As a member of the firm's nationally recognized Complex Litigation Group, Amy has a national practice litigating complex securities, ERISA, and consumer protection cases, with a focus on mortgage-backed securities and prudent investment management. She is skilled at strategizing in the context of large cases with multiple parties and issues and thinking creatively to find resolution.

Amy has experience litigating in state and federal courts at both the trial and appellate levels and has represented clients in mediation and arbitration settings, including before the National Labor Relations Board, National Association of Securities Dealers, and the New York Stock Exchange. She has also represented clients in proceedings involving the U.S. Department of Justice. Her current representative cases include *Federal Home Loan Bank of Boston v. Ally Financial, Inc., et al.* (D. Mass.), and *Federal Home Loan Bank of Chicago v. Banc of America Funding Corporation, et al.* (Cook Cty., Ill.), involving litigation by the Federal Home Loan Banks against dozens of issuers, underwriters, and sponsors of private label mortgage-backed securities worth $13 billion.

Prior to joining Keller Rohrback, Amy practiced commercial litigation and was a fellow with Earthjustice, where she was involved in natural resources litigation..

Professional & Civic Involvement

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

Lake City Legal Clinic, *Volunteer Attorney*, 1999-2001

Independent Employment Services, *Board of Directors*, 2000-2001

WithinReach, *Board of Directors*, 2006-2009

The Evergreen School, *Annual Giving Co-Chair*, 2012-2013

Washington Women Lawyers, *Member*

King County Washington Women Lawyers, *Member*

Publications & Presentations

Amy Williams-Derry, *No Surprises After Winstar: Contractual Certainty and Habitat Conservation Planning Under the Endangered Species Act*, 17 Va. Envtl. L.J. 357 (1998).

Speaker, American Law Institute-American Bar Association ERISA Conference, Employer stock cases and cash balance plans, 2008.

Presenter, Washington State Bar Association, Employment Benefits CLE, *Hot Topics in ERISA Class Action Litigation*, 2010.

Honors & Awards

Selected to Rising Stars list in *Super Lawyers - Washington*, 2003-2009

EXHIBIT B

In re Bank of New York Mellon Corp. Forex Transactions Litigation

FIRM NAME: Keller Rohrback L.L.P.

REPORTING PERIOD: Inception through May 31, 2015

Categories:

(1) Investigation, Factual Research
(2) Plaintiffs' Document Review
(3) Defendants' and Third Party Document Review
(4) Discovery
(5) Deposition
(6) Pleadings, Briefs, Class Certification, and Legal Research
(7) Court Appearances
(8) Litigation Strategy and Case Management
(9) Mediation and Settlement
(10) Experts

Status:

(A) Associate
(CA) Contract Attorney
(OC) Of Counsel
(P) Partner
(SA) Staff Attorney
(I) Investigator
(PL) Paralegal
(PS) Professional Staff

Name	Status	1	2	3	4	5	6	7	8	9	10	Rate	Cumulative Hours	Cumulative Lodestar
Cari Laufenberg	P										16.40	$675	16.40	$ 11,070.00
David Preminger	P	5.10			148.20	78.40	170.10	19.60	19.20	7.80	6.00	$895	454.40	$ 406,688.00
Harry Williams	A						12.10					$525	12.10	$ 6,352.50
Ian Mensher	A						29.80					$525	29.80	$ 15,645.00
Laura Gerber	P	30.45					97.75					$675	128.20	$ 86,535.00
Lynn Sarko	P	32.30			1.00		89.80		14.60	219.60	34.90	$895	392.20	$ 351,019.00
Margie Wetherald	P	18.30		5.60	218.10	313.30	544.80		60.80	104.60	52.80	$750	1,318.30	$ 988,725.00
Susan Kim	A						31.10					$475	31.10	$ 14,772.50
T. David Copley	P	59.60			170.10	162.30	613.30	22.00	93.50	78.60	14.70	$750	1,214.10	$ 910,575.00
SUBTOTAL ATTORNEYS		**145.75**	**0**	**5.60**	**537.40**	**554.00**	**1,588.75**	**41.60**	**188.10**	**410.60**	**124.80**		**3,596.60**	**$ 2,791,382.00**
PROFESSIONAL STAFF														
A.J. de Vries	PL			15.80								$245	15.80	$ 3,871.00
Brian Spangler	PL			0.30	16.90				1.80			$215	19.00	$ 4,085.00
Debbie Beeler	PL			19.80		39.30	27.10					$225	86.20	$ 19,395.00
Erica Knerr	PL				8.80	2.50	13.00		12.20			$215	36.50	$ 7,847.50
Jason Dillman	PL	4.80								12.40		$285	17.20	$ 4,902.00
Jennifer Tuato'o	PL	66.10	0.60	89.60	21.60				0.60			$275	178.50	$ 49,087.50
John Evans	PL			12.10								$220	12.10	$ 2,662.00

Kris Sanderson	PL	0.20						13.10	21.05			$215	34.35	$ 7,385.25
Kris Bartlett	PL					10.20	1.40		15.85	0.80	3.00	$215	31.25	$ 6,718.75
Lauren Arnaud	PL			27.90								$265	27.90	$ 7,393.50
Mavis Bates	PL								11.80			$210	11.80	$ 2,478.00
Robert Rousseau	PL			110.90		26.00			46.80			$240	183.70	$ 44,088.00
Sara Lenentine	PL	7.00							10.10			$250	17.10	$ 4,275.00
Susan James	PL				94.00							$255	94.00	$ 23,970.00

SUBTOTAL PROFESSIONAL STAFF		**78.10**	**0.60**	**276.40**	**141.30**	**78.00**	**41.50**	**13.10**	**120.20**	**13.20**	**3.00**		**765.40**	**$ 188,158.50**

TOTALS		**223.85**	**0.60**	**282.00**	**678.70**	**632.00**	**1,630.25**	**54.70**	**308.30**	**423.80**	**127.80**		**4,362.00**	**$ 2,979,540.50**

EXHIBIT C

In re Bank of New York Mellon Corp. Forex Transactions Litigation
Master File No. 12-MD-2335 (LAK)
EXPENSE REPORT

FIRM NAME: KELLER ROHRBACK L.L.P.
REPORTING PERIOD: INCEPTION TO AUGUST 1, 2015

DESCRIPTION	CUMULATIVE TOTAL
External Reproduction	$548.48
Internal Reproduction/Printing	$5,514.60
Court Fees (Filing costs etc.)	$2,494.95
Court Reporters/Transcripts	$1,878.25
Computer Research	$4,151.55
Electronic Database	$136,581.68
Teleconferences/Fax	$1,569.02
Postage/Express Delivery/Messenger	$2,130.29
Experts/Consultants	$45,315.40
Witness/Service Fees	$1,696.98
Meals, Hotels and Transportation	$27,491.87
MDL Litigation Fund Contributions/Assessments	$1,620.00
TOTAL EXPENSES	**$230,993.07**

EX. 189

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	No. 12-MD-2335 (LAK) (JLC)
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3066 (LAK) (JLC)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3067 (LAK) (JLC)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3470 (LAK) (JLC)
Carver, et al. v. The Bank of New York Mellon, et al.	No. 12-CV-9248 (LAK) (JLC)
Fletcher v. The Bank of New York Mellon, et al.	No. 14-CV-5496 (LAK) (JLC)

DECLARATION OF J. BRIAN MCTIGUE IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF MCTIGUE LAW LLP

I, J. Brian McTigue, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner of the law firm, McTigue Law LLP. I submit this declaration in support of Lead Settlement Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would testify competently thereto.

2. McTigue Law LLP is located in Washington, D.C. and focuses its practice on ERISA retirement plan class actions. The Firm has litigated class actions in the Southern District

of New York and in other courts around the country. A copy of the Firm's resume is attached hereto as Exhibit A.

3. I personally rendered legal services and was responsible for coordinating and supervising the activity carried out by attorneys and professional staff at McTigue Law LLP in this Action. In its capacity as lead ERISA Plaintiffs' Counsel in *Carver v. The Bank of New York Mellon*, 12-cv-09248-LAK and *Fletcher v. The Bank of New York Mellon*, 12-cv-05496-LAK, and as co-Lead Settlement Class Counsel, McTigue Law LLP contributed to this Action and performed valuable work on behalf of and for the benefit of the Class.

McTigue Law's Efforts in This Litigation

4. The overall contributions of ERISA counsel to the litigation are summarized in the concurrently filed "Declaration of J. Brian McTigue on Behalf of ERISA Counsel and in Support of Motion for Attorneys 'Fees and Reimbursement of Expenses." Below is a summary of the work McTigue Law LLP performed and/or participated in.

5. In addition to serving as one of the Lead Settlement Class Counsel in this litigation, McTigue Law LLP also serves as co-lead ERISA counsel. The work performed by McTigue Law LLP includes the initial representation conferences with, and drafting attorney-client agreements for, all the named plaintiffs in the *Carver* and *Fletcher* actions, who collectively represent four large employee benefit plans with more than 490,000 participants and beneficiaries. In addition, the firm was one of the principal drafters of, and researched and developed the ERISA legal theories and facts employed in, the complaints in each of those actions.

6. After the actions were filed, the firm zealously litigated its clients' claims. It drafted interrogatories and document requests seeking additional information to support its

clients ERISA claims, and drafted responses to Defendants' interrogatories and document requests. After Defendants attacked the standing of some of the named plaintiffs in their motion to dismiss, the firm initiated and participated in a special jurisdictional discovery period, including drafting document requests, reviewing documents, and deposing two of Defendants' employees. The firm then drafted amended pleadings incorporating the results of jurisdictional discovery. In addition, in both the *Carver* and *Fletcher* cases it drafted opposition motions to Defendants' subsequently filed motions to dismiss, as well as successfully opposing "Defendants' Emergency Motion for Pretrial Order Governing Jurisdictional Discovery and Briefing." The firm also devoted significant amounts of time and resources to reviewing, and locating relevant ERISA evidence within, more than 25 million pages of documents.

7. McTigue Law LLP prepared for and took part in eleven merits depositions. Firm representatives also took part in the mediation process and personally attended the mediation sessions.

8. McTigue Law LLP conferred with an expert consultant who assisted in developing a strategy for making loss estimates for ERISA class members. McTigue Law LLP also participated with co-counsel in reviewing and filing two expert reports on ERISA issues, and reviewing and analyzing the other expert reports filed by defendants and other plaintiffs in this case.

9. In its role as co-Lead Settlement Counsel, the firm has reviewed and revised all settlement documents, filings, and agreements, including all agreements with settlement service providers such as settlement administrators and escrow agents. It has also participated in numerous telephone conferences with co-Lead Settlement Counsel and with the escrow agents.

Billing and Lodestar Details

10. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by attorneys and staff at McTigue Law LLP in this Action ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit B hereto. This chart (i) identifies the names and positions (*i.e.*, titles) of the firm's Timekeepers who undertook litigation activities in connection with the Action and who expended 10 hours or more on the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through June 30, 2015; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of the work by each Timekeeper and the entire firm.[1] For Timekeepers who are no longer employed by the Firm, the hourly rate used is the billing rate in his or her final year of employment by the Firm. The Firm's billing records, which are regularly prepared from contemporaneous daily time records, are available at the request of the Court. Time expended in preparing any papers for this motion for fees and reimbursement of expenses has not been included in this request. Additionally, time expended in preparing any papers for prior motions for reimbursement of expenses has not been included in this request.

11. The hourly rates charged by the Timekeepers are the Firm's regular rates for contingent cases and those generally charged to clients for their services in non-contingent/hourly matters.[2] Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in their respective cities by attorneys and

[1] The information concerning each Timekeeper's hours and hourly rate is not based on my personal knowledge, but on the information reported by each such Timekeeper or the files and records of McTigue Law LLP, as well as my familiarity with the work undertaken by McTigue Law LLP in the Action.

[2] On occasion and for a specific type of representation, the Firm may offer a discount on its hourly rates to longstanding clients.

paraprofessionals of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements.

12. The total number of hours expended by McTigue Law LLP on this Action, from investigation through June 30, 2015, is 5,503.35. The total lodestar for the Firm is $2,784,375.73, consisting of $2,381,348.13 for attorney time and $403,027.60 for professional support staff time.

13. In my judgment, the number of hours expended and the services performed by the attorneys and staff at McTigue Law LLP were reasonable and expended for the benefit of the Settlement Class in this Action.

14. McTigue Law LLP's lodestar figures are based on the Firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the Firm's billing rates.

15. As set forth in Exhibit C, McTigue Law LLP has incurred a total of $142,864.22 in unreimbursed expenses in connection with this Action from inception to August 1, 2015. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.

16. These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of McTigue Law's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

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

Executed this 14th day of August, 2015 in Washington, DC.

J. Brian McTigue

Exhibit A

MCTIGUE LAW LLP
4530 Wisconsin Ave, NW
Suite 300
Washington, DC 20016

McTigue Law LLP represents participants in traditional pension plans, 401(k) salary deferral plans, savings plans, and Employee Stock Ownership Plans (ESOPs). The firm confines itself to the litigation of complex class actions, the majority of which are brought under the federal Employee Retirement Income Security Act (ERISA). We represent and protect employees in pension plans when those plans have lost assets because the employer-fiduciaries, trustees and investment managers fail to meet their obligations under ERISA.

We are likely the first law firm, years before the Enron, WorldCom, and Global Crossing scandals, to recognize the need for lawyers focused on litigation to protect plan participants against the growing risks of imprudently-invested 401(k) plans. Participants in these plans directly bear the investment risks of plan investments.

The Firm's representative cases include the following in which the firm served as lead or co-lead class counsel and secured multimillion dollar awards for ERISA plans and their participants:

- *Figas v. Wells Fargo & Co.* (Wells Fargo ERISA Litig.), No. 08-04546 (D. Minn.). This litigation involved allegations of breaches of ERISA fiduciary duties and prohibited transactions where defendants invested retirement plan savings in proprietary mutual funds with high fees and poor performance. A $17.5 million award was recovered for the plan.

- *Ellen Stoody Broser v. Bank of America, et al*., 08-cv-2705-JSW, This case involved allegations that Bank of America breached its fiduciary duties as trustee of thousands of small, family trusts by imprudently choosing to uniformly place trust assets in its own high-fee proprietary mutual funds.

- *Presley v. CHH, et al.*, 97-cv-04316 (SC) (N.D. Cal.) (bankrupt plan sponsor). CHH, was the Los Angeles holding company for the Broadway, Emporium, Capwells, and Weinstocks department stores, with more than 24,000 employees in its 401(k) plan. More than half of the plan's assets were invested in CHH stock when the chain filed for bankruptcy. Nearly $39 million was recovered for the plan from defendants.

- *Blyler v. Agee, et al.,* CV97-0332-(BLW) (D. Idaho) (bankrupt plan sponsor). This litigation involved pension plans with 8,000 employees sponsored by Morrison Knudsen Corporation which declared bankruptcy in 1996.

- *Koch v. Dwyer, et al.*, 98-cv-5519 (RPP) (S.D.N.Y.) (bankrupt plan sponsor). This litigation involved JWP, Inc., a S&P 500 company that declared bankruptcy. A $6.4 million settlement was reached in 2002 on behalf of JWP's pension plan.

- *In re CMS Energy ERISA Litig.*, 02-cv-72834 (GCS) (E.D. Mich.). This litigation, on behalf of more than 10,000 pension plan participants, involves a former Detroit based utility. A $28 million settlement was reached in this litigation.

- *In Re McKesson HBOC, Inc. ERISA Litig.*, C 00-20030 (RMW) (N.D. Cal.). Plan with 8,000 participants. $23 million settlement.

- *Sherrill v. Federal Mogul Corp. Ret. Programs Committee, et al.,* 04072949 (E.D. Mich.) (plan sponsor bankruptcy with asbestos liability). Plan with 12,000 participants. $12.75 million settlement.

Overall, the firm has prosecuted cases on behalf of hundreds of thousands of plan participants recovering more than $150 million. Many lawsuits involved allegations of fiduciary breaches with respect to a pension plan sponsored by a S&P 500 or similar company.

The firm currently litigates numerous other cases throughout the United States on behalf of thousands of other pension plan participants, in both public and private sector plans, who have lost retirement assets due to a trustee's or fiduciary's breach of fiduciary duty. These cases include the following ERISA actions:

- *Henriquez v. State Street Bank and Trust Company et al*, (DMA), Case No. 1:11-cv-12049-MLW: Alleging breaches of fiduciary duty related to defendants' pricing and execution of foreign exchange transactions for funds invested in by plan participants.

- *Leber v. CitiGroup*, 07-09329 (S.D.N.Y.): Alleging breaches of fiduciary duty where defendants invested retirement plan savings in proprietary mutual funds with high fees and poor performance.

- *Brown v. Suntrust Banks, Inc., et al.*, 14-029565 (N.D. Ga.): Alleging breaches of fiduciary duty where defendants invested retirement plan savings in proprietary mutual funds with high fees and poor performance.

The Defendants in these cases include fiduciaries and administrators of 401(k) Plans, corporate boards which appointed and failed to monitor the fiduciaries and administrators. The lawsuits allege a variety of federal pension law violations, including that fiduciaries of these pension plans failed to perform fiduciary duties to the funds and their pension plan members as required by federal law, participated in others breaches of fiduciary duty, and engaged in prohibited transactions, involving conflicts-of-interest, under federal pension law.

The events beginning in late 2001 and the first half of 2002, including the financial collapse and bankruptcy filings by ENRON, WorldCom, and Global Crossing confirmed the risks that participants in defined contribution pension plans are exposed to because of large portfolios of Company Stock. The nature of this risk to 401(k) plan participants was brought to

the attention of the United States Department of Labor in 1997 by Mr. McTigue when he was invited to testify before the Department's pension fund Advisory Council.

PRINCIPAL ATTORNEYS

J. Brian McTigue

Mr. McTigue founded McTigue Law LLP. Prior to private practice, Mr. McTigue was counsel to committees of the United States House of Representatives and Senate. His legislative work included investigations and legislation pertaining to federal pension law and pension fund investment.

As a Senate Legal Counsel for Special Projects, Mr. McTigue was responsible 1996 for initiating the first legislative proposal to reduce the percentage of sponsoring corporation stock permitted in the portfolios of 401(k) and similar defined contribution pension plans. The bill represented the first congressional recognition of problems with the typical pension plan of the baby boom generation. Although opposed by many employers and employer groups, several of the concepts embodied in the bill became law. Since, then, Mr. McTigue has assisted congressional offices with draft legislation which would give ERISA fiduciary breach claims greater protection when companies sponsoring plans file for bankruptcy.

Mr. McTigue's congressional investigation of Michael Milken, Drexel Burnham Lambert and the junk bond market was a basis for *FDIC v. Milken*, *et al*. brought by the Federal Deposit Insurance Corporation and settled for $1.3 billion. His congressional investigations of the funding of pension plans through annuities issued by the California-based Executive Life Insurance Company identified issues giving rise, when Executive Life later became insolvent several years later, to a plethora of private class actions and United States Department of Labor litigation alleging violations of federal pension law, the Labor Department's adoption of new fiduciary standards for pension plan termination annuities, and to the passage of the Pension Annuitants Protection Act.

Prior to his legislative work, Mr. McTigue was an investigative reporter and television news producer for ABC and NBC News. Before working in television he reported from Europe and Africa. His investigative reporting has been awarded Emmys and a George Polk Award.

Mr. McTigue is a graduate of Notre Dame and the Golden Gate University Law School, San Francisco, California. Mr. McTigue is a member of the District of Columbia Bar and the State Bar of California. He is also a member of the Bars of the United States District Courts for the District of Columbia, Northern District of California, and the Eastern District of Michigan.

Mr. McTigue is from Fort Dodge, Iowa.

MCTIGUE LAW LLP

James A. Moore

Mr. Moore is a senior litigation partner with nearly two decades of experience in class action cases in federal and state courts, including, in particular, ERISA retirement plan, health benefit, insurance, and consumer fraud cases. He is regularly quoted in news articles on cutting-edge ERISA litigation issues.

Mr. Moore has played a major role in securing multimillion dollar awards for 401(k) and pension plan participants in numerous cases, including *Figas v. Wells Fargo & Co.*, No. 08-04546 (D. Minn.); *Dickerson v. Feldman* (Solutia Corp. ERISA Litig.), No. 1:04-CIV-07935 (S.D.N.Y.); *In re RCN Corp. ERISA Litig.,* No. 04-5068 (D.N.J.); *Koch v. Dwyer* (EMCOR Corp. ERISA Litig.), No. 98CIV5519 (S.D.N.Y.); and *Blyler v. Agee* (Morrison Knudsen Corp. ERISA Litig.), No. 97-00332 (D. Idaho).

Mr. Moore is a 1994 graduate of the University of Michigan Law School, where he served as an Associate and Article editor for the *Michigan Journal of International Law*. He is admitted to practice in the District of Columbia, Pennsylvania, the United States District Court for the District of Columbia, the U.S. Court of Appeals for the Second Circuit, the U.S. Court of Appeals for the Fourth Circuit, and the U.S. Court of Appeals for the Eleventh Circuit. He serves on the Board of Directors of the Maryland Ornithological Society, and is chair of its investment committee.

Prior to his law career, Mr. Moore earned a Ph.D. in philosophy from the University of Pittsburgh. The Pitt philosophy department has been ranked among the top five in the country. He was awarded the prestigious Mellon Pre-Doctoral Fellowship in his first year of study, and was awarded a Teaching Fellowship to teach logic and philosophy during the remainder of his studies. He earned his Bachelor of Arts from Indiana University-Bloomington, graduating Phi Beta Kappa and with honors.

Prior to joining McTigue Law LLP, Mr. Moore was an attorney with Malakoff, Doyle, & Finberg, P.C., which, together with McTigue Law LLP, pioneered the pursuit of class action suits on behalf of employees who lost retirement savings due to their pension plan fiduciary's imprudent investment in their employer's stock.

Mr. Moore's publications include "Taking Legal Action to Protect Policyholders' Ownership Rights in the Wake of the Continuing Trend Toward Insurance Company Demutualization," ATLA Insurance Law Section Newsletter, Fall 2000 (co-author with Ellen M. Doyle), and publications in scholarly journals including the *Harvard International Law Journal*.

MCTIGUE LAW LLP

Regina M. Markey

Since beginning her law practice in 2001, Ms. Markey has concentrated on employment, employee benefit, and labor law. She has argued as a federal appellate advocate, developed a successful ERISA claim against a National Football League benefit plan, pursued and settled employment claims, represented a prominent environmental whistleblower, advised the U.S. Congress on public safety officer benefit legislation, and was instrumental in a class action charging the U.S. Environmental Protection Agency and its former administrator with Constitutional and statutory violations following 9/11 terrorist attacks on behalf of New York City residents, office workers, and students. Ms. Markey is admitted to practice in the District of Columbia and Pennsylvania, before the United States Court of Appeals for the District of Columbia, the U.S. District Court for the District of Columbia, the U.S. District Court in Maryland, and the U.S. Supreme Court. Ms. Markey is a member of the District of Columbia Bar Association, the American Bar Association, the AFL-CIO Lawyers Coordinating Committee, and the Metropolitan Washington Employment Lawyers Association. She graduated from the Columbus School of Law at Catholic University of America, Washington, D.C., J.D. (1992), and earned a B.A. in Economics from the University of Connecticut.

Prior to private practice, for more than a decade Ms. Markey's primary professional focus was policies to protect ERISA and public employee pension funds, during which time she advised plans, trustees, labor organizations, and financial companies on related governance and programmatic investment issues. For seven years Ms. Markey co-authored the leading labor union publication covering pension participant and investment issues, *Labor and Investments*. She analyzed domestic and foreign retirement systems, and actively promoted best practices for retirement funds through strategic advice, writing and presentations.

Ms. Markey has served as the AFL-CIO Staff Retirement Plan's representative to the Council of Institutional Investors; as an observer to the National Conference of Commissioners on Uniform State Law Drafting Committee on the Public Employee Retirement Fund Act; as a founder and coordinator of the Industrial Heartland Labor Investment Forum, a grassroots consortium examining private and public sector pension investment practices; and as an advisor in corporate shareholder accountability actions.

Ms. Markey has spoken on retirement funds and ethics before numerous groups, including the National Coalition of Public Safety Officers; the National Association of Public Pension Attorneys; the California Public Employee Retirement System Board of Trustees; the Communications Workers of America; the Connecticut Treasurer's Stakeholders Conference; the AFL-CIO; and the Super 2000 Pension Conference in Sydney, Australia. Ms. Markey was raised in Emerson, New Jersey and Ridgefield, Connecticut as one of eleven siblings.

* * *

Exhibit B

In re Bank of New York Mellon Forex Transactions Litigation, Master File No. 12-MD-2335 (LAK)
McTigue Law LLP - Hours from Inception to June 30, 2015

		Billing Categories												
Name	**Title**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**Total**	**Rate**	**Lodestar**
Attorneys														
J. Brian McTigue, Esq.	Partner	68.85	10.95	133.36	194.8	867.43	387.1		498.7	258.3	48.45	2467.90	$625.00	$1,542,439.38
James Moore, Esq.	Partner	0.33		12.33	163.8	28.48	915.9	12	180.4	14.7		1327.89	$625.00	$829,931.25
Regina Markey, Esq.	Partner						4.6		6.22	6.28		17.10	$525.00	$8,977.50
Attorney Total												3812.89		$2,381,348.13
Staff														
David T. Bond	Case Manager	70.02	31.7	472.822	11.2	429.03	8.46		19.65	1.33	2.177	1046.40	$250.00	$261,599.00
Rachel Kaplan	Law Clerk	13.68		17.39	9.45	29.43	20.79		161.6			252.34	$250.00	$63,085.00
Cinthia Razakalalao	Legal Assistant	18.15	7.266			15.733						41.15	$200.00	$8,229.60
Sarah McGuane, M.B.A	Analyst/Research	39.86		41.58		11.15			257.3		0.7	350.57	$200.00	$70,114.00
Staff Total												1690.45		$403,027.60
Firm Total												**5503.35**		**$2,784,375.73**

Key to Billing Categories:

1) Investigations and Fact Research
2) Plaintiff-side Document Review
3) Defendant/Third Party Document Review
4) Other Discovery Work – Memos, Correspondence, Meet and Confers
5) Depositions; Preparation, Document Review and Support For Same
6) Legal Research and Writing, Pleadings, Briefing.
7) Court Appearances and Prep/Follow-Up.
8) Litigation Strategy and Case Management
9) Mediation/Settlement, Settlement Administration
10) Expert Work/Consultations

Exhibit C

In re Bank of New York Mellon Corp. Forex Transactions Litigation
Master File No. 12-MD-2335 (LAK)
EXPENSE REPORT

FIRM NAME: McTigue Law LLP
REPORTING PERIOD: INCEPTION TO AUGUST 1, 2015

DESCRIPTION	CUMULATIVE TOTAL
External Reproduction	$4,104.52
Internal Reproduction/Printing (includes 77,735 pages @ $0.09/page)	$7,819.15
Court Fees (Filing costs etc.)	$800.50
Court Reporters/Transcripts	$645.25
Computer Research	
Electronic Database	$30,418.85
Teleconferences/Fax	$506.89
Postage/Express Delivery/Messenger	$990.92
Experts/Consultants	$75,394.28
Witness/Service Fees	
Meals, Hotels and Transportation	$22,065.91
Publications	$117.95
MDL Litigation Fund Contributions/Assessments	
TOTAL EXPENSES	**$142,864.22**

EX. 190

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	**No. 12-MD-2335 (LAK) (JLC)**
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	**No. 12-CV-3066 (LAK) (JLC)**
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	**No. 12-CV-3067 (LAK) (JLC)**
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	**No. 12-CV-3470 (LAK) (JLC)**
Carver, et al. v. The Bank of New York Mellon, et al.	**No. 12-CV-9248 (LAK) (JLC)**
Fletcher v. The Bank of New York Mellon, et al.	**No. 14-CV-5496 (LAK) (JLC)**

DECLARATION OF JONATHAN G. AXELROD IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF BEINS, AXELROD, P.C.

I, Jonathan G. Axelrod, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a shareholder in the law firm Beins, Axelrod, P.C., one of the ERISA counsel in this Action. I submit this declaration in support of Lead Settlement Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would testify competently thereto.

2. Beins, Axelrod, P.C. has offices in Washington, D.C. and Alexandria, Virginia. A copy of the Firm's resume is attached hereto as Exhibit A. The Firm focuses its practice on labor and employment law, including the representation of ERISA funds.

3. I personally rendered legal services and was responsible for coordinating and supervising the activity carried out by attorneys at Beins, Axelrod, P.C. in *Carver v. The Bank of New York Mellon*, 12-cv-09248-LAK and *Fletcher v. The Bank of New York Mellon*, 12-cv-05496-LAK ("Action"). In its capacity as an ERISA Plaintiffs' Counsel in the Action, Beins, Axelrod contributed to this Action and performed work on behalf of and for the benefit of the Class.

4. Through my representation of their Unions, I performed a range of services, including locating Plaintiffs L.D. Fletcher, Carl Carver, Edward Day, Deborah Jean Kenny, Lisa Parker, and Frances Greenwell-Harrell. I was instrumental in their agreeing to serve as Plaintiffs in this action. I further participated in numerous discussions concerning litigation strategy and obtained documents from the Funds in which our clients are Participants. Those documents were used by ERISA Counsel and/or were in response to Defendants' discovery requests.

5. During her employment with the Firm, Regina Markey zealously litigated the Action on behalf of our clients. Her significant contributions included:

- Reviewing Defendants' document production to identify legally significant evidence for the unique ERISA claims;
- Providing ERISA counsel continuous legal analyses of the unique ERISA issues e.g. related to federal foreign currency regulatory and statutory authority, ERISA fiduciary liability, ERISA statutes of limitations, ERISA remedies, and Constitutional standing;

- Providing ERISA counsel analyses of the foreign currency market, procedures, and pricing, and such as range of the day transactions, benchmarking transactions, illegal front-running as they occurred or likely occurred for the putative ERISA Class when custodied by Defendants;
- Preparing for and participating in numerous depositions of Defendant employees and reviewed transcripts;
- Assisting in the preparation of Plaintiffs' pleadings and submissions, including identifying and analyzing key evidence, formulating legal arguments and drafting briefs;
- Authoring the December 2014 interrogatories and requests for admissions;
- Working closely with ERISA counsel's consultant to identify facts needed to develop the ERISA claims and ERISA damages;
- Providing support during mediation; and
- Providing ongoing strategic advice generally.

6. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by attorneys at Beins, Axelrod in this Action ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit B hereto. This chart (i) identifies the names and positions (*i.e.*, titles) of the Firm's Timekeepers who undertook litigation activities in connection with the Action and who expended 10 hours or more on the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through June 30, 2015; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of the work by each Timekeeper

and the entire Firm.[1] Timekeeper Regina Markey is no longer employed by the Firm; the hourly rate used is the billing rate during her final year of employment by the Firm in contingency cases. The Firm's billing records, which are regularly prepared from contemporaneous daily time records, are available at the request of the Court. Time expended in preparing any papers for this motion for fees and reimbursement of expenses has not been included in this request. Additionally, time expended in preparing any papers for prior motions for reimbursement of expenses has not been included in this request.

7. The hourly rates charged by the Timekeepers are the Firm's regular rates for contingent cases and those generally charged to clients for their services in non-contingent/hourly matters.[2] Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in Washington, DC by attorneys of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements.

8. The total number of hours expended by Beins, Axelrod on this Action, from investigation through June 30, 2015 is 1,351.7 hours. The total lodestar for the Firm is $624,944.43 all for attorney time.

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[1]The information concerning each Timekeeper's hours and hourly rate is not based on my personal knowledge, but on the information reported by each such Timekeeper or the files and records of Beins, Axelrod, as well as my familiarity with the work undertaken by Beins, Axelrod in the Action.

[2] The Firm has charged an hourly rate of $525 in litigation involving fiduciary breach committed by a former trustee and service providers. The Firm does charge a lower rate to longstanding Fund clients in non-contingency matters and to its longstanding Union clients. The Firm has also charged reduced rates to individual employees with employment discrimination claims, in the public interest.

9. In my judgment, the number of hours expended and the services performed by the attorneys at Beins, Axelrod were reasonable and expended for the benefit of the Settlement Class in this Action.

10. Beins, Axelrod's lodestar figures are based on the Firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the Firm's billing rates.

11. As set forth in Exhibit C, Beins, Axelrod has incurred a total of $5,751.17 in unreimbursed expenses in connection with this Action from December 2011 through June 2015. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.

12. These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of the Firm's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

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

Executed this 14th day of August, 2015 in Washington, DC.

Jonathan G. Axelrod

EXHIBIT A

BEINS, AXELROD, P.C.

1625 MASSACHUSETTS AVENUE, N.W.
SUITE 500
WASHINGTON, D.C. 20036

Beins, Axelrod, P.C. was established in 1996, with the merger of the labor and employee benefits practices of two longstanding and highly regarded Washington, D.C. firms. Together, the Firm's lawyers bring more than 80 years of expertise in labor, employment and employee benefits law and litigation to the service of the Firm's clients.

The Firm's clients include unions and professional associations representing federal, state, and municipal public employees, private sector unions, benefit plans, nonprofit organizations, and individual employees in matters ranging from employment discrimination to stock options and severance to benefit plan amendment and terminations. The Firm's union clients include national and international unions as well as local unions and other subordinate bodies. The Firm litigates on behalf of its clients in federal and local trial and appellate courts, and in administrative agencies including the National Labor Relations Board, the District of Columbia Public Employee Relations Board, the Federal Labor Relations Authority, the U. S. Department of Labor and other forums.

The Firm has five types of ERISA clients. For general fund clients, the Firm provides day-to-day representation and advice on matters ranging from drafting Plan Documents and securing their approval by the Internal Revenue Service to advising trustees whose actions are questioned by plan participants or by the government. The Firm has prosecuted cases involving the collection of contributions, and the collection of withdrawal liability. The Firm has defended trustees charged with fiduciary breaches and has defended funds in benefit determination cases. Second, for other fund clients, the Firm serves solely as prosecutor in collection matters against delinquent employers. Third, the Firm has represented individual Funds in the prosecution of fiduciary breaches by former trustees and service providers. Fourth, the Firm has represented individual fund participants in the prosecution of benefit claims.

Fifth, the Firm has begun to represent funds and fund participants in class action litigation against fund service providers for fiduciary breaches. The Firm is counsel of record in the following cases on behalf of ERISA plans and their participants:

Henriquez v. State Street Bank and Trust Company et al, (D. Mass), Case No. 1:11-cv-12049-MLW: Alleging breaches of fiduciary duty related to defendants' pricing and execution of foreign exchange transactions for funds invested in by plan participants.

Carver v. The Bank of New York Mellon, Case No. 12 Civ. 9248 and *Fletcher v. The Bank of New York Mellon,* Case No. 14 Civ. 5496 (S.D. N.Y.): Alleging breaches of fiduciary duty related to defendants' pricing and execution of foreign exchange transactions for funds invested in by plan participants.

Potter v. Convergex Group LLC, Case No. 13-cv-9150 (S.D. N.Y.): Alleging breaches of fiduciary duty in brokerage services or transition management services where defendants added unauthorized and undisclosed markups and markdowns under their double-charging scheme.

Beins, Axelrod, P.C. also represents employees in class actions and individual cases alleging violations of federal and local civil rights, wage and hour, pension and other employment laws. Partner Jonathan Axelrod has served as lead counsel in the litigation and successful settlement of the following class action cases brought by employees against their employers:

Carr v. The Whitestone Group, Civil Action No. 1:09-cv-03412 (D. Md.) (breach of contract, fiduciary breach).

Brown v. Vance, Civil Action No. 1:00CV00135 (D. D.C.) (FLSA).

Abdullah v. District of Columbia, Civil Action No. 00CV01295 (D. D.C.) (FLSA).

PRINCIPAL ATTORNEYS

JONATHAN G. AXELROD

After almost three years in the Appellate Court Branch of the National Labor Relations Board, Mr. Axelrod became Assistant General Counsel of the Eastern Conference of Teamsters, where he represented Local Unions in litigation with employers. After six years with the Eastern Conference, he and Hugh Beins founded what has become Beins, Axelrod, P.C. While in private practice, Mr. Axelrod has represented labor unions in numerous district and appellate court proceedings and has argued in the Supreme Court of the United States *(Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981)). He has represented Taft-Hartley pension funds since 1991. He has published numerous articles and presented papers on a variety of issues involving labor relations. He is the author of the Duty of Fair Representation Chapter in LABOR UNION LAW AND REGULATION, published by the American Bar Association's Section of Labor and Employment Law and BNA.

Mr. Axelrod is admitted to practice in the District of Columbia and New York State and before the First through Tenth, the District of Columbia, and the Federal Circuit Courts of Appeals and the Supreme Court of the United States. He is admitted to practice before the District Courts for the District of Columbia, Maryland, and the Eastern District of Wisconsin.

Mr. Axelrod is a graduate of Dartmouth College (AB, 1968), Columbia Law School (JD 1971), and George Washington University Law Center (LLM (Labor Law), 1975).

H. DAVID KELLY, JR.

David Kelly has represented labor unions and Taft-Hartley funds for 28 years. Since joining Beins, Axelrod in 2001, he has specialized in employee benefits, labor and employment law, including the enforcement of statutory claims of employees under federal and various state laws, including the Employee Retirement Income Security Act (ERISA), and Title VII and the ADA, the FLSA and State analogues, as well as the representation of multiemployer and non-profit single employer employee benefit plans. Included among these is service as co-counsel in a number of class and/or collective actions to recover wages and/or benefits and for breach of fiduciary duty. He has appeared as counsel of record in more than a score of federal courts, and before state court judges and administrative officers in numerous jurisdictions as well as arbitrators in other proceedings. Mr. Kelly was chairman of the creditors committee in the Chapter 11 bankruptcy of American Carriers, in which a number of Taft-Hartley funds had withdrawal liability claims.

He is a member of numerous bar associations and has been a speaker at the American Bar Association's annual and regional conferences as well as at other national conferences where he presented papers on topics that arise in our practice areas. He was elected to serve on the Steering Committee of the D. C. Bar's Labor and Employment Section for a three-year term, and was selected to be one of its co-chairs.

Mr. Kelly is a graduate of the University of Michigan (BA 1983), Northeastern University School of Law (JD 1986), and Wayne State University Law School (LLM (Labor Law), 1997). He is admitted to practice in Massachusetts, Michigan, the District of Columbia, and Maryland, and is a member of the bars of the United States Supreme Court, the First Circuit Court of Appeals, and the United States District Courts in the Districts of Maryland, Massachusetts, the Eastern and Western Districts of Michigan and the District of Columbia.

JUSTIN P. KEATING

Mr. Keating graduated from the State University of New York College at Fredonia (BA. 1997) and George Washington University School of Law (JD 2000). He is admitted to practice in New York, the District of Columbia, and Virginia.

Mr. Keating practices almost exclusively in traditional labor law, collective bargaining, and employee benefits. He is admitted to and has appeared in five different U.S. District Courts and has litigated pre-trial through jury trial in several others on a pro hac vice basis. He has arbitrated about 100 collective bargaining grievance arbitrations. He has litigated several FLSA multi-plaintiff cases. While employed by the International Brotherhood of Teamsters, he was the first assistant counsel to the union in two rounds of negotiations for the largest private sector collective bargaining agreement in the country, covering over 200,000 employees. His work on collective bargaining negotiations ranges from advice to the union on strategy, legal issues on bargaining, strike/lockout preparations, health and welfare benefits, and labor cost accounting. He has taught many legal/labor law seminars to union officials in groups ranging in size from 10 to 200.

In addition to representing unions and their members, Mr. Keating served on the Gore 2000 recount team and has done voter protection legal work in 2004, 2006, 2008, and 2009.

Since 2013, Mr. Keating has been an elected member of the School Board for the City of Alexandria, Virginia. As a Board Member, he oversees a $280M budget and all policies (financial, educational, student, Human Resources, etc.) for a school system with 14,000 students and more than 2,000 employees.

REGINA M. MARKEY

Regina Markey was employed by Beins, Axelrod until becoming a partner at McTigue Law LLP in April 2015. Her biographical material is supplied in the McTigue Law material. While at Beins, Axelrod, Ms. Markey actively participated in the litigation of the *Carver* and *Fletcher* cases.

EXHIBIT B

In re Bank of New York Mellon Forex Transactions Litigation, Master File No. 12-MD-2335 (LAK)
Carver v. BNYM 1:12-cv-09248-LAK, Fletcher v. BNYM 1:14-cv-05496-LAK
Beins Axelrod, PC- Hours from Inception to June 30, 2015

		Billing Categories												
Name	**Title**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**Total**	**Rate**	**Lodestar**
Attorneys														
Jonathan G. Axelrod, Esq.	Shareholder	35.1	0	0	20.5	9.7	20.1	0	31.8	24.3	0	141.50	$525.00	$74,287.50
Regina Markey, Esq.	Of Counsel	103.64	0	59.67	95.26	252.34	404.95	0	168.59	93.82	31.97	1210.24	$455.00	$550,656.93
Firm Total														**$624,944.43**

Key to Billing Categories:

1) Investigations and Fact Research
2) Plaintiff-side Document Review
3) Defendant/Third Party Document Review
4) Other Discovery Work – Memos, Correspondence, Meet and Confers
5) Depositions; Preparation, Document Review and Support For Same
6) Legal Research and Writing, Pleadings, Briefing.
7) Court Appearances and Prep/Follow-Up.
8) Litigation Strategy and Case Management
9) Mediation/Settlement, Settlement Administration
10) Expert Work/Consultations

EXHIBIT C

In re Bank of New York Mellon Corp. Forex Transactions Litigation
Master File No. 12-MD-2335 (LAK)
Carver v. BNYM 1:12-cv-09248-LAK, Fletcher v. BNYM 1:14-cv-05496-LAK
EXPENSE REPORT

FIRM NAME: Beins Axelrod, PC
REPORTING PERIOD: INCEPTION TO JUNE 30, 2015

DESCRIPTION	CUMULATIVE TOTAL
External Reproduction	$0.00
Internal Reproduction/Printing	$203.32
Court Fees (Filing costs etc.)	$460.00
Court Reporters/Transcripts	$0.00
Computer Research	1,595.57
Electronic Database	$425.00
Teleconferences/Fax	$0.00
Postage/Express Delivery/Messenger	$181.84
Experts/Consultants	$0.00
Witness/Service Fees	$0.00
Meals, Hotels and Transportation	$2,885.44
Publications	$0.00
MDL Litigation Fund Contributions/Assessments	$0.00
TOTAL EXPENSES	**$5,751.17**

EX. 191

National Association of Legal Fee Analysis
Specializing in Attorney Fees & Legal Billing

Hourly Rate Survey Report: Donoghue Barrett & Singal Survey (Financial Fraud/Securities and/or Other Class Actions Litigation)

Introduction

The National Association of Legal Fee Analysis (NALFA) is a 501(c)(6) non-profit professional association for the legal fee analysis field. Our members provide a range of services on attorney fee and legal billing matters.

Courts and clients turn to us for expertise when attorney fees and expenses are at issue in large, complex cases. NALFA members are fully qualified attorney fee experts, special fee masters, bankruptcy fee examiners, fee dispute mediators and legal bill auditors.

NALFA conducts custom hourly rates surveys for clients such as law firms, courts, and government agencies. Our hourly rate surveys provide clients with accurate and authoritative data on prevailing hourly rates within a given jurisdiction and/or practice area(s).

There are several factors that determine reasonable, prevailing hourly rates. These quantitative variables include, but are not limited to, geography, years in practice or job title (i.e. partner/associate), practice area, and size of law firm. These four factors are known to have significant impact on hourly rates and should be considered in any custom hourly rate survey.

Survey Overview & Scope

NALFA was tasked with providing a custom hourly rate survey for Donoghue Barrett & Singal located in Boston. This survey targeted litigators practicing in financial fraud/securities and/or other class actions in Greater Boston, New York, and San Francisco. This survey was divided into two parts. The first survey targeted partners and associates. The second survey targeted staff attorneys.

Survey Process & Methodology

NALFA began the survey process by generating a list of law firms in Greater Boston, New York, and San Francisco that practiced in financial fraud/securities and/or other class actions. The law firm list included 46 law firms Greater Boston; 74 law firms in New York; and 56 law firms in San Francisco and 42 law firms from other cities. The list totaled 218 law firms. This list included law firms of all sizes and some solo practitioners.

Through proprietary methods, NALFA obtained the email addresses of partners, associates, and staff attorneys on the law firm list. NALFA later merged these emails with its overall class action email list. NALFA continued to add emails before the survey launch and during the survey. The emails totaled over 5,000.

This hourly rate survey was conducted via electronic mail. The client provided 9 survey questions to be answered. We worked with the client on the subject line, the introductory text, survey design, and question flow. NALFA updated the client on the survey progress throughout the survey run time and survey conclusion. The hourly rate survey was launched on July 14, 2017. 8 emails ran from July 14, 2017 to July 28, 2017 for both surveys. Please see the survey results for more information on email survey statistics.

Survey Conclusion

The first survey, the partner and associate survey, generated 19 responses to all 9 survey questions. That represents 171 data points. This is a threshold to start to draw survey conclusions. Also, within those 171 data sets, is even more data. For instance, one could do further analysis to find the average variance between partner and associates “quoted” hourly rates verses “actually paid” hourly rates.

The second survey, the staff attorney survey, did not generate any responses. No conclusion or findings can be reached, given the results. The survey questions may be better obtained via an interview style questionnaire of law firm office managers and/or managing partners.

EX. 192

Message

From: Rogers, Michael H. [MRogers@labaton.com]
Sent: 9/11/2015 5:01:32 PM
To: Michael Lesser [MLesser@tenlaw.com]; Chiplock, Daniel P. [/O=LCHB/OU=First Administrative Group/cn=Recipients/cn=DCHIPLOCK]
CC: Zeiss, Nicole [NZeiss@labaton.com]; Goldsmith, David [dgoldsmith@labaton.com]; Evan Hoffman [EHoffman@tenlaw.com]
Subject: RE: State Street

Mike, where are you at with the lodestar numbers? We should plan to exchange up-to-date lodestar, calculated at both current and historical rates, on Tuesday. I assume that's fine with you, Dan?

-----Original Message-----
From: Michael Lesser [mailto:MLesser@tenlaw.com]
Sent: Wednesday, September 09, 2015 3:06 PM
To: Rogers, Michael H.; Daniel P. Chiplock
Cc: Zeiss, Nicole; Goldsmith, David; Evan Hoffman
Subject: RE: State Street

We're 97% there. Evan, unfortunately, had to leave today for a somewhat emergent dental situation and he is out tomorrow with a client. As he is the captain of this project, I think the best we can do is Friday.

-----Original Message-----
From: Rogers, Michael H. [mailto:MRogers@labaton.com]
Sent: Wednesday, September 09, 2015 2:59 PM
To: Daniel P. Chiplock
Cc: Michael Lesser; Zeiss, Nicole; Goldsmith, David; Evan Hoffman
Subject: Re: State Street

Any day works for me. Mike L., where are you guys at on this?

> On Sep 9, 2015, at 2:38 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:
>
> Was it still the plan to exchange early this week? I'm on the road tomorrow.
>
> -----Original Message-----
> From: Michael Lesser [mailto:MLesser@tenlaw.com]
> Sent: Friday, September 04, 2015 11:33 AM
> To: Rogers, Michael H.
> Cc: Chiplock, Daniel P.; Zeiss, Nicole; Goldsmith, David; Evan Hoffman
> Subject: Re: State Street
>
> Yes
>
>> On Sep 4, 2015, at 11:31 AM, Rogers, Michael H. <MRogers@labaton.com> wrote:
>>
>> Great. Can we plan to exchange early next week?
>>
>> -----Original Message-----
>> From: Michael Lesser [mailto:MLesser@tenlaw.com]
>> Sent: Friday, September 04, 2015 11:31 AM
>> To: Rogers, Michael H.
>> Cc: Daniel P. Chiplock; Zeiss, Nicole; Goldsmith, David; Evan Hoffman
>> Subject: Re: State Street
>>
>> Well. Almost done through August.
>>
>>> On Sep 4, 2015, at 11:23 AM, Rogers, Michael H. <MRogers@labaton.com> wrote:
>>>
>>> We've gathered Labaton's as well.
>>>
>>> Mike - How's it going on Thornton's end?
>>>
>>> -----Original Message-----
>>> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
>>> Sent: Friday, September 04, 2015 10:02 AM
>>> To: Rogers, Michael H.

>>> Cc: Michael Lesser; Zeiss, Nicole; Goldsmith, David
>>> Subject: RE: State Street
>>>
>>> Did I lose the thread on this? I haven't seen anything further - I have LCHB's lodestar and expenses gathered through 8/31.
>>>
>>> -----Original Message-----
>>> From: Rogers, Michael H. [mailto:MRogers@labaton.com]
>>> Sent: Sunday, August 30, 2015 11:32 AM
>>> To: Chiplock, Daniel P.
>>> Cc: Michael Lesser; Zeiss, Nicole; Goldsmith, David
>>> Subject: Re: State Street
>>>
>>> Spoke briefly to Nicole. Generally speaking this needs to be part of a larger discussion. For purposes of now, no caps and all timekeepers. If we want, we can cut later and will need to figure out apples to apples.
>>>
>>>> On Aug 30, 2015, at 8:27 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:
>>>>
>>>> Do we want to cap document reviewer rates at a certain level? We probably need to pick consistent rates. In BNYM, the top document reviewer rate was $425/hour, I think. We also didn't include lodestar for timekeepers who billed less than 10 hours. Do you want to do the same here?
>>>>
>>>> Also, we need to get ERISA counsel's lodestar and expenses too, right?
>>>>
>>>> -----Original Message-----
>>>> From: Chiplock, Daniel P.
>>>> Sent: Saturday, August 29, 2015 6:56 AM
>>>> To: 'Rogers, Michael H.'; Michael Lesser
>>>> Subject: RE: State Street
>>>>
>>>> Very good idea. Will circulate ours on Monday as well (as we've done previously on request).
>>>>
>>>> -----Original Message-----
>>>> From: Rogers, Michael H. [mailto:MRogers@labaton.com]
>>>> Sent: Friday, August 28, 2015 11:24 PM
>>>> To: Michael Lesser; Chiplock, Daniel P.
>>>> Subject: State Street
>>>>
>>>> In anticipation of making a formal fee request, we should gather time and daily backup, plus expenses info. On Monday I'll get Labaton's and circulate among ourselves.
>>>>
>>>>
>>>> ***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.
>>>>
>>>>
>>>>
>>>>
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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.
>> 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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EX. 193

ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93-379
American Bar Association

BILLING FOR PROFESSIONAL FEES, DISBURSEMENTS AND OTHER EXPENSES

December 6, 1993

Consistent with the Model Rules of Professional Conduct, a lawyer must disclose to a client the basis on which the client is to be billed for both professional time and any other charges. Absent a contrary understanding, any invoice for professional services should fairly reflect the basis on which the client's charges have been determined. In matters where the client has agreed to have the fee determined with reference to the time expended by the lawyer, a lawyer may not bill more time than she actually spends on a matter, except to the extent that she rounds up to minimum time periods (such as one-quarter or one-tenth of an hour). A lawyer may not charge a client for overhead expenses generally associated with properly maintaining, staffing and equipping an office; however, the lawyer may recoup expenses reasonably incurred in connection with the client's matter for services performed in-house, such as photocopying, long distance telephone calls, computer research, special deliveries, secretarial overtime, and other similar services, so long as the charge reasonably reflects the lawyer's actual cost for the services rendered. A lawyer may not charge a client more than her disbursements for services provided by third parties like court reporters, travel agents or expert witnesses, except to the extent that the lawyer incurs costs additional to the direct cost of the third-party services.

The legal profession has dedicated a substantial amount of time and energy to developing elaborate sets of ethical guidelines for the benefit of its clients. Similarly, the profession has spent extraordinary resources on interpreting, teaching and enforcing these ethics rules. Yet, ironically, lawyers are not generally regarded by the public as particularly ethical. One major contributing factor to the discouraging public opinion of the legal profession appears to be the billing practices of some of its members.

It is a common perception that pressure on lawyers to bill a minimum number of hours and on law firms to maintain or improve profits may have led some lawyers to engage in problematic billing practices. These include charges to more than one client for the same work or the same hours, surcharges on services contracted with outside vendors, and charges beyond reasonable costs for in-house services like photocopying and computer searches. Moreover, the bases on which these charges are to be assessed often are not disclosed in advance or are disguised in cryptic invoices so that the client does not fully understand exactly what costs are being charged to him.

The Model Rules of Professional Conduct provide important principles applicable to the billing of clients, principles which, if followed, would ameliorate many of the problems noted above. The Committee has decided to address several practices that are the subject of frequent inquiry, with the goal of helping the profession adhere to its ethical obligations to its clients despite economic pressures.

The first set of practices involves billing more than one client for the same hours spent. In one illustrative situation, a lawyer finds it possible to schedule court appearances for three clients on the same day. He spends a total of four hours at the courthouse, the amount of time he would have spent on behalf of each client had it not been for the fortuitous circumstance that all three cases were scheduled on the same day. May he bill each of the three clients, who otherwise understand that they will be billed on the basis of time spent, for the four hours he spent on them collectively? In another scenario, a lawyer is flying cross-country to attend a deposition on behalf of one client, expending travel time she would ordinarily bill to that client. If she decides not to watch the movie or read her novel, but to work instead on drafting a motion for another client, may she charge both clients, each of whom agreed to hourly billing, for the time during which she was traveling on behalf of one and drafting a document on behalf of the other? A third situation involves research on a particular topic for one client that later turns out to be relevant to an inquiry from a second client. May the firm bill the second client, who agreed to be charged on the basis of time spent on his case, the same amount for the recycled work product that it charged the first client?

The second set of practices involves billing for expenses and disbursements, and is exemplified by the situation in which a firm contracts for the expert witness services of an economist at an hourly rate of $200. May the firm bill the client for the expert's time at the rate of $250 per hour? Similarly, may the firm add a surcharge to the cost of computer-assisted research if the per-minute total charged by the computer company does not include the cost of purchasing the computers or staffing their operation? The questions presented to the Committee require us to determine what constitute reasonable billing procedures; that is, what are the services and costs for which a lawyer may legitimately charge, both generally and with regard to the specific scenarios? This inquiry requires an elucidation of the Rule of Professional Conduct 1.5, [FN1] and the Model Code of Professional Responsibility DR 2-106. [FN2]

Disclosure of the Bases of the Amounts to Be Charged

At the outset of the representation the lawyer should make disclosure of the basis for the fee and any other charges to the client. This is a two-fold duty, including not only an explanation at the beginning of engagement of the basis on which fees and other charges will be billed, but also a sufficient explanation in the statement so that the client may reasonably be expected to understand what fees and other charges the client is actually being billed.

Authority for the obligation to make disclosure at the beginning of a representation is found in the interplay among a number of rules. Rule 1.5(b) provides that when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

The Comment to Rule 1.5 gives guidance on how to execute the duty to communicate the basis of the fee: In a new client-lawyer relationship ... an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that renders an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

This obligation is reinforced by reference to Model Rule 1.4(b) which provides that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

While the Comment to this Rule suggests its obvious applicability to negotiations or litigation with adverse parties, its important principle should be equally applicable to the lawyer's obligation to explain the basis on which the lawyer expects to be compensated, so the client can make one of the more important decisions "regarding the representation."

An obligation of disclosure is also supported by Model Rule 7.1, which addresses communications concerning a lawyer's services, including the basis on which fees would be charged. The rule provides: A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

It is clear under Model Rule 7.1 that in offering to perform services for prospective clients it is critical that lawyers avoid making any statements about fees that are not complete. If it is true that a lawyer when advertising for new clients must disclose, for example, that costs are the responsibility of the client, Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985), it necessarily follows that in entering

into an actual client relationship a lawyer must make fair disclosure of the basis on which fees will be assessed.

A corollary of the obligation to disclose the basis for future billing is a duty to render statements to the client that adequately apprise the client as to how that basis for billing has been applied. In an engagement in which the client has agreed to compensate the lawyer on the basis of time expended at regular hourly rates, a bill setting out no more than a total dollar figure for unidentified professional services will often be insufficient to tell the client what he or she needs to know in order to understand how the amount was determined. By the same token, billing other charges without breaking the charges down by type would not provide the client with the information the client needs to understand the basis for the charges.

Initial disclosure of the basis for the fee arrangement fosters communication that will promote the attorney-client relationship. The relationship will be similarly benefited if the statement for services explicitly reflects the basis for the charges so that the client understands how the fee bill was determined.

Professional Obligations Regarding the Reasonableness of Fees

Implicit in the Model Rules and their antecedents is the notion that the attorney-client relationship is not necessarily one of equals, that it is built on trust, and that the client is encouraged to be dependent on the lawyer, who is dealing with matters of great moment to the client. The client should only be charged a reasonable fee for the legal services performed. Rule 1.5 explicitly addresses the reasonableness of legal fees. The rule deals not only with the determination of a reasonable hourly rate, but also with total cost to the client. The Comment to the rule states, for example, that "[a] lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures." The goal should be solely to compensate the lawyer fully for time reasonably expended, an approach that if followed will not take advantage of the client.

Ethical Consideration 2-17 of the Model Code of Professional Responsibility provides a framework for balancing the interests between the lawyer and client in determining the reasonableness of a fee arrangement:

The determination of a proper fee requires consideration of the interests of both client and lawyer. A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.

The lawyer's conduct should be such as to promote the client's trust of the lawyer and of the legal profession. This means acting as the advocate for the client to the extent necessary to complete a project thoroughly. Only through careful attention to detail is the lawyer able to manage a client's case properly. An unreasonable limitation on the hours a lawyer may spend on a client should be avoided as a threat to the lawyer's ability to fulfill her obligation under Model Rule 1.1 to "provide competent representation to a client." Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation." Model Rule 1.1. Certainly either a willingness on the part of the lawyer, or a demand by the client, to circumscribe the lawyer's efforts, to compromise the lawyer's ability to be as thorough and as prepared as necessary, is not in the best interests of the client and may lead to a violation of Model Rule 1.1 if it means the lawyer is unable to provide competent representation. The Comment to Model Rule 1.2, while observing that "the scope of services provided by a lawyer may be limited by agreement," also notes that an agreement "concerning the scope of representation must accord with the Rules.... Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1...." [FN3]

On the other hand, the lawyer who has agreed to bill on the basis of hours expended does not fulfill her ethical duty if she bills the client for more time than she actually spent on the client's behalf. [FN4] In

addressing the hypothetical regarding (a) simultaneous appearance on behalf of three clients, (b) the airplane flight on behalf of one client while working on another client's matters and (c) recycled work product, it is helpful to consider these questions, not from the perspective of what a client could be forced to pay, but rather from the perspective of what the lawyer actually earned. A lawyer who spends four hours of time on behalf of three clients has not earned twelve billable hours. A lawyer, who flies for six hours for one client, while working for five hours on behalf of another, has not earned eleven billable hours. A lawyer who is able to reuse old work product has not re-earned the hours previously billed and compensated when the work product was first generated. Rather than looking to profit from the fortuity of coincidental scheduling, the desire to get work done rather than watch a movie, or the luck of being asked the identical question twice, the lawyer who has agreed to bill solely on the basis of time spent is obliged to pass the benefits of these economies on to the client. The practice of billing several clients for the same time or work product, since it results in the earning of an unreasonable fee, therefore is contrary to the mandate of the Model Rules. Model Rule 1.5.

Moreover, continuous toil on or overstaffing a project for the purpose of churning out hours is also not properly considered "earning" one's fees. One job of a lawyer is to expedite the legal process. Model Rule 3.2. Just as a lawyer is expected to discharge a matter on summary judgment if possible rather than proceed to trial, so too is the lawyer expected to complete other projects for a client efficiently. A lawyer should take as much time as is reasonably required to complete a project, and should certainly never be motivated by anything other than the best interests of the client when determining how to staff or how much time to spend on any particular project.

It goes without saying that a lawyer who has undertaken to bill on an hourly basis is never justified in charging a client for hours not actually expended. If a lawyer has agreed to charge the client on this basis and it turns out that the lawyer is particularly efficient in accomplishing a given result, it nonetheless will not be permissible to charge the client for more hours than were actually expended on the matter. When that basis for billing the client has been agreed to, the economies associated with the result must inure to the benefit of the client, not give rise to an opportunity to bill client phantom hours. This is not to say that the lawyer who agreed to hourly compensation is not free, with full disclosure, to suggest additional compensation because of a particularly efficient or outstanding result, or because the lawyer was able to reuse prior work product on the client's behalf. The point here is that fee enhancement cannot be accomplished simply by presenting the client with a statement reflecting more billable hours than were actually expended. On the other hand, if a matter turns out to be more difficult to accomplish than first anticipated and more hours are required than were originally estimated, the lawyer is fully entitled (though not required) to bill those hours unless the client agreement turned the original estimate into a cap on the fees to be charged.

Charges Other Than Professional Fees

In addition to charging clients fees for professional services, lawyers typically charge their clients for certain additional items which are often referred to variously as disbursements, out-of-pocket expenses or additional charges. Inquiries to the Committee demonstrate that the profession has encountered difficulties in conforming to the ethical standards in this area as well. The Rules provide no specific guidance on the issue of how much a lawyer may charge a client for costs incurred over and above her own fee. However, we believe that the reasonableness standard explicitly applicable to fees under Rule 1.5(a) should be applicable to these charges as well.

The Committee, in trying to sort out the issues related to these charges, has identified three different questions which must be addressed. First, which items are properly subject to additional charges? Second, to what extent, if at all, may clients be charged for more than actual out-of-pocket disbursements? Third, on what basis may clients be charged for the provision of in-house services? We shall address these one at a time.

A. General Overhead

When a client has engaged a lawyer to provide professional services for a fee (whether calculated on the

basis of the number of hours expended, a flat fee, a contingent percentage of the amount recovered or otherwise) the client would be justifiably disturbed if the lawyer submitted a bill to the client which included, beyond the professional fee, additional charges for general office overhead. In the absence of disclosure to the client in advance of the engagement to the contrary, the client should reasonably expect that the lawyer's cost in maintaining a library, securing malpractice insurance, renting of office space, purchasing utilities and the like would be subsumed within the charges the lawyer is making for professional services.

B. Disbursements

At the beginning of the engagement lawyers typically tell their clients that they will be charged for disbursements. When that term is used clients justifiably should expect that the lawyer will be passing on to the client those actual payments of funds made by the lawyer on the client's behalf. Thus, if the lawyer hires a court stenographer to transcribe a deposition, the client can reasonably expect to be billed as a disbursement the amount the lawyer pays to the court reporting service. Similarly, if the lawyer flies to Los Angeles for the client, the client can reasonably expect to be billed as a disbursement the amount of the airfare, taxicabs, meals and hotel room.

It is the view of the Committee that, in the absence of disclosure to the contrary, it would be improper if the lawyer assessed a surcharge on these disbursements over and above the amount actually incurred unless the lawyer herself incurred additional expenses beyond the actual cost of the disbursement item. In the same regard, if a lawyer receives a discounted rate from a third-party provider, it would be improper if she did not pass along the benefit of the discount to her client rather than charge the client the full rate and reserve the profit to herself. Clients quite properly could view these practices as an attempt to create additional undisclosed profit centers when the client had been told he would be billed for disbursements.

C. In-House Provision of Services

Perhaps the most difficult issue is the handling of charges to clients for the provision of in-house services. In this connection the Committee has in view charges for photocopying, computer research, on-site meals, deliveries and other similar items. Like professional fees, it seems clear that lawyers may pass on reasonable charges for these services. Thus, in the view of the Committee, the lawyer and the client may agree in advance that, for example, photocopying will be charged at $.15 per page, or messenger services will be provided at $5.00 per mile. However, the question arises what may be charged to the client, in the absence of a specific agreement to the contrary, when the client has simply been told that costs for these items will be charged to the client. We conclude that under those circumstances the lawyer is obliged to charge the client no more than the direct cost associated with the service (i.e., the actual cost of making a copy on the photocopy machine) plus a reasonable allocation of overhead expenses directly associated with the provision of the service (e.g., the salary of a photocopy machine operator).

It is not appropriate for the Committee, in addressing ethical standards, to opine on the various accounting issues as to how one calculates direct cost and what may or may not be included in allocated overhead. These are questions which properly should be reserved for our colleagues in the accounting profession. Rather, it is the responsibility of the Committee to explain the principles it draws from the mandate of Model Rule 1.5's injunction that fees be reasonable. Any reasonable calculation of direct costs as well as any reasonable allocation of related overhead should pass ethical muster. On the other hand, in the absence of an agreement to the contrary, it is impermissible for a lawyer to create an additional source of profit for the law firm beyond that which is contained in the provision of professional services themselves. The lawyer's stock in trade is the sale of legal services, not photocopy paper, tuna fish sandwiches, computer time or messenger services.

Conclusion

As the foregoing demonstrates, the subject of fees for professional services and other charges is one that is fraught with tension between the lawyer and the client. Nonetheless, if the principles outlined in this opinion are followed, the ethical resolution of these issues can be achieved.

FN1. Rule 1.5 states in relevant part:

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

FN2. DR 2-106 contains substantially the same factors listed in Rule 1.5 to determine reasonableness, but does not require that the basis of the fee be communicated to the client "preferably in writing" as Rule 1.5 does.

FN3. Beyond the scope of this opinion is the question whether a lawyer, with full disclosure to a sophisticated client of the risks involved, can agree to undertake at the request of the client only ten hours of research, when the lawyer knows that the resulting work product does not fulfill the competent representation requirement of Model Rule 1.1.

FN4. Rule 1.5 clearly contemplates that there are bases for billing clients other than the time expended. This opinion, however, only addresses issues raised when it is understood that the client will be charged on the basis of time expended.

ABA Formal Op. **93-379**
END OF DOCUMENT

EX. 194

Bradley Legal
80 Washington Square, Bld. K
Norwell MA 02061

LEGAL ENGAGEMENT AGREEMENT

This Engagement Agreement dated September 2, 2015 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 the **Commonwealth v. [redacted] Plymouth District Court Docket No. [redacted] as well as a Chemical Test Refusal Appeal through the Massachusetts Registry of Motor Vehicles.**

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.

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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 (Flat Fee)

The parties hereby acknowledge that Client will be charged a flat legal fee or **$10,000.00** total for both matters as specified under the section of this document entitled **Scope of Engagement**. Said flat legal fee is without regard to actual hours expended on the matter rather than pursuant to an hourly rate system. **Said Fee will be reduced by 25%** pursuant to Client and Attorney's relationship with A.R.A.G. (an independent insurance company).
In total, the client is responsible for $7,500.00 of which $3,750.00 was received today as a non-refundable retainer. The remaining balance will be paid, by agreement, on or before 10/13/15. Said flat legal 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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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 "flat" legal fee shall be paid in full at the commencement 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.

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.

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

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Norwell MA 02061

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: _____

[redacted]

Date: 9/2/15

EX. 195

Bradley Legal
80 Washington Square, Bld. K
Norwell MA 02061

LEGAL ENGAGEMENT AGREEMENT

This Engagement Agreement dated September 15, 2015 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 the **Commonwealth v. [redacted] Brockton District Court No. [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.

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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 (Flat Fee)

The parties hereby acknowledge that Client will be charged a flat legal fee of **$5,000.00** total for the matter as specified under the section of this document entitled Scope of Engagement. On December 28, 2015 client has paid $800.00 as a non-refundable retainer. Parties further agree that on or before February 17, 2016 client will make an additional payment of $2,000.00. The remaining balance will be paid in even installments monthly beginning on March 30, 2016. Said flat legal fee is without regard to actual hours expended on the matter, rather than pursuant to an hourly rate system. Said flat legal 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,

Bradley Legal
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.

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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 "flat" legal fee shall be paid in full at the commencement 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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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.

Bradley Legal
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.

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Bradley Legal
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: [redacted]

Date: 12/28/15

EX. 196

From: Garrett Bradley
Sent: Thursday, January 8, 2015 9:56 PM
To: Michael Lesser

what rate are we using for my brother's time in sst?

Garrett

EX. 197

From: Garrett Bradley
Sent: Thursday, January 8, 2015 10:06 PM
To: Michael
Subject: Re:

whatever it is i am sure we can bill him out higher.

Garrett

> On Jan 8, 2015, at 10:00 PM, "Michael Lesser" <MLesser@tenlaw.com> wrote:
>
> I'll check.
>
>
>> On Jan 8, 2015, at 9:55 PM, Garrett Bradley <GBradley@tenlaw.com> wrote:
>>
>> what rate are we using for my brother's time in sst?
>>
>> Garrett

EX. 198

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Case No. 11-cv-10230 MLW
- -x

ARKANSAS TEACHER RETIREMENT SYSTEM,
et al.,
Plaintiffs,

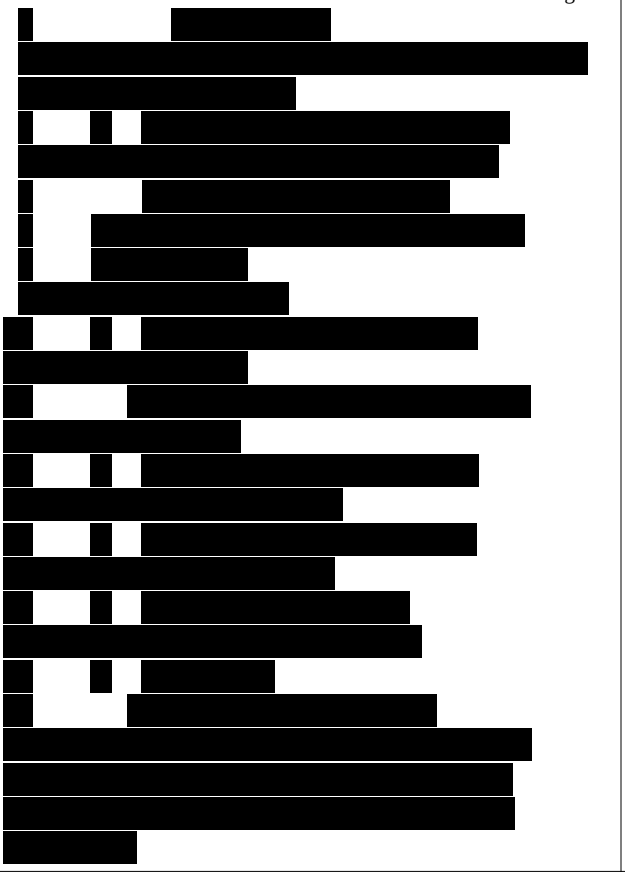
-against-

STATE STREET BANK AND TRUST COMPANY,
Defendant.
- -x
JAMS
Reference No. 1345000011
- -x
In Re: STATE STREET ATTORNEYS' FEES
- -x
July 17, 2017
4:30 p.m.

B e f o r e :

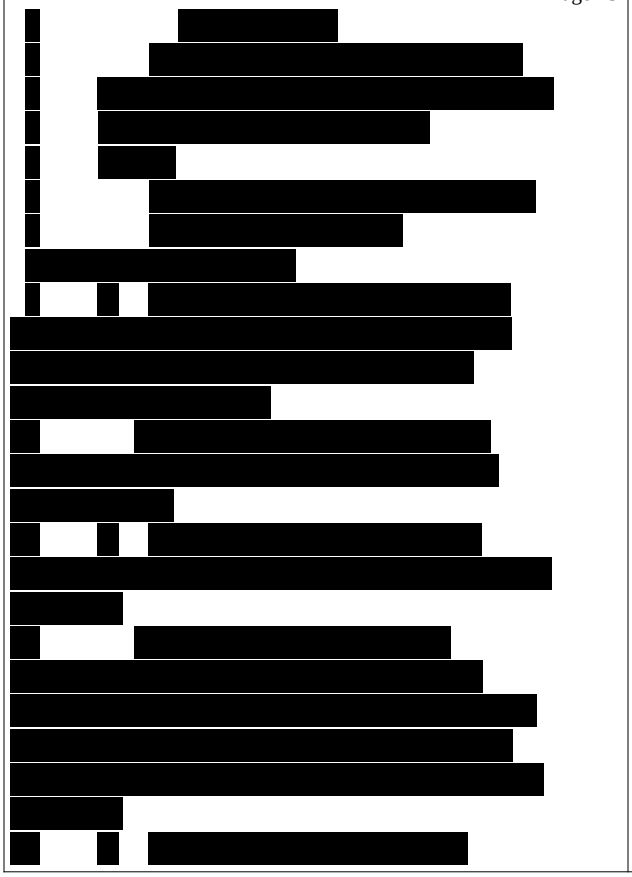
SPECIAL MASTER HON. GERALD ROSEN
United States District Court, Retired
Deposition of JAMES JOHNSON, taken
by Counsel to the Special Master, held at
the offices of JAMS, 620 Eighth Avenue, New
York, New York, before Jessica Taft, a
Registered Professional Reporter and Notary
Public.

Page 14



Page 16

Page 15



Page 17

J. JOHNSON
excellent way of describing it.
JUDGE ROSEN: But employees nonetheless of the firm?
THE WITNESS: Absolutely.
BY MR. SINNOTT:
Q But with these changes or conversions to the name staff attorney, the substantive work did not change, did it?
A Well, I think the substantive work evolved over time, if I may in answering your question. As recently as the early 2000s, we were still reviewing hard copies of documents. And there seemed to be a sea change around 2001, 2002, where document productions were increasing exponentially. And so that we were receiving millions of pages in response to document requests. And we quickly had to move over to an electronic form of reviewing documents.
Our initial way of reviewing documents was to use an outside agency who would hire the attorneys, review the documents, and send us the results.

Page 18

J. JOHNSON

What we found over the next few years is that we couldn't control the way we wanted the quality of the work or the quality of the people being hired, so we brought the people in-house.

And once they were in-house, we found that by meeting with the what are now known as the short-term attorneys reviewing documents for a specific case, they obviously had a wealth of information that could assist the associates and partners litigating the case to more effectively prosecute the case. So in that sense it grew in terms of responsibilities of the short-term attorneys.

Q Okay. The document references quote, unquote investigators. Are those attorneys?

A No, not necessarily and in most cases they are not. They are former FBI officials, police officers who are more familiar with investigative techniques.

Q So they bring a particular skill set with them. Do they also do document

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Page 19

Page 21

EX. 199

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Case No. 11-cv-10230 MLW
- -x

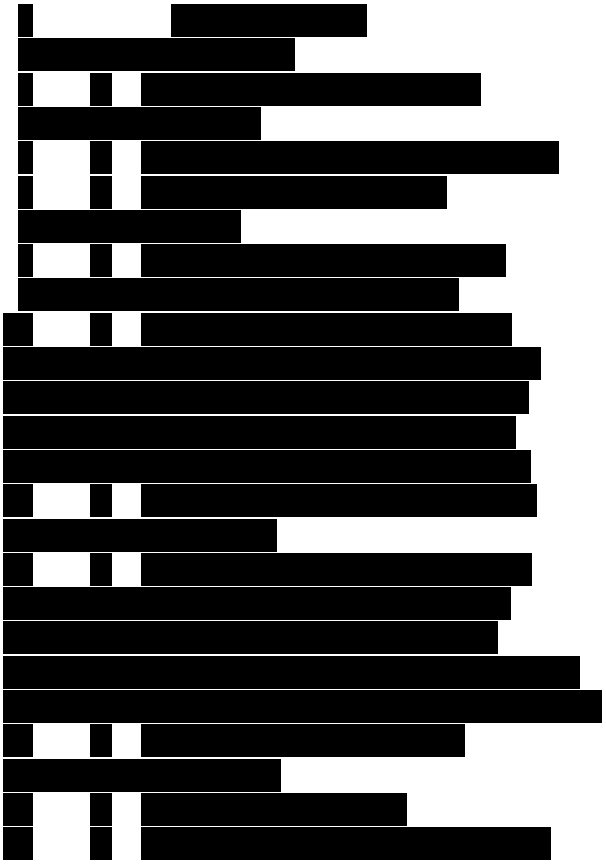
ARKANSAS TEACHER RETIREMENT SYSTEM,
et al.,
Plaintiffs,

-against-

STATE STREET BANK AND TRUST COMPANY,
Defendant.
- -x
JAMS
Reference No. 1345000011
- -x
In Re: STATE STREET ATTORNEYS' FEES
- -x
July 17, 2017
11:13 a.m.

B e f o r e :

SPECIAL MASTER HON. GERALD ROSEN
United States District Court, Retired
Deposition of HOWARD GOLDBERG, taken
by Counsel to the Special Master, held at
the offices of JAMS, 620 Eighth Avenue, New
York, New York, before Jessica Taft, a
Registered Professional Reporter and Notary
Public.

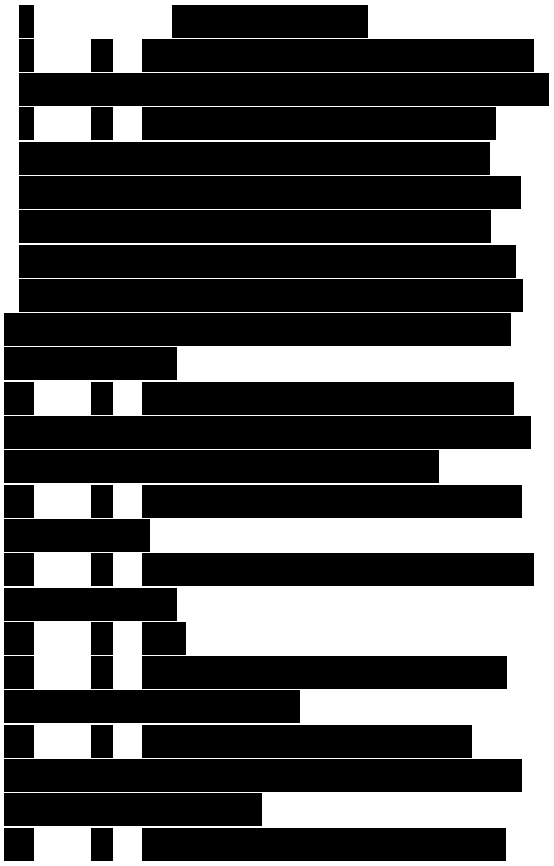


H. GOLDBERG

2016 in the State Street litigation?
A Yes.
Q Can you describe briefly for us just what types of involvement you had during that time period?
A I was asked by attorneys to give them -- I am pretty sure it was quarterly lodestar reports, which I would go into our Rainmaker software, punch in the date, get out, print out the number and just e-mail it to the attorney.
Q Did you have any other involvement in connection with that case?
A At that time, I don't believe so.
Q Towards the end of that case, were you involved in putting together a fee petition submitted to the court?
A Yes.
Q As part of that effort, did you have further involvement with the Rainmaker database?
A Well, yes. I would -- Nicole Zeiss would prepare the fee affidavit. She would ask me to print out the lodestar and

H. GOLDBERG

expense report for the time period in the case. I would then convert it to Excel through an Excelerator software package and send that off to her for her review.
Q I want to take a step back and break down that process.
You mentioned that Nicole Zeiss was in charge of preparing the fee petition?
A Yes.
Q What specifically did she ask you to do to assist her in that process?
A She asked me to -- as far as the expenses, she would ask me to, you know, put in the time period in Rainmaker for all the expenses. Then I converted it to, into Excel through Excelerator. Then she would want me to sort it by actual, you know, expense category and forward that to her so she could review it.
As far as the lodestar, I was doing the same thing. Basically, everybody who worked on the case, she wanted me to sort it by individual biller and forward that report to her for her review.



H. GOLDBERG

A No.

Q And a moment ago you I believe speculated, but you mentioned that your understanding from reading this e-mail is that there would be an exchange between accounting and Thornton, is that correct?

A Well, accounting being the people who would, who pay off other firms, pay the agreements that they made, you know, that I have no knowledge of at all.

Q Just to clarify, these types of invoicing agreements which you are speaking generally about now, were you aware of any specific agreements like that between Labaton and other firms in any case in your experience at Labaton?

A Any specific agreements, no, I am not aware of its -- again, outside of my job, so I tend to not deal with things that I don't have to deal with.

Q Who at Labaton is responsible for ensuring that the -- well, let me back up a moment.

You mentioned before you worked

H. GOLDBERG

from a database called Rainmaker, is that correct?

A Yes.

Q Did Rainmaker include hourly billing rates in the system?

A Yes.

Q Did you use those hourly billing rates when you compiled the spreadsheet that we spoke about a moment ago from Ms. Zeiss?

A Yes.

Q Did you have any involvement in setting those rates that appear in Rainmaker?

A No.

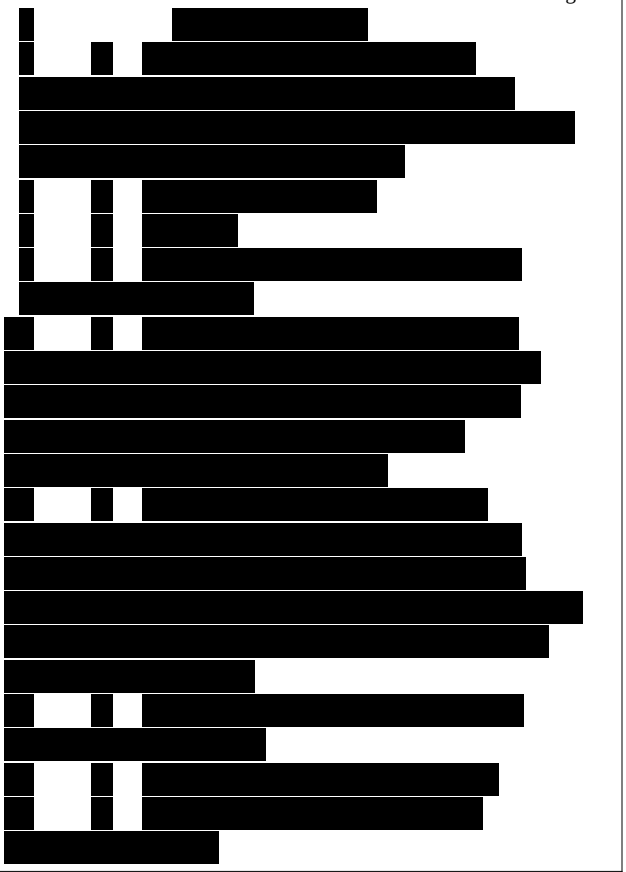
Q Who at Labaton would be responsible for inserting those rates or assigning those rates to the attorneys?

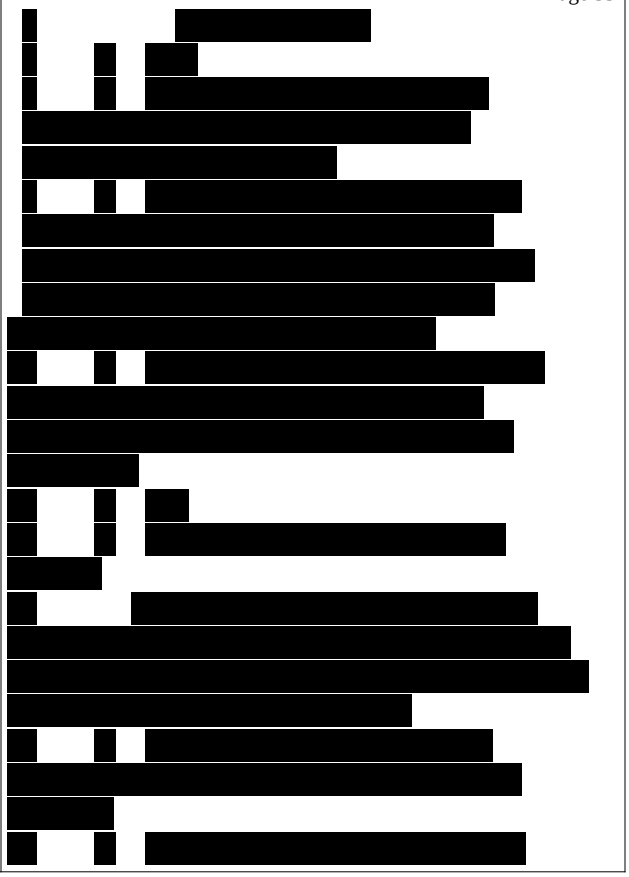
MS. LUKEY: You are talking about assigning, not putting them into the software?

MS. McEVOY: Correct, to making the connection between the attorney and the rate.

THE WITNESS: I don't know.

BY MS. McEVOY:





EX. 200

From: Michael Lesser
Sent: Monday, August 24, 2015 3:24 PM
To: Evan Hoffman
Subject: Re: STT Hours, Timeline, Mediations

Call my cell

On Aug 24, 2015, at 3:22 PM, Evan Hoffman <EHoffman@tenlaw.com> wrote:

> Here's the deal: I DO NOT have any other emails relating to a lodestar request from 2014 other than what we did in response to Goldsmith's request to have it done by "cob" on May 20th. You can see at the bottom of this email that you ask me for a bunch of stuff and I send it to you. You must have then compiled that and sent a final number to Goldsmith. I do not have that ultimate email.
>
> In any event, assuming you did not add to the entries of what I sent you back in May, 2014, the total hours calculation would have been: **1,683.9** (1004.4 hours for doc review + 679.5 for GJB, MPT, ERH, MAL hours relating to all non-doc review). I don't have a corresponding lodestar figure for this, but can do one if you want.
>
> The CURRENT calculation is:
>
> Hours: 13,324.65
>
> Lodestar: $6,344,062

From: Evan Hoffman
Sent: Wednesday, May 21, 2014 4:55 PM
To: Michael Lesser
Subject: RE: Hours for STT AR--WORK FROM THIS VERSION!!

WORK FROM THIS ONE: has a few more new entries I just located.

From: Evan Hoffman
Sent: Wednesday, May 21, 2014 4:43 PM
To: Michael Lesser
Subject: Hours for STT AR

Here is what you need to know about the chart:

- All of the hours are taken from LCHB's chart where there were mentions of discussions with either "co-counsel" "team" or, of course, Mike Lesser and/orMPT, GJB. . .**EXCEPT** those hours that have annotations next to them (mediation; memo etc…).
- Those hours are not from the LCHB chart and are based on the information I could gather from my own emails and/or files. They include historical records I took during the preparation of the

complaint and the opp to MTD, as well as recent hours relating to the ppt presentations. I am sure these are not complete. I will continue to dig through my files and emails for more.

- I have added hours for MPT and/or GBJ where it was either indicated on the LCHB chart, or I have other documentary evidence of them being included. Obviously, there is going to be more hours for them; we need to determine how to estimate these.

- What YOU need to do:
  - Go back through all of your emails and/or word documents, excel sheets, presentations (look for the 'date created' meta data), doc review, etc. . . and add your time on the appropriate date.
  - If you see a date where I have already included hours for you, it is from the LCHB information. I would check your email or document against that date—and the LCHB chart and description—and make sure it is not duplicative.
  - If it is not, add the date into the excel chart; your hours; mine (if you think applicable); and a note of what you did (like I already have for mine) so we can have a basis to construct a larger and more complete timesheet later.

- Then, we can simply combine the total hours from this new chart with the doc review hours and give a total figure.

From: Evan Hoffman
Sent: Tuesday, May 20, 2014 3:57 PM
To: Michael Lesser
Subject: RE: STT Hours, Timeline, Mediations

Hours indicated are per person.

Sept. 11, 2012: NYC: Mediation prep w/ co counsel

- Mike Lesser; Evan Hoffman; Mike Thornton; Garrett Bradley (?)
  - Mediation time: 4 hours
  - Travel time: 4 hours

Sept. 13, 2012: NYC: Ex-parte meetings with mediator

- Mike Lesser; Evan Hoffman; Mike Thornton; Garrett Bradley (?)
  - Time: 3 hours
  - Travel time: 4 hours

Oct. 23-24, 2012: Boston: Mediation

- Mike Lesser; Evan Hoffman; Mike Thornton; Garrett Bradley
  - Time: 8 hours

November 15, 2012: Wolf meeting re: status report

- Mike Thornton; Mike Lesser(?)
  - Time: 1 hour

January 24, 2013: DC: Mediation

- Mike Lesser; Evan Hoffman; Mike Thornton
  - Time: 4 hours
  - Travel time: 4.5 hrs

June 13, 2013: NYC: ex-parte mediation meeting

- Mike Lesser; Mike Thornton
  - Time: 2.5 hours
  - Travel time: 4 hours

July 9, 2013: NYC: Mediation

- Mike Lesser; Evan Hoffman; Mike Thornton
  - Time: 2 hours
  - Travel time: 4 hours

September 17, 2013: NYC: Mediation

- Mike Lesser; Evan Hoffman; Mike Thornton
  - Time: 2 hours
  - Travel time: 4 hours

November 13, 2013: NYC: Mediation

- Mike Lesser; Evan Hoffman; Mike Thornton
  - Time: 3 hours
  - Travel time: 4 hours

December 18, 2013: Santa Barbara: internal mediation

- Mike Lesser; Mike Thornton
  - Time: ?
  - Travel time: 16 hours

March 4, 2014: NYC: Mediation

- Mike Lesser; Mike Thornton
  - Time: 2 hours
  - Travel time: 4 hours

May 9th, 2014: NYC: Mediation

- Mike Lesser; Evan Hoffman; Mike Thornton; Garrett Bradley
  - Time: 4 hours
  - Travel time: 4 hours

From: Michael Lesser
Sent: Tuesday, May 20, 2014 3:38 PM
To: Evan Hoffman
Subject: RE: STT Hours, Timeline, Mediations

Good – now total the hours for the crew for each of the mediations – travel and mediation time only. I have my other records for prep time and whatnot

---

From: Evan Hoffman
Sent: Tuesday, May 20, 2014 3:34 PM
To: Michael Lesser
Subject: STT Hours, Timeline, Mediations

DOC REVIEW:

Mike B.: 219.2

Andrea: 597.5

Jotham: 172.7

Evan: 15

Mike L:

Total: 1,004.4 hrs.

TIMELINE:

Initial Complaint Filed: 2/10/2011

Amended Complaint Filed: 4/15/2011

Opp to MTD Filed: 7/20/2011

MTD Hearing: 5/8/2012

MEDIATIONS:

Sept. 11, 2012: NYC: Mediation prep w/ co counsel
Sept. 13, 2012: NYC: Ex-parte meetings with mediator
Oct. 23-24, 2012: Boston: Mediation
November 15, 2012: Wolf meeting re: status report
January 24, 2013: DC: Mediation
June 13, 2013: NYC: Internal mediation meeting
July 9, 2013: NYC: Mediation
September 17, 2013: NYC: Mediation
November 13, 2013: NYC: Mediation
March 4, 2014: NYC: Mediation
May 9th, 2014: NYC: Mediation

Evan R. Hoffman, Esq. | **Thornton & Naumes, LLP**
100 Summer Street, 30th Floor | Boston, MA 02110
---
t: (617) 720.1333 | f: (617) 720.2445 | ehoffman@tenlaw.com

EX. 201

From: Zeiss, Nicole <NZeiss@labaton.com>
Sent: Wednesday, August 31, 2016 12:11 PM
To: Garrett Bradley; Michael Thornton; Evan Hoffman; Michael Lesser
Cc: Goldsmith, David; Sucharow, Lawrence; Rogers, Michael H.; Belfi, Eric J.
Subject: State Street - model small fee dec for reporting time and expenses
Attachments: SST - model small fee declaration (1633650_1).DOC

Importance: High

Per usual, in connection with the motion seeking fees and expenses, each firm will be submitting an individual firm declaration reporting its hours, lodestar, and expenses. Attached is a model for you to use. Within the model are some comments giving guidance about the time period, compensable time, reduction of any first class airfare etc. Let us know if you want to discuss. (Ps I have your lit fund contribution as $98,000)

Given that the motions are due Sept 15, we would appreciate seeing draft decs Friday Sept 9 (to make sure we are all consistent, numbers don't have to be final), then executed ones Tuesday Sept 13. Early next week, please also send me your rough lodestar so we can get an idea of the multiplier and make sure we have the right discussion in the fee brief.

Thanks,

Nicole

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

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

DECLARATION OF [XXXXX] ON BEHALF OF
[XXXX] IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND PAYMENT OF EXPENSES

_____, Esq., declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am [a member of] [associated with] with the law firm of [INSERT FIRM NAME] ("[ABREV. FIRM NAME]"). I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and payment of litigation expenses on behalf of all Plaintiffs' counsel who contributed to the prosecution of the claims in the above-captioned class actions (the "Class Actions") from inception through August 30, 2016 (the "Time Period").

2. My firm is _____ [and counsel of record for plaintiff[s] [insert name]. [Supplement to explain role in the Class Actions and give overview of work performed.]

3. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff-member of my firm who was involved in the prosecution of the Class Actions, and the lodestar calculation based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and payment of expenses has not been included in this request.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions.

5. The total number of hours expended on this litigation by my firm during the Time Period is _____ hours. The total lodestar for my firm for those hours is $_____.

Comment [A1]: We realize that people investigated the claims before the cases were filed in 2011 and 2012. A reasonable inception date should be set, which would likely not be before Oct 2009 when the April 2008 qui tam complaint was unsealed.

Comment [A2]: In addition to not billing for fee/expense related time, you should only report lodestar that was directed at your clients in the Class Actions and the claims here, as opposed to other investigative work.

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

7. As detailed in Exhibit B, my firm has incurred a total of $_____ in expenses in connection with the prosecution of the Class Actions. The expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

Comment [A3]: Expenses should be vetted so that they all relate to the time period, the clients in the Class Actions, and the claims in the Class Actions. All first class airfare should be reduced to economy; working meal reimbursement (including meals with clients) should be reasonable; alcoholic drinks should not be claimed.

8. With respect to the standing of my firm, attached hereto as Exhibit C is a brief biography of my firm as well as biographies of the firm's partners and of counsels.

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

_____
XXXXXXXXXXXXXXXX

EXHIBIT A

STATE STREET INDIRECT FX TRADING CLASS ACTION
No. 11-cv-10230, No. 11-cv-12049, No. 12-cv-11698 MLW (D. Mass.)

LODESTAR REPORT

FIRM: [NAME]
REPORTING PERIOD: INCEPTION THROUGH AUGUST 30, 2016

PROFESSIONAL	STATUS*	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
TOTAL				

Partner	(P)	Paralegal	(PL)
Of Counsel	(OC)	Investigator	(I)
Associate	(A)	Research Analyst	(RA)
Staff Attorney	(SA)		

EXHIBIT B

STATE STREET INDIRECT FX TRADING CLASS ACTION
No. 11-cv-10230, No. 11-cv-12049, No. 12-cv-11698 MLW (D. Mass.)

EXPENSE REPORT

Comment [A4]: Please delete any items that don't apply

FIRM: [NAME]
REPORTING PERIOD: INCEPTION THROUGH AUGUST 30, 2016

EXPENSE	TOTAL AMOUNT
Duplicating	
Postage	
Long-Distance Telephone / Fax / Conference Calls	
Messengers	
Filing / Service / Witness Fees	
Court Hearing & Deposition Transcripts	
Online Legal & Financial Research	
Overnight Delivery Services	
Experts/Consultants	
Litigation Support/Electronic Discovery	
Work-Related Transportation/Meals/Lodging	
Litigation Fund Contribution	
Miscellaneous	
TOTAL	**$0**

EX. 202

Volume: 1

Pages: 1-115

Exhibits: 1-4

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 PROFESSOR GEORGENE M. VAIRO

April 10, 2018, 9:43 a.m.-12:21 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

APPEARANCES:

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[appearances continued]

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ALSO PRESENT: Michael Thornton, Esq.
Stephen Gillers (via teleconference)

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EXHIBITS

PROCEEDINGS

(Witness duly sworn.)

MR. SINNOTT: Good morning, professor.

THE WITNESS: Good morning.

MR. SINNOTT: Thank you for being here. For the record, my name is William Sinnott, S-I-N-N-O-T-T. I'm counsel to the special master.

The special master is The Honorable Gerald T. Rosen, retired, formerly of the United States District Court in Detroit, Michigan. Judge Rosen has been appointed as special master by The Honorable Mark L. Wolf in the matter of Arkansas Teacher Retirement System, et al., versus State Street Bank & Trust Company, defendant. And this is civil action number 11-10230-MLW.

The special master is to my right, and on my left also on the special master's team is Attorney Elizabeth McEvoy also of the law firm of Barrett & Singal, and on the telephone line is Professor Stephen Gillers. We're not expecting Attorney Hylenski to join the call this morning.

At this time I'd ask that the counsel in the room identify themselves. Stu, if you could lead it off.

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MR. GLASS: Stuart Glass from Choate, Hall & Stewart from for the Labaton firm.
MR. VALLEE: Attorney Jim Vallee from Nixon Peabody for Thornton.
MR. KELLY: Brian Kelly of Nixon Peabody also on behalf of Thornton.
MS. HARLAN: Emily Harlan of Nixon Peabody for the Thornton Law Firm.
MR. SINNOTT: Welcome back, Emily.
MS. HARLAN: Thank you.
MR. THORNTON: Michael Thornton of the Thornton Law Firm.
MR. LIEFF: Robert Lieff of Lieff Cabraser.
MR. HEIMANN: Richard Heimann for Lieff Cabraser.
MR. SINNOTT: And, Josh, could you identify yourself for the record?
MR. SHARP: Joshua Sharp of Nixon Peabody for the Thornton Law Firm.
MR. SINNOTT: All right. Thank you.
Just the normal caveat that because we have phone participants, I'd ask that participants in the room and not just the witness but also any

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questioners or commenters keep their voices up so that the folks on the phone can hear.
And by the same token, Josh, and, Steve, if anything is unclear or garbled or you have what you think may be a loss of audio or communication, please let us know at the earliest possible time so that we don't have to repeat testimony or do read-backs.
EXAMINATION
BY MR. SINNOTT:

Q. All right. Having said that, welcome, professor.
A. Thank you.
MR. KELLY: Just for the record, Bill, we'll again object to Professor Gillers' participation in this other expert's deposition.
MR. SINNOTT: All right. So noted. Thank you.
BY MR. SINNOTT:
Q. Professor, you've submitted an expert declaration in connection with this case; is that correct?
A. Yes, I did.

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Q. And I have in my hands a document that you signed on March 26, 2018 in Santa Barbara, California that's styled as Expert Declaration of Georgene M. Vairo.
Is that how you pronounce your last name?
A. Yes.
MR. SINNOTT: Paulette, if we could mark that as Exhibit 1.
(Exhibit 1 marked for identification.)
BY MR. SINNOTT:
Q. And, professor, looking at that document that's been marked as Exhibit 1, is that the expert declaration that you've submitted in this case?
A. It looks like it is, sir.
Q. Okay. And let me direct your attention to the CV that's attached as Exhibit A to your report. Do you see that?
A. Yes, I do.
Q. And does that accurately state your experience and background in the law?
A. I think it does for the most part. I'm sure there's a few things missing, but, you know, it's a

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fairly -- it's a fair representation of what I've done over the course of my career.
Q. Okay. And since you signed your report on March 26, are there any changes or additions to your CV that you think need to be noted?
A. No, sir.
Q. And are there any previous roles or positions you've held that inform your opinion that are not described in your CV?
A. No, sir. I mean the only thing that when I was reviewing this I realized there was one more recent Rule 11 program that I participated in with Greg Joseph, and, um, I for some reason didn't put it on my resume, and I can't remember what year it was, but it was within the last couple of years.
Q. Okay.
A. It was sort of a PLI thing or something like that.
Q. And do you remember what the -- was there a specific area of Rule 11 that was discussed?
A. No. It was just a general developments update.
THE SPECIAL MASTER: Anymore bicycle road racing championships?

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THE WITNESS: No, sir. No, your Honor. But I still have six bikes hanging in my garage.
THE SPECIAL MASTER: I notice that neither tennis or golf are on your resume.
THE WITNESS: I have played tennis. My farther was playing up to the moment he died, and he taught me how to play.
MR. SINNOTT: The professor is now doing trail running lest you think she's goofing off.
THE SPECIAL MASTER: Ah.
BY MR. SINNOTT:
Q. And, professor, are you being compensated for your work in this case?
A. Yes, I'm being compensated for my work.
Q. What's your rate of compensation?
A. Nine hundred dollars an hour plus expenses.
Q. And approximately how many hours to date do you estimate you've spent on this case?
A. I would say probably about 60 or so.
Q. And with respect to your deposition today, have you prepared for your testimony?
A. Yes, sir.
Q. And how did you prepare?
A. If you'd like me to go back to the

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beginning, I got an e-mail from Brian Kelly asking to talk about a possible Rule 11 matter, and we had a chat, and he gave me the general outlines of the situation, and I asked for him to send me a copy of Professor Gillers' report which I read, and we talked a little further, and I agreed to become the expert to provide an expert declaration.
After that time, I received various documents, transcripts of hearings, depositions that have been taken in connection with this investigation. As I read through them, I would ask for other depositions, other materials, other hearings, etcetera, and received them from Nixon Peabody.
So I read all of the transcripts. I read all of the depositions and then began to sit down and write my report and, you know, referred back and forth to the things I read, the research I had done and prepared the declaration.
THE SPECIAL MASTER: Did you meet with Garrett Bradley or anybody else from the Thornton Law Firm?
THE WITNESS: I never met with Garrett Bradley, but I also was at Nixon Peabody yesterday

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going over the declaration, and at the end of the day Brian came by with Mike Thornton. So I met him yesterday afternoon.
Q. When Mr. Kelly first contacted you on this case, what did he tell you the case was about?
A. I don't remember specifically, but that the matter arose out of a complex class action and that there had been a settlement and that an attorney and law firm that he was representing was, you know, being investigated for various -- you know, various things that Judge Wolf was concerned about.
Q. Were you able to understand Attorney Kelly?
A. Yes.
Q. 'Cause most of us can't.
A. Well, I'm from New York so somehow, you know, I specifically can understand a Boston accent.
Q. All right.
THE SPECIAL MASTER: I don't have any problem understanding him.
MR. KELLY: Thank you, your Honor.
MR. SINNOTT: That's very troubling, your Honor.
THE SPECIAL MASTER: Agreeing with him is another matter.

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MR. KELLY: It's a process, judge. It's a process.
MR. SINNOTT: He's an acquired taste.
MR. KELLY: Yeah.
BY MR. SINNOTT:
Q. Professor, you mentioned that you read all the transcripts.
I take it you're referring to all the transcripts that Attorney Kelly sent to you, correct?
A. Yes.
Q. Can you recall what transcripts those were?
A. I read a transcript of a status conference that was held in June of 2016. That might have been the first. I read the transcript of the hearing at which preliminary approval was -- Judge Wolf preliminarily approved the settlement. I read the transcript of the November 2 hearing at which final approval was given.
I read the transcript of the March 7 hearing in 2017. I think that's it, but there could have been more.
Q. Okay. Did you read any deposition transcripts?

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A. I read a number of deposition transcripts. I read Garrett Bradley's transcript, the transcript of his deposition, Evan Hoffman, Nicole Zeiss, Mike Thornton, Mike Lesser, Larry Sucharow.
I can't remember -- I know I read depositions of somebody from the Lieff firm. I can't remember who it was now off the top of my head.
Q. Was it Dan Chiplock?
A. Could have been Chiplock, but I feel like there was another one I read. Maybe it was Chiplock. I just don't -- I just don't -- I have it listed, but I don't recall.
Q. Okay. I thought you had cited Attorney Chiplock in your --
A. Well, I did read that one, yes.
Q. Okay.
A. But I have a feeling I read another -- or maybe it was just references in the transcripts that have me not recollecting perfectly.
Q. And I might have missed this, but among the hearing transcripts that you reviewed, did you review the March 7, 2017 hearing transcript?
A. Yes, I did. I also read the February 6

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order that led to that hearing.
Q. Okay. Now with respect to those deposition transcripts and hearing transcripts, is it your testimony that you read all of them in their entirety?
A. Yes.
Q. Were any particular portions pointed out to you by Attorney Kelly or anyone else as being more pertinent than others?
A. No.
Q. And --
A. Let me amend that just a little bit --
Q. Sure.
A. -- because I also did read -- when I cited I read the Zeiss depositions and the Garrett Bradley depositions, I read the ones in June as well as the ones in September.
But I have to say that I did not read the September ones as carefully as I did the earlier ones because they had to do with a matter that I'm not involved with.
Q. Okay. And the opinions that are contained in your report between pages 8 and 19 were written by whom?

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A. By me.
Q. And did you have any assistance?
A. No, sir.
Q. And --
A. I mean other than towards the end of the process I sent drafts to the Nixon Peabody firm for help with making sure that my citations were correct; that typos -- and I did see a couple of typos; I apologize for that -- but you know, that kind of formalistic thing.
Q. Beyond the typos, with respect to your actual opinions, did you solicit or receive any feedback on those opinions?
A. No, sir.
Q. And notwithstanding the fact you didn't solicit any opinions, did Mr. Kelly or anyone from Nixon Peabody offer to opine on them or to evaluate them at any point?
A. No, sir.
Q. And did you do all of the research with respect to your report yourself, or did you have research assistants?
A. I have no research assistants.
Q. All right. Now are you an expert in Federal

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Rule of Civil Procedure 11?
A. Yes, sir.
Q. And is it fair to say that Rule 11(b) imposes certain obligations on counsel who are making a filing?
A. Yes, sir.
Q. To include fee petitions, correct?
A. It would include any paper, including a fee petition.
Q. All right. And if you'd just listen to this and tell me if I'm stating this correctly.
Rule 11(b) under the heading of representations to the Court says, "By presenting to the Court a pleading, written motion or other paper, whether by signing, filing, submitting or later advocating it, an attorney or unrepresented party certifies that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances." And then there are four subheadings.
Is that correct based on your familiarity with Rule 11(b)?
A. Yes, sir.
Q. And Subsection 3 of those four items says,

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"The factual contentions have evidentiary support or as specifically so identified will likely have evidentiary support after a reasonable opportunity for further investigation or discovery."

Now is that correct based on your familiarity with Rule 11?

A. Yes, it is.

Q. Does Rule 11 impose a duty of candor to the Court?

A. I would say that even though the language is not in the rule, both with respect to the 1983 and 1993 amendments, the courts have characterized Rule 11 as requiring a duty of candor, yes, sir.

Q. All right. And from either your work on this case or in other context, are you familiar with Massachusetts Rule of Professional Conduct 3.3?

A. I read about it in Professor Gillers' report, but I have not studied the Massachusetts Rules of Professional Conduct.

Q. All right. Would you agree with me based on what you've read in Professor Gillers' report that Rule 3.3 also imposes a duty of candor to the tribunal?

MR. KELLY: Objection. Beyond the

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scope.

A. I would say that my reading of Rule 3.3, the language seems very similar to that of the duties imposed by Rule 11.

Q. All right. So --

A. But I have not read, you know, opinions interpreting Rule 3.3 or the like.

Q. Okay.

THE SPECIAL MASTER: And you're not here to testify about Rule 3.3 or Rule 8.4?

THE WITNESS: Correct, your Honor.

Q. All right. So are you sufficiently familiar with 3.3 to opine at all as to how the duties in each of these rules -- in Rule 11 as opposed to Rule 3.3 -- differ?

MR. KELLY: Objection. Beyond the scope.

A. I would say I did not do the research to be able to form an opinion about that.

Q. Okay. Let me direct your attention, professor, to pages 24 and 25 of your report.

A. Do you mean paragraphs 24 --

Q. I'm sorry, paragraphs 24 and 25.

A. Yes, sir.

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Q. On page 9 --

A. Hm hm.

Q. -- of your report.

And specifically let me direct your attention to paragraph 24.

A. Hm hm. Yes, sir?

Q. And approximately five lines -- or four lines into that paragraph -- and you're welcome, of course, to read the entire paragraph, but I'm referencing the sentence that begins with the words "even if."

A. Hm hm. Yes, sir.

Q. Even if an attorney has failed to conduct a reasonable inquiry into factual contentions, Rule 11 sanctions may be imposed only when an attorney later advocates a position taken in a paper filing -- in a paper filed in court.

Is that a correct reading of that portion of your opinion?

A. Yes, sir.

Q. And you go on to state that Rule 11(b) provides that by presenting to the Court a pleading, written motion or other paper, whether by signing, filing, submitting or later advocating it, an

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attorney or unrepresented party certifies that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances that the paper is well grounded in the facts and law and not filed for improper purposes.

And then you finish that sentence by saying the later advocating language must be read together with Rule 11(c)(2) which provides a safe harbor for an attorney who is the target of a motion for sanctions if any paper is withdrawn or appropriately corrected within 20 days, and you cite 11(c)(2).

A. Hm hm. Yes.

Q. So if I might refer you to the first sentence that I read and ask you what is the basis for your concluding that Rule 11 sanctions are only appropriate when an attorney later advocates a position as opposed to when the pleading stating the position is filed?

A. Well, as I say earlier in my declaration, the 1993 amendments to Rule 11 substantially altered the whole approach of the rule.

The idea of the 1993 amendments which were designed to correct some other problems, too,

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but a very important problem that the 1993 amendments were designed to correct was the idea that attorneys may make a mistake, attorneys may file a paper in court, whether it's a complaint, an answer, whatever, and it may in the context of an adversarial situation be pointed out to them by their adversary, and that's why I say you have to take a look at the later advocating language read together with Rule 11(c)(2) safe harbor because the rule -- what the rule is doing is providing an out so-to-speak for an attorney who files a paper where it is pointed out that there's something wrong with it.

So that's the basis for my opinion. The whole purpose of the 1993 amendment providing an opportunity for an attorney to make corrections to a paper, aspects of the paper, once there's a need to do so.

So, for example, if the complaint is entirely frivolous, what a plaintiff should do is withdraw once put on notice that the paper is entirely frivolous, and sanctions may not be imposed if the complaint is in fact withdrawn within those 21 days.

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Q. But isn't your emphasis on later advocating -- and I see that you've emphasized that in italics in your presentation -- isn't that belied by a plain language reading of the rule which has the word "or" prior to that -- "whether by signing, filing, submitting or later advocating it"?

I mean isn't -- doesn't the word "or" in that rule indicate that the original signing, filing or submitting can be a violation of that rule?

A. I don't read it that way, especially read in conjunction with 11(c)(2) because the whole purpose of the amendment was to provide an opportunity for an attorney to make corrections.

So it may well be true that when the attorney presented the pleading, written motion or other paper a Court could reasonably find that that paper violated Rule 11, but sanctions can't be imposed if the attorney ceases to advocate the positions that are encompassed in that paper.

THE SPECIAL MASTER: So let me ask just a couple questions about that.

Putting aside for just a moment temporal issue that you and Mr. Sinnott are discussing, professor.

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THE WITNESS: Hm hm.

THE SPECIAL MASTER: What if an attorney knows at the time that the paper that is being filed contains false statements, blatantly false statements, is it still your position that nevertheless sanctions cannot be imposed under Rule 11 if at some later time the attorney fesses up and says, gee, I'm sorry?

THE WITNESS: If -- yes, your Honor.

THE SPECIAL MASTER: Okay.

THE WITNESS: I mean it's -- there may be other tools available, but, you know, certainly not Rule 11.

Rule 11 was designed to ensure that an attorney withdraws a paper that's an offending paper. Unless they continue to advocate it, you know, they have that safe harbor.

I hesitate to even answer the question because I don't know exactly, you know, in the context of knowingly false and all of that, but the whole purpose of the rule is to enable a party to correct whatever mistakes are made.

THE SPECIAL MASTER: All right. Let's drill down on that a little bit.

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I want you to assume that the statements are knowingly false.

MR. KELLY: Objection.

THE SPECIAL MASTER: We can go further in this, but I want you to at least for now assume that, okay?

THE WITNESS: May I -- may I ask what "knowingly" means?

THE SPECIAL MASTER: That at the time they were made the attorney knew that the statements were false or certainly should have known that the statements were false. I want you to assume that for now. Okay?

Is it your testimony then that even in those situations sanctions are not appropriate if the attorney says, yes, I was wrong, I apologize?

MR. KELLY: Object to the hypo unless the Court specifies knowingly in the sense of when.

THE SPECIAL MASTER: All right. Let's get into this instead of fencing around.

THE WITNESS: Okay.

THE SPECIAL MASTER: Let's talk about what these statements are, okay?

THE WITNESS: Okay.

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THE SPECIAL MASTER: You've read Professor Gillers' --
THE WITNESS: Yes.
THE SPECIAL MASTER: -- report?
THE WITNESS: Yes.
THE SPECIAL MASTER: He calls out I believe six statements.
THE WITNESS: Six statements, yes, sir.
(Pause.)
MR. SINNOTT: Do you have a copy of that, professor?
THE WITNESS: I don't have it before me.
THE SPECIAL MASTER: Let's get a copy before her. Or just the declaration.
MS. McEVOY: We have the declaration.
THE SPECIAL MASTER: The declaration would be fine. Exhibit 8.
MR. KELLY: Which declaration?
THE SPECIAL MASTER: The Bradley declaration to the lodestar.
MS. McEVOY: Exhibit 16.
MR. SINNOTT: Paulette, if we could mark this as an exhibit.
(Exhibit 2 marked

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for identification.)
MR. SINNOTT: That's been marked as Exhibit 2.
THE WITNESS: Okay. Exhibit?
THE SPECIAL MASTER: The declaration, please.
THE WITNESS: Okay.
THE SPECIAL MASTER: Paragraphs 3 and 4.
THE WITNESS: Okay.
THE SPECIAL MASTER: You understand these statements were made under oath in the declaration?
THE WITNESS: Yes, your Honor.
THE SPECIAL MASTER: All right. Paragraph 3.
"The schedule attached hereto as Exhibit A, which is the lodestar petition, is a summary indicating the amount of time spent by each attorney and professional support staff member of my firm who was involved in the prosecution of the class actions, and the lodestar calculation is based on my firm's current billing rates.
For personnel who are no longer employed by my firm, the lodestar calculation is based upon

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the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily records regularly prepared and maintained by my firm which are available at the request of the Court. Time expended in preparing this application for fees and payment of expenses has not been included in this request."
Paragraph 4. "The hourly rate for attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services which have been accepted in other class actions."
So in the sworn declaration Mr. Bradley says Exhibit A contains professional support staff members of my firm.
THE WITNESS: Correct.
THE SPECIAL MASTER: We're talking here about the staff attorneys.
THE WITNESS: Right.
THE SPECIAL MASTER: And what we've all colloquially referred to in this as the double counting issue.
THE WITNESS: Correct.

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THE SPECIAL MASTER: You're familiar with that?
THE WITNESS: Yes, your Honor.
THE SPECIAL MASTER: Is there any way Mr. Bradley did not know that the staff attorneys listed on professional -- on Exhibit A were not professional support staff members of my firm?
Is there any way he could not have known that?
THE WITNESS: My understanding of the record is that he knew that the staff attorneys were actually either employees of the other firms or had been supplied, I think in the case of the Lieff Cabraser firm, by outside agencies and that he -- that those attorneys were doing the work for the Thornton Law Firm, but they were not employees of the law firm, and Garrett Bradley knew they were not his employees.
THE SPECIAL MASTER: More accurately, those attorneys were doing the work for the entire what we've talked about as the customer class lawyers including Thornton but also Lieff Cabraser and Labaton, not just Thornton.
THE WITNESS: I mean I'm not quite sure

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what you're getting at with that. I mean all --
THE SPECIAL MASTER: You said they were doing work for Thornton.
THE WITNESS: Yes. And --
THE SPECIAL MASTER: They were working for all of the firms.
THE WITNESS: They were working for the class.
THE SPECIAL MASTER: Correct.
THE WITNESS: They were working to review the I think it was something like nine million documents for the entire class -- for the purposes of the entire class.
THE SPECIAL MASTER: Nevertheless, my question is the same to you, professor.
Is there any way that Garrett Bradley did not know that these professional support staff members were not members of his firm?
Is there any way he could not have known that?
THE WITNESS: Well, he did know that, but the question is whether the filing of this direct -- of this declaration with respect to language like that violates Rule 11, and Mr. Sinnott

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had previously asked me whether Rule 11 imposes a duty of candor.
And so, you know, my -- in my opinion as a Rule 11 expert, what the duty of candor means is that an attorney should not be intentionally misleading the Court.
And so despite the fact that he may have known at that time --
THE SPECIAL MASTER: May have known?
THE WITNESS: Knew. He knew. He knew that these attorneys were not employees of his firm --
PHONE LINE CONFERENCE: The following participant has entered the conference: Mike.
THE WITNESS: He knew that, your Honor. But in making that statement, it's my opinion that he did not violate his Rule 11 duty of candor to the Court.
THE SPECIAL MASTER: Okay. We'll explore that a little further.
THE WITNESS: Okay.
THE SPECIAL MASTER: The next statement, "The billing rates for the staff attorneys are based on my firm's current billing rates."

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Did the firm have current billing rates for the staff attorneys?
THE WITNESS: No, your Honor, it did not have current billing rates because this is a plaintiffs' contingency firm, and they were not changing clients.
So that language was very similar -- similar? -- it was the same as in the fee declarations of the other law firms.
THE SPECIAL MASTER: And particularly these staff attorneys had no billing rates, whether contingent or not, with the Thornton firm, did they?
THE WITNESS: The Thornton firm paid them.
THE SPECIAL MASTER: Paid them what?
THE WITNESS: Paid them less than the billing rate.
THE SPECIAL MASTER: They reimbursed the Labaton and Lieff firms for the actual cost that those firms bore for these staff attorneys, correct?
THE WITNESS: Yes, sir.
THE SPECIAL MASTER: All right. So the statement that the billing rates for the staff attorneys are based on my firm's current billing

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rates is false, right?
THE WITNESS: Um, I -- I -- I have -- I have a hard time saying that it's false read in context, and in the context of this case particularly because all the plaintiffs' law firms use similar language, and I mean I'm not an expert in this. I'm not going to purport to be an expert in this, but it is well-known whether you're talking about contingency fee lawyers or even defense lawyers that the amount that is paid to an attorney, i.e., the cost is different than the rates that would be billed --
THE SPECIAL MASTER: Professor, you keep shifting the focus.
MR. KELLY: Objection. Objection. Arguing with the witness when the witness is trying to give an answer.
THE SPECIAL MASTER: My focus is strictly on whether the Thornton Law Firm had current billing rates for these staff attorneys as members of my firm.
THE WITNESS: They did not.
THE SPECIAL MASTER: They did not. Thank you.

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Just to clarify, I'm not quibbling about whether they can mark up the staff attorneys, whether courts have awarded mark-ups on staff attorneys. That's not my focus, okay?

THE WITNESS: Okay. Hm hm.

THE SPECIAL MASTER: My focus is strictly on the truth or falsity of the declaration statement that the billing rates for the staff attorneys are based on my firm's current billing rates. "My firm's current billing rates."

The truth is --

MR. KELLY: And we're objecting to conflating factual inaccuracy with knowingly false submission.

THE SPECIAL MASTER: Okay. Is there any way that Mr. Bradley could not have known that his firm did not have current billing rates for staff attorneys that were employed by the Lieff firm and the Labaton firm? Plausibly.

THE WITNESS: May I say, your Honor, that in answering that question -- and, I'm sorry, my head from time to time because I have bronchitis, but --

THE SPECIAL MASTER: If you need a

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break, just let us know.

THE WITNESS: No, no, no. It's not that. I may just from time to time go off a little bit.

THE SPECIAL MASTER: Okay.

THE WITNESS: I'm here to talk about Rule 11 and whether Garrett Bradley violated Rule 11, and I completely appreciate the Court's concern, your concern, Mr. Sinnott's concern about whether some of the statements in the declaration were inaccurate. I mean I fully appreciate that.

And I'm happy to say that I understand that the rates -- that the amounts that were paid to the staff attorneys were less than the mark-up so-to-speak -- the word you used -- with respect to the amounts that were charged for lodestar purposes.

But I guess it's -- I just want to make clear that for Rule 11 purposes what's really, really important is not that the statements themselves were inaccurate, but, you know, whether they violate Rule 11, whether they misled the Court, whether they violate the duty of candor.

So I mean you have indicated that we're going to get there. So -- but I think it's

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important to get there because I think that's really the nub of the issue here. Again, I think that to the extent that he knew and could have stated this more artfully, more accurately with greater clarity, I appreciate the concern.

But do these statements violate Rule 11? It's my firm conviction that they do not.

THE SPECIAL MASTER: You understand that declarations are submitted to judges with the intent that the judge relies upon the truthfulness of the statements?

THE WITNESS: Yes, your Honor.

THE SPECIAL MASTER: And that, in fact, in looking at a lodestar a judge might well be concerned that the lodestar petition is about lawyers in the declarant's own firm and the personal knowledge that that declarant has of those lawyers, right?

THE WITNESS: Hm hm. Yes.

THE SPECIAL MASTER: And that the billing rates in the lodestar are in fact the billing rates for lawyers in that firm? You understand that a judge might well want to be able to rely upon that?

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THE WITNESS: I would think that the judge would want to rely on for fee petition purposes knowing who exactly had performed work overall in the context of the entire case, and I -- of course, the judge would want to know what their billing rates were.

THE SPECIAL MASTER: Okay.

THE WITNESS: Because the whole purpose of this exercise, the lodestar check, is to ensure that the percentage could be checked by the lodestar.

So what's really significant -- and this is I think one of the essences of what my argument here as to why Garrett Bradley did not violate Rule 11 is that in fact the Thornton Law Firm was responsible for its share of the costs of various attorneys, its own as well as the staff attorneys, and was responsible for accurately keeping records of the time that they spent so that the number that was presented to the Court was one that would be reliable.

THE SPECIAL MASTER: Is that the same as telling the judge that these staff attorneys are members of my firm? And that the billing rates are

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the current billing rates that are charged for these staff attorneys by my firm?

THE WITNESS: I don't know that that would make a difference -- if I were a judge, I don't know that that would make a difference to me. But I'm not Judge Wolf.

But what I think would be important to Judge Wolf would be hours worked and billing rates that are -- and I think that, um, for the purposes -- actually now I should really step aside because I know that we have the expert declaration from Professor Rubenstein who goes into this in much greater detail.

And I guess all I would say is that my knowledge of how the world works, the idea that attorneys cost less -- the law firms pay them less than they're billed at is common knowledge and that the rates that were proposed here in all the declarations were well within the range of what's acceptable in class action cases.

THE SPECIAL MASTER: So I'm not going to get you off of this notion of conflating what might be accepted policy, marking up staff attorneys from the amount that they're billed to a market rate, to

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the truth or falsity of the statements actually made in the declaration.

You're going to continue to conflate those two concepts in your answers?

MR. KELLY: Objection. Argumentative.

THE SPECIAL MASTER: Is that right?

THE WITNESS: I don't think I'm -- it's difficult to answer your question in the way that I think you want me to because --

THE SPECIAL MASTER: I just want you to tell me straight out and simple.

THE WITNESS: Okay.

THE SPECIAL MASTER: Are the statements made in the declaration in paragraphs 3 and 4 true or false?

THE WITNESS: They're inaccurate, yes, they are.

THE SPECIAL MASTER: Okay, that's all.

THE WITNESS: I thought I --

THE SPECIAL MASTER: Is there any way that Garrett Bradley could not have known that they were false?

THE WITNESS: He could have known that, yes.

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THE SPECIAL MASTER: Is there any way he could not have known it?

He's a managing partner at the Thornton firm. Is there any way he could not have known that these staff attorneys were not members of his firm?

THE WITNESS: He did know that they were not members of his firm --

THE SPECIAL MASTER: Okay, thank you.

THE WITNESS: -- at the time he signed this declaration, yes.

THE SPECIAL MASTER: Let me follow up.

THE WITNESS: Okay.

THE SPECIAL MASTER: Does motive or intent play any role in your analysis of whether or not there's a violation of Rule 11 made in sworn statements to a Court?

THE WITNESS: Yes.

THE SPECIAL MASTER: Okay. Were you shown deposition testimony of Garrett Bradley in which he acknowledged that the best way to jack up the lodestar -- the best way for us, Thornton, to increase our lodestar and make it comparable to the other two firms, I was absolutely concerned about Thornton's lodestar vis-a-vis the other two firms.

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MR. KELLY: Sorry, what was the last line? Vis-a-vis?

THE SPECIAL MASTER: Vis-a-vis the other two firms.

THE WITNESS: I read that, your Honor, yes.

THE SPECIAL MASTER: Did you read the e-mail of Garrett Bradley to Mike Thornton and Mike Lesser in which he says words to the effect -- we can get it out -- but we need to jack up our lodestar; we need to increase our lodestar?

THE WITNESS: Um, I did not read the e-mail, but I probably read reference to it in either the March 7 hearing or in his -- I guess the March 7 hearing.

So I did not read the e-mail, but...

THE SPECIAL MASTER: Okay.

(Pause.)

THE SPECIAL MASTER: Are you aware that the staff attorney time on the Thornton lodestar was billed at -- was approximately 70 percent of the entire lodestar hours claimed?

THE WITNESS: Um, I -- I don't have that calculation.

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THE SPECIAL MASTER: Okay. We can do the math but --
THE WITNESS: Okay, yes.
THE SPECIAL MASTER: -- there's a chart in the fact situation setting out the attorney lodestar time for all three of the firms.
THE WITNESS: I just don't recall that, your Honor. But I'm not, you know --
THE SPECIAL MASTER: About 70 percent. So that is a significant portion of the Thornton lodestar you would agree?
THE WITNESS: If the staff attorneys' time was 70 percent of the total Thornton time, then that would be a significant portion, yes. Seventy percent is.
THE SPECIAL MASTER: And if there was a motive to in Garrett Bradley's words "jack up the lodestar" --
MR. KELLY: I'm going to object as to what I see as a deliberate misinterpretation of the jacking up of the lodestar and the reading out of that last line "vis-a-vis the other firms."
The Court here continues to -- I don't want to go on a long speaking objection because I

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know you don't like that, but in the search for the truth here it matters in terms of vis-a-vis the competing law firms getting their share versus the Court and whether we have a Rule 11 violation.
So I'm going to object to continuing to ignore the "vis-a-vis the other firms" which I suggest is critical to this analysis that she's here for.
THE SPECIAL MASTER: Okay, Brian, that is a blatant violation of Rule 30(c), speaking objections. I've talked to Joan about this. I have talked to Richard about this. And now I'm putting you on notice. No more speaking objections.
Make your record with an objection as the rule requires which is concisely, non-argumentative and non-suggestive. Back to my questions.
THE WITNESS: Okay, let me try if I have it all.
I'm aware that there was a fee allocation agreement among the three counsels' law firms, Labaton, Thornton and Lieff. And I'm aware that the expectation it appears from somebody just coming in cold from the outside that there was

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originally 20/20/20 and that there was another 40 percent therefore, that that would have to be allocated among the firms and that their work -- the investment that they would put in would have an impact on their -- you know, their share of the 40 percent so-to-speak. That's my understanding of the agreement.
And therefore each of the firms had probably a desire to ensure that they would have a proper share of that 40 percent. And so the way in which the Thornton Law Firm was able to do that is by virtue of taking on the burden, the risk of paying for certain of those staff attorneys.
It's my understanding that there were two fairly large document productions. I think one was called the California production; the other was the Hill production. There was a scramble in the context of the whole mediation to get through those documents.
And so there was an agreement among the parties that Thornton would be -- bear the risk of a third of those attorneys that they would be on their fee declaration, and so -- so I don't know if that answers your question or what more you want me to

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say, but, you know, they were not his employees. They were not employees of the Thornton Law Firm, but for the purposes of this litigation they were essentially Thornton lawyers and would be treated the same as the staff attorneys would be at the other law firms.
THE SPECIAL MASTER: Okay.
THE WITNESS: Does that answer your question, your Honor?
THE SPECIAL MASTER: Again you've conflated two entirely different principles, the issue of whether the staff attorneys can be marked up --
THE WITNESS: Hm hm.
THE SPECIAL MASTER: -- and the issue of whether or not these staff attorneys are employees of the firm and whether or not the billing rates were current billing rates for these staff attorneys of the firm is different than the question of whether or not it's appropriate to mark them up, and maybe there could have been a way in which Thornton got credit for a pro rata share on a lodestar without telling the Court on its lodestar in a sworn declaration that these were members of the firm and

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that these were the current billing rates that the firm has for these staff attorneys.
There was a way to do that without putting these staff attorneys on the Thornton lodestar and telling the Court that they were members of the firm and that these were the current billing rates for the firm.
So --
THE WITNESS: I appreciate --
MR. KELLY: Objection. No question pending.
THE SPECIAL MASTER: There's no question pending. My question to you in asking about motive --
THE WITNESS: Hm hm?
THE SPECIAL MASTER: -- and the motive being that the best way to jack up the lodestar was putting the staff attorneys on the Thornton firm, and my question to you is is it not reasonable to assume that the motive in putting these staff attorneys on the lodestar was to increase the Thornton lodestar?
THE WITNESS: I guess I have a hard time saying that -- I mean the lodestar vis-a-vis the

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other firms, not the lodestar vis-a-vis the entire bucket that's going to go to the Court. Those hours were going to appear on the fee petition, the omnibus fee petition, the award, okay, that Labaton submitted.
So the Court was not misled in any manner, shape or form. Those lawyers' time were going to be accounted for in somebody's fee petition.
THE SPECIAL MASTER: But not twice.
THE WITNESS: Well, the twice problem in my opinion was not the Thornton problem. The Thornton -- Thornton pursuant to the agreement was taking on the burden of those -- burden is probably the wrong word -- but was taking on a share of the staff attorneys.
THE SPECIAL MASTER: Cost burden is perfectly appropriate if that's what you're referring to.
THE WITNESS: Well --
THE SPECIAL MASTER: The cost and risk burden.
THE WITNESS: But if the agreement was to try to equalize the position of each of the firms

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within the context of the litigation, then I just fail to see what that has to do with Rule 11.
The Court was using the lodestar check as a means of determining whether the 25 percent fee was an appropriate one. And so the dollar amount, the 41 million, would have been there regardless of how the individual firms manifested them on their individual fee declarations.
So I -- I have to tell you, your Honor, I do agree that those statements are facially inaccurate, and it's also true, as Garrett Bradley said at the March 7 hearing and then again in his deposition, that, oh, yes, they're inaccurate, and I apologize. I apologize for the lack of clarity.
THE SPECIAL MASTER: Was the March 7th hearing the first opportunity that Garrett Bradley had to tell the Court that these statements were inaccurate?
THE WITNESS: Um, hindsight being 20/20, you know, he could have done a better job at the time the fee petition was written. Hindsight being 20/20, when it was brought to his firm's attention that there might be a problem with the double counting, hindsight being 20/20, he could have, you

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know, focused on that language.
But it seems to me from reading everything I read that people were just totally freaked out so-to-speak about the double counting. And so I think that that was the focus, and it seems to me that that was the appropriate focus because what was most important was the numbers, what exactly -- you know, if the 41 million is wrong, the Court needed to know that. And the attorneys got together and just -- you know, saw there was a problem. There was a double counting problem, and they sent the letter to the Court saying that their math should have been 37 million.
THE SPECIAL MASTER: Did you read the -- that's the November 10th letter --
THE WITNESS: Correct.
THE SPECIAL MASTER: -- that was drafted initially by David Goldsmith of the Labaton firm and then circulated?
THE WITNESS: Yes.
THE SPECIAL MASTER: Yes. Did you read that letter?
THE WITNESS: Yes, I did.
THE SPECIAL MASTER: Is there anything

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in there that tells the Court that the double counting occurred because the staff attorneys that were included on the Labaton and Lieff petitions and also included on the Thornton petitions were not staff attorneys employed by the firm and that the rates for those staff attorneys were not the current rates of that firm?

THE WITNESS: That was not pointed out, your Honor, no.

THE SPECIAL MASTER: Don't you think that would have been a good opportunity to point that out to the Court?

THE WITNESS: You know, hindsight being 20/20, again, you know, as a law professor I certainly would have graded Garrett higher if, you know, that had been done at the time, but I think that the critical problem was fixing the lodestar number, letting the Court know that a four-million-dollar mistake had been made because the attorneys who were listed on the Thornton fee declaration that were supposed to be listed on the Thornton declaration pursuant to the agreement of the parties happened to be inadvertently double counted on the Lieff fee petition and the Labaton

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fee petition.

THE SPECIAL MASTER: Were you shown any agreement between the parties -- by the parties we mean the Labaton, Lieff and Thornton firms -- that explicitly tells the Thornton firm it can include these staff attorneys on its lodestar?

THE WITNESS: Excuse me. No, but there are --

THE SPECIAL MASTER: Again, if you need a break.

THE WITNESS: No. But there are many, many references in the various depositions and transcripts by the attorneys involved in all three firms that make it clear to me that everybody understood that those attorneys were going to be counted on the Thornton firm's fee declaration.

THE SPECIAL MASTER: If it were so clear, why did Labaton and Lieff also include them on their fee petitions?

THE WITNESS: I don't know why. There was no crosscheck.

THE SPECIAL MASTER: Can we agree that at least as of November 10th Garrett Bradley had the opportunity to tell the Court that his declaration

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was, in your words, inaccurate?

THE WITNESS: Um, certainly. But that --

THE SPECIAL MASTER: So that would have been the first opportunity, right?

THE WITNESS: It was an opportunity to read more carefully, but -- I mean I don't know what's in Garrett Bradley's mind, but I believe again that because the whole purpose of this was the lodestar check, that probably none of the attorneys were really focusing on the language in the template and that what they were focused on -- you know, I saw many references to, you know, filling in the blanks, and what we're talking about there is the attorneys who worked, the hours they worked and the amount that was being charged or put into the lodestar calculation for each of those attorneys.

THE SPECIAL MASTER: Was there anything -- after the letter was written --

THE WITNESS: Hm hm?

THE SPECIAL MASTER: -- and the freak-out portion had stopped --

THE WITNESS: Hm hm?

THE SPECIAL MASTER: -- was there

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anything that prevented Garrett Bradley from writing a supplemental letter to the Court saying in addition to what Mr. Goldsmith has told the Court about the double counting --

THE WITNESS: Hm hm. Well --

THE SPECIAL MASTER: -- I want to call the Court's attention to the fact that the statements in my declaration were inaccurate, and I apologize for any problems that this has caused the Court?

THE WITNESS: He could have done that, but from a Rule 11 perspective the question is whether what he did or didn't do was reasonable under the circumstances. And it seems to me that they have now informed the Court of the double counting problem.

They knew there would be a reaction from the Court. The Court did react on February 6th by ordering all the attorneys to appear before him on March 7.

So it seems to me that, you know, it was reasonable for the parties to await the Court's instructions in terms of what it wanted to know about.

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I also know that -- I believe this was in Nicole Zeiss' deposition that there might have been talk about doing something further than writing the letter, but it seemed that all the lawyers agreed -- and I believe it was Nicole Zeiss' advice -- to just let's wait for the judge's instructions, and the judge's instructions came on February 8.

THE SPECIAL MASTER: Did the Labaton firm -- anybody at the Labaton firm have to correct any misstatements in their declaration?

THE WITNESS: Well, you know, I don't have them side by side, but I know that all the firms used some of the language verbatim from the template which had been provided by the Labaton firm, which was putting together all the materials for the Court for the fee request, and that every single one of them had some aspects that were less than accurate.

For example, if you look at Lieff and Labaton, um, they're also contingency fee law firms. Labaton I believe from the record was -- is totally contingent fee at this point in time. So, you know, if you think about my firm's billing rates for -- I put that in quotes "billing rates" -- you know, the

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Labaton firm no longer had, you know, the kind of billing rates that we're thinking about in terms of the mark-up. I'm not trying to conflate, but that's what we're talking about here.

And Lieff Cabraser, as I recall from reading various depositions, does have a couple of paying clients, but, um, you know, generally it's well-known that Lieff Cabraser is largely a contingency fee firm as well.

THE SPECIAL MASTER: So are you saying that Lieff Cabraser and Labaton then should have also stepped forward and said, judge, to the extent that we declared in our sworn statements that these were current rates that were charged, that they should have stepped up and explained to the Court that they don't have current rates charged to clients?

MR. GLASS: Objection.

THE SPECIAL MASTER: I'm just trying to understand what she's saying.

THE WITNESS: All I'm saying is -- I hate to say that it's minor because being a hundred percent accurate to a Court is an important value, and attorneys should try to be perfect, but Rule 11

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does not require perfection. That's what I'm saying.

And so in the context -- and you have to look at whether Rule 11 has been violated in context -- these sorts of statements are not the sorts of statements that the attorneys at that time should have been worried about. They should have been worried about the lodestar numbers.

THE SPECIAL MASTER: So do you believe that Garrett Bradley's declarations about the staff attorneys were minor?

THE WITNESS: I'm not saying that they're minor in that sense. Everything -- it's minor overall. I mean I think they were immaterial to the exercise of putting together the fee petition. I would say that.

Not immaterial in a securities fraud type of a context. But, you know, not important in the sense that the key aspects of the fee declarations were to make sure that the numbers were right.

THE SPECIAL MASTER: And, of course, they weren't.

THE WITNESS: Well, they weren't, but --

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you know, and I don't want to cast blame here because I think it was a mistake. It was an inadvertent mistake as David Goldsmith said in his November 10 letter to the Court.

THE SPECIAL MASTER: So let me ask you when Garrett Bradley got the template from Nicole Zeiss that was used with these statements in the declaration, he could have changed it to explain exactly what these staff attorney -- the staff attorneys were listed -- exactly what their relationship was to the Thornton firm, right?

THE WITNESS: He could have.

THE SPECIAL MASTER: He could have. And he could have stated exactly what the rates were based on and not tell the Court that they were based on the current rates charged by my firm. He could have told the Court exactly that. Right?

THE WITNESS: Yes.

THE SPECIAL MASTER: Okay. And perhaps when Nicole Zeiss got that back and she was doing -- you understand she was doing the preparation --

THE WITNESS: She was the settlement attorney.

THE SPECIAL MASTER: She was the

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settlement attorney. Perhaps that would have called her attention to the fact that these staff attorneys were also being claimed on the Thornton petition. Would you agree to that?

THE WITNESS: I would not agree to that. I don't know, you know, what she would have done with that. I have no idea what she would have done with that. I mean I --

THE SPECIAL MASTER: Presumably she would have read it.

THE WITNESS: I mean there's all kinds of things that could have been done differently here, but that doesn't mean that the things that could have been done differently show that what was done violates Rule 11.

I mean -- I don't know about Lieff. I don't know about Labaton. But what I do know is that Labaton is a highly experienced firm in terms of putting together fee petitions. And I'm not going to say that it was entirely proper or best practice -- I think it's better to put it in terms of best practice -- that you should think in terms of not modifying a template that you're given, but under the circumstances -- and Rule 11 is about

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what's reasonable under the circumstances -- the bottom line of what was going on here is that the Thornton firm was trying to get the numbers right for the attorneys that they were responsible for.

And in materials of the fee allocation agreement among Lieff, Labaton and Thornton, they were their attorneys. They were not their employees, but they were the attorneys that they were responsible for presenting in the fee declaration.

THE SPECIAL MASTER: That's a different issue, and we'll -- I'll have to deal with that issue.

THE WITNESS: Okay.

THE SPECIAL MASTER: So your testimony is the Court should simply overlook these statements made in Garrett Bradley's declaration that are clearly inaccurate and clearly misleading?

THE WITNESS: I'm not saying the Court should overlook them. I'm saying they're not sanctionable. There's a big difference. And in many, many, many of the cases that you read -- and, your Honor, I know you were a judge for a long time, and I've checked your Rule 11 cases --

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THE SPECIAL MASTER: How many did you find? I'm curious.

THE WITNESS: Not very many.

THE SPECIAL MASTER: I think you could count on less than three fingers the number of times that I actually imposed Rule 11 sanctions on the Court. I honored the safe harbor provision post 93, and I know exactly what it means.

THE WITNESS: Hm hm. I can't remember what the question was.

THE SPECIAL MASTER: My question is are you saying to Judge Wolf and to me that courts and in my role here as a special master should simply overlook the clearly inaccurate and misleading statements made in Garrett Bradley's declaration?

MR. KELLY: Objection. Asked and answered. Argumentative.

THE WITNESS: You know, I'm not saying that you shouldn't think about it. And, again, the Rule 11 jurisprudence I think is very, very clear. Even in many, many cases, some of which I have cited in my declaration, courts should be concerned about ensuring that attorneys practice law in as professional a manner as possible.

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But we all know or anybody who's been an attorney -- and you were an attorney for many, many years before you joined the bench -- mistakes get made. People get called out for them. Getting called out is very, very different from sanctioning somebody when a mistake has been made.

Garrett Bradley made a mistake by not taking a closer look at the template before he submitted it to the Court. But that does not mean that he violated Rule 11. There was no intent, no motive to mislead the Court about anything in his declaration.

THE SPECIAL MASTER: And you don't accept that the motive to -- in Garrett Bradley's words "to jack up the lodestar" --

MR. KELLY: Again objection. Argumentative. Misstates the record.

THE WITNESS: I again --

THE SPECIAL MASTER: -- is a motive?

THE WITNESS: It's a motive -- to the extent that it's a motive, it's a motive vis-à-vis the other firms. The firms it looks to me -- and I didn't read all the e-mails; I read the deposition transcripts, but, you know, there were many, many

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references and quotes from many, many, many of the e-mails, and it's just normal practice that there's going to be a lot of back and forth among the plaintiffs' attorneys that are working together in a complex class action to talk about what's going to happen with the fees at the end of the day.

And so since there was, it appeared to me, an agreement that the costs were going to be shared fairly evenly, it's not surprising to me that Garrett Bradley would say, you know, we've got to keep up our share of the -- we got to keep our share of the bargain.

So, you know, it's -- he wanted to ensure that his firm was pulling its weight in terms of ensuring that his firm was appropriately financing the prosecution of a very complex case that resulted in what appears to be, and as Judge Wolf found, a very good result for the plaintiff class.

THE SPECIAL MASTER: Bill.

BY MR. SINNOTT:

Q. Professor, getting back to page 9, and some of what I'm going to ask you is going to follow up on the special master's inquiry. But at the bottom

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of paragraph 24 you talk about safe harbor.

A. Hm hm.

Q. In paragraph 25 in the third line you say: "While there is no safe harbor for an attorney who ceases relying on an offending paper after the Court issues an order to show cause, here Garrett Bradley took immediate action to investigate the issues raised by the immediate inquiry prior to Judge Wolf's February 6, 2017 order."

Now let me first ask you isn't it true that 11(c)(2) in its safe harbor provision only applies to motions brought by opposing counsel?

A. Yes.

Q. And it doesn't apply to a Court initiating inquiry, correct?

A. Correct.

Q. And you don't dispute that?

A. No.

Q. So the safe harbor provision here is irrelevant, is it not?

A. I don't think it's irrelevant for a couple of reasons. There is no safe harbor. There is no technical safe harbor. The advisory committee makes that clear, too. I think I quote that somewhere.

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But -- but a couple of things. Number one, the entire purpose of -- not the entire purpose, but one of the key purposes of the 1993 amendments to Rule 11 were to give attorneys an opportunity to correct or withdraw. And so I think that that idea infuses all of Rule 11, whether we're talking about (c)(2) where you have sanctions come up in an adversarial context or (c)(3) where you have the Court raising the issue.

And so for the purposes of the double counting, if you -- if you, you know, look at the advisory committee note comment that I have down there, the duplication issue was brought to the attention of the Court before anything happened. As soon as the attorneys found out about it, they corrected the double counting problem.

Q. But --

A. So, you know, sui sponte sanctions for the duplication problem would be entirely inappropriate in my view.

Q. But is it fair to say that the concept of safe harbor is not relevant to this inquiry?

A. I would not agree with that.

Q. Why do you say that?

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A. Well, because of what -- well, first of all, the advisory committee note makes clear that we're talking about situations where sanctions might be appropriate after a Court has issued a show cause order.

But what I'm saying here with respect to the duplication issue is because the offending paper so-to-speak was already corrected by the November 10 letter to the Court, sanctions would be inappropriate.

So I guess I would say that Rule 11(c)(2) is just -- is irrelevant to what we're talking about right now.

Q. But the concept of safe harbor as opposed to mitigation of sanctions --

A. Hm hm.

Q. -- are two different things, correct?

A. Um, yes. However -- and Judge Rosen is out of the room, but there's the Wellesley case -- Wesley case where he was sitting by designation in the sixth circuit in which he addressed this issue, and I don't have it cited here. I found it later. And where he talked about even when sui sponte sanctions are being imposed you have to think about

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the spirit of the 1993 amendments.
Q. But aside from the spirit of the 1993 amendments, I didn't see anything in your opinion that acknowledged that the safe harbor provision does not apply.
A. I think -- I think I say that.
Q. Could you point that out for me?
A. The rule does not provide a safe harbor.
Q. Could you point that out for me, please?
A. That's at the bottom of page 9. I cite the advisory committee note there.
Q. Yeah, but you do that in quoting the advisory committee after you make the statement, "While there is no safe harbor for an attorney who ceases relying on an offending paper after the Court issues an order to show cause, here Garrett Bradley took immediate action to investigate the issues raised by the media inquiry prior to Judge Wolf's February 6, 2017 order."
Isn't a plain reading of that that Garrett Bradley was entitled to the safe harbor provision because he did take remedial actions?
A. He wasn't entitled to the safe harbor provision in Rule 11(c)(2), but he was entitled to

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the idea of safe harbor which is what the 1993 amendments were all about.
In other words, you know, the -- the whole purpose of amendments -- the 1993 amendments were to provide incentives for attorneys to correct problems as soon as they found out about them.
And here they weren't put on notice by an adversary because there was no adversary, and they weren't put on notice by the Court. They got media inquiry. They took a look at it, and they fixed it within two days.
Q. But you're not talking about the spirit of the rule or the 1993 amendment. In this particular paragraph you're claiming that Garrett Bradley falls under that safe harbor provision?
A. I -- I --
MR. KELLY: Objection.
Q. Correct?
A. I put safe harbor in quotes both in paragraph 24 where I'm talking about it in terms of (c)(2) and also where I put it in paragraph 25. The safe harbor, those words do not appear in (c)(2) or (c)(3).
The common knowledge of what (c)(2) is

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all about is it's providing a safe harbor. So it's typically used in that context because again another one of the key problems with the 1983 version of Rule 11 is that defense attorneys particularly in I believe around 75 percent of the cases were using Rule 11 as a fee-shifting device.
So after -- if an attorney actually withdrew a paper, tried to correct a paper, the defendants or the plaintiffs if the shoe were on the other foot would say, voila, you violated Rule 11, you withdrew it, you corrected it so you're admitting you violated Rule 11.
So what the advisory committee is trying to do is provide an opportunity and an incentive for attorneys to fix things as soon as they learn that there's something to be fixed.
Q. But don't you think it's misleading to present in the context of a discussion of the safe harbor provision to talk about the timing of Garrett Bradley's immediate action as you described it when you appear to acknowledge now that the safe harbor provision does not apply?
A. Um, no, I -- for the reasons I've already stated, I believe that all the attorneys, including

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Garrett, acted appropriately by -- I mean he's not the only one.
I mean the attorneys from all the firms were horrified when they found out that there had been a double counting.
Q. Well, your heading for this particular section on page 8 is Garrett Bradley met his Rule 11 obligations because he took immediate action once the duplication and template issues were brought to his attention.
That's a safe harbor argument, isn't it?
A. Yes, it is a safe harbor argument, but when I say safe harbor argument here -- and, again, it's in quotes because it's not in the rule anywhere; and, as I've just explained, I believe that the advisory committee was most concerned about the abusive use of Rule 11 motion practice where parties are targeting somebody for Rule 11 sanctions to -- and this created a lot of satellite litigation and an inappropriate use of the rule as a fee-shifting device.
Q. I understand your reference to the spirit of the advisory committee in 1993, but would you agree with me that the case law unequivocally states that

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the 11(c)(2) safe harbor provision only applies to motion brought by opposing counsel and that it does not apply to Court-initiated inquiry such as we have in this case?
A. It does not expressly apply as I indicate on -- in paragraph 25, correct.
Q. I'm sorry, I just -- perhaps I'm missing it, but I don't see how you've alerted the special master to it not applying by quoting from the advisory committee the words the rule does not provide a safe harbor to a litigant for withdrawing a claim defense, etcetera, after a show cause order has been issued on the Court's own initiative.
That's not what we're talking about here, is it?
A. Yes, I think with respect to the duplication issue, that is exactly what we're talking about.
Q. Yes, but you're claiming that the safe harbor applies?
A. Well, it's even -- what they did was in a sense even better than what Rule 11(c)(2) provides in the adversarial context because nobody that they were concerned with in the litigation pointed out the problem.

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So they weren't on notice by an adversary. They weren't on notice by the Court. A problem was called to their attention for whatever reason, and they immediately went into action -- all the attorneys -- found that there was a problem and immediately notified the Court.
Q. All right. So this --
A. And since that was a four-million-dollar error, you know, they had to do that. That was a big number, even though, you know, I don't want to get into the lodestar multipliers and all of that. It appears to be a big number, but it's a big number because the settlement was a large number.
But that was -- that was again the critical aspect of all the fee declarations was ensuring that Judge Wolf had the information he needed to see how many hours were worked, what were the rates and multiplying it out.
Q. So if the safe harbor spirit is the standard, does that also apply to the other statements that Judge Rosen asked you about in Garrett Bradley's declaration?
A. I think the spirit applies, the atmospherics and all that, but the spirit as was used in the opinion I referenced earlier.
But I think that there are additional reasons why the statements that we discussed earlier -- what I call the template issues in my declaration -- even if you do not accept the argument that I was making on page 9 which has less force in the context of the template issues, the cases that I've cited in the latter part of my declaration make clear that what we would be looking for is serious misconduct, deliberate falsehoods, intents to deceive the Court, and I just do not in my opinion see that here in any manner, shape or form.
Q. Well, I'm not going to revisit the discussion that Judge Rosen had with you on that, but let me ask you this question: With respect to those items in the declaration putting aside the duplication, what immediate action was taken by Garrett Bradley to remedy those false statements?
MR. KELLY: Which ones? Objection. Specification.
Q. The other statements that were discussed in the context of the declaration. For example -- if you'd like me to --

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A. The six identified by Professor Gillers?
Q. Yes, professor.
A. Excuse me. Could you repeat the question?
Q. Sure. What immediate action was taken to remedy those false statements?
A. The Garrett Bradley acknowledged the mistakes at the March 7 hearing and apologized.
Q. Why didn't he acknowledge those at the time that The Globe story was addressed?
MR. KELLY: Objection.
Q. Or the potential Globe story was addressed?
MR. KELLY: Objection. Asked and answered.
A. Like I said before, he could have, but it's not sanctionable that he didn't.
Q. Yes, but you're claiming that his actions in the duplication of effort somehow mitigated his conduct with respect to sanctions, correct?
A. No, that's -- well, with respect to the duplication issue.
Q. Yes.
A. But that does not cure -- I will say that what he did vis-à-vis the duplication issue does not have anything to do with the template issues. Does

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that answer your question?
Q. No.
A. Okay. So I'm not sure what you're getting at.
Q. My question is -- well, first of all, let me just ask you what effect with respect to the duplication issues did the November 10th letter to Judge Wolf have?
A. What effect did it have?
Q. Yes.
A. It prompted the Court to issue an order -- it seems it prompted the Court to issue an order in February -- February 6 I believe it was --
Q. No, I mean with respect to Garrett Bradley's Rule 11 exposure.
A. That letter in my opinion -- yes, that letter in my opinion cured whatever violation -- whatever violation -- because I would dispute that, um, he committed a violation by putting the names of the attorneys that he did in his fee declaration and the hours they worked and the rates at which they were set forth to the Court.
So I would say that there was no Rule 11 violation; but to the extent that there is a

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violation, to the extent the Court were to find that Thornton was somehow culpable in terms of the duplication issue, any Rule 11 liability that may have arisen as a result of that was mitigated and eliminated by the November 10 letter.
Q. What about these other false statements in the declaration that were not addressed in the November 10th letter?
MR. KELLY: Objection. Asked and answered.
A. You know, again, I don't see them -- I see them as things that were regrettably not corrected at that time; that regrettably, as Garrett Bradley conceded, not corrected at the time he signed it, but they -- those statements in my opinion are not of the sort of misstatements that rise to the level of a Rule 11 violation.
So I'm not talking about safe harbors here at all because he didn't talk about these issues until the March 7 hearing. So I acknowledge that any kind of safe harbor argument that I make -- I might make is of less force when we're talking about the template issues.
But when you look at the context of

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these statements, the purpose of the fee declarations, it's my opinion that these are not the sorts of misstatements that are sanctionable.
I do not see from the record any intent to mislead. As I discussed earlier with Judge Rosen, yes, he knew that those people were not staff attorneys -- that those staff attorneys were not employees of his firm, but I would argue that the case law does not support the imposition of sanctions here because they were not material so-to-speak to the inquiry that the Court was making.
I am not at all -- and I think these cases make clear, and in many of the cases that I cite in my declaration when the courts of appeals including those in the first circuit reverse an imposition of sanctions, they go out of their way to say that this was a good judge; this judge is doing a good job; I know this judge to be very, very responsible, but the misstatements in these cases do not rise to the level of a Rule 11 violation because in the larger scheme they lack the sort of materiality that should give rise to a Rule 11 violation, a finding of a Rule 11 violation.

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We're talking about situations where -- I mean Rule 11 is serious. And Rule 11 findings are very important to lawyers being sanctioned and the law firms in which they work.
Therefore, the case law in my opinion is quite clear that lawyers ought not be sanctioned unless a level of seriousness is found. And in my opinion I don't see it here at all.
THE SPECIAL MASTER: All right. Let me ask you a question.
Is it your position that there should be no sanctions whatsoever --
THE WITNESS: Yes, your Honor, no sanctions --
THE SPECIAL MASTER: -- addressed to Garrett Bradley for his inaccurate statements made to the Court?
THE WITNESS: I do not believe sanctions should be imposed for the template-type issues. I don't think that in any case for any attorney who makes that sort of a misstatement should be sanctioned. Not Garrett Bradley. Not the attorneys from any of the other firms who used the template where there may be some inaccuracies in the overall

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scheme of things. Not lawyers in other cases.
This is not the type of misstatement that should give rise to Rule 11 sanctions. So I would say no finding of Rule 11. No Rule 11 violation here.
BY MR. SINNOTT:
Q. Let me just talk about the facts as you understand them, professor. At some point --
MR. KELLY: You want to take a break --
THE WITNESS: No, I'm good.
Q. At some point prior to the letter being sent to Judge Wolf, Garrett Bradley learns that there's a media inquiry involving the fee petitions in this case.
A. Hm hm.
Q. And would you agree with me that prompted by that Garrett Bradley and the other attorneys in the firms of -- in his firm, in Labaton and in Lieff Cabraser go back, and they look at all the fee petitions, correct?
A. I assume they did, but I also -- it appears from the record as I read it that the issue that they were keying in on was the duplication issue.
Q. Well, aside from the issue that they were

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keying on, it's fair to state that Garrett Bradley read through his fee petition --
A. Hm hm.
MR. KELLY: Objection.
Q. -- again?
MR. KELLY: Not a fair statement.
Q. Correct?
A. I don't know that he stated in his deposition whether he read it or not. I don't know -- I mean I don't know what any of the attorneys were doing.
I mean it seems to me from the various statements about how Garrett Bradley looked when he -- I believe he went down to Evan Hoffman's, and Evan Hoffman described him as looking like a ghost because of his horror over the duplication issue.
So I mean I think that the attorneys were quite properly very concerned about the duplication issue because it did have an impact on the amount that they had reported to the Court in terms of the lodestar.
THE SPECIAL MASTER: Is it your testimony that the statements made by Garrett Bradley in his declaration was not any part of the

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duplication issue?
THE WITNESS: Um, I would say that because -- I would say that any of the six misstatements that Professor Gillers discusses at the end of his report have no bearing on the numbers that were reported by the Thornton firm. Because --
THE SPECIAL MASTER: No bearing on the double counting at all?
THE WITNESS: I don't see where it does.
I mean I see that the Thornton Law Firm took the same approach to reporting the numbers in terms of billing rates, in terms of counting up the hours as the other law firms.
THE SPECIAL MASTER: Which raises this question: Are you aware that in most -- not all -- but in most instances the amounts charged on the Thornton lodestar -- charged I use colloquially --
THE WITNESS: Hm hm.
THE SPECIAL MASTER: -- for those staff attorneys was more than the amounts charged by either the Lieff firm or the Labaton firm on their own petitions?
THE WITNESS: Yes, I'm aware of that. Four twenty-five as opposed to I think 400. I

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don't --
THE SPECIAL MASTER: Does that play into motive at all to increasing the lodestar?
THE WITNESS: I don't -- I don't see that there was a -- I mean this is really more Professor Rubenstein's bailiwick, but I know that the Thornton firm was involved in the BNY Mellon case and that Judge Kaplan had approved a rate of 425.
So that's -- I know from the testimony that I read -- I don't know whether it was in transcripts of hearings or deposition; I can't remember, but it's been testified to that the rate that was approved by Judge Kaplan in BNY Mellon was 425, and that's the number that they were relying on in terms of the amounts they were going to charge the staff attorneys because that was the number for the staff attorneys in the other case.
THE SPECIAL MASTER: That's a good segue into my next couple questions.
Did you see the e-mails between Garrett Bradley and Dan Chiplock in which Garrett Bradley expresses concern that he believed that the lodestar in BNY Mellon vis-a-vis the Lieff firm was not

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sufficient?
THE WITNESS: I don't understand your question.
THE SPECIAL MASTER: Were you made aware of the e-mails between Garrett Bradley and Dan -- Dan Chiplock is a lawyer at the Lieff firm.
THE WITNESS: Hm hm.
THE SPECIAL MASTER: Were you made aware of those e-mails in which Garrett Bradley is expressing concern that the lodestar -- the Thornton lodestar in the BNY Mellon case was inadequate; that it was -- vis-a-vis the lodestar that Lieff submitted, that it was inadequate in that case and that there is considerable discussion between Dan Chiplock and Garrett Bradley about the interrelationship of the BNY Mellon case and the State Street case?
MR. HEIMANN: Objection. This goes back, your Honor, to my view that if you're going to use e-mails and question the witness about e-mails, she ought to be able to see them rather than rely on your characterization.
THE SPECIAL MASTER: All right. Are you aware of those e-mails?

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THE WITNESS: I know that I have read those --
THE SPECIAL MASTER: We can get them for you.
THE WITNESS: I haven't read the e-mails. Again, I didn't read e-mails. I read excerpts of e-mails that were presented in deposition testimony and transcripts -- hearing transcripts.
THE SPECIAL MASTER: Okay.
BY MR. SINNOTT:
Q. Professor, let me go to the March 7, 2017 hearing before Judge Wolf. And I know you've testified that you've read this in its entirety.
MR. KELLY: Do you have an extra copy of that, Bill?
MR. SINNOTT: Yes, we do. In fact, let me mark one as an exhibit.
(Exhibit 3 marked for identification.)
BY MR. SINNOTT:
Q. Professor, if you would go to page 86. Looking at line 25 at the bottom of the page --
A. Hm hm.

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Q. -- after -- and that follows I note after three paragraphs containing statements by Mr. Sucharow -- Attorney Sucharow, but the Court says on line 25: Let me ask Garrett Bradley -- and maybe it can be a little shorter -- essentially the same question. Unless you're concerned that I'll listen to Mr. Kelly, but the docket number 104-16 is the same language. It's the hourly rates for the attorneys and professionals, support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services which have been accepted in other complex class actions.
And then it showed the so-called special attorneys' fee charged at $425 an hour. And Judge Wolf asked were those attorneys employed by Thornton.
And Garrett Bradley replies, "They were not, your Honor. The affidavit that was sent by lead counsel was an affidavit requested to be used by our firm and other firms."
And there's some further back and forth with Judge Wolf on that, but let me direct your attention to page 88. And beginning on line 14, Mr. Bradley continues a response to a question from

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Judge Wolf with the words: "The staff attorneys that were listed on there -- that under paragraph 4 in my affidavit where it states that we paid them is a mistake, your Honor. Those individuals were actually housed at Labaton Sucharow or Lieff Cabraser. We had not used those before. That paragraph, quite frankly, should have been clarified by me at that time. It was not. But those individuals -- those types of individuals have been billed out at those rates before but not by my firm."
So is it fair to say that Attorney Garrett Bradley's acknowledgement of the mistakes as he described them in his fee petition, that acknowledgement was made in response to questioning from Judge Wolf, correct?
A. Correct.
Q. And it's fair to say that Garrett Bradley did not acknowledge those mistakes, if you will, in the November 10th letter to Judge Wolf, correct?
A. Correct.
Q. And that Garrett Bradley did not at anytime between November 10th and the March 7, 2017 hearing bring those mistakes to Judge Wolf's attention,

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correct?
A. Correct.
Q. So it's also fair to say that Garrett Bradley took no immediate action with respect to alerting the Court as to those mistakes, correct?
MR. KELLY: Objection to the term "immediate."
Q. Correct?
A. Um, immediately upon becoming aware of the mistake by the Court, um, and by then I have no idea whether Garrett Bradley had focused on that, there's nothing in the record about that because I assume that between the time that the November 10 letter was put in and the February 8 order by Judge Wolf to appear at the March 7 hearing, I mean I don't -- I don't know what Garrett Bradley was doing in between, but I can see here, and have read before, that when the Court was discussing these issues, he owned up to the mistake at that point in time.
And, you know, again, as we've discussed previously, Garrett had the opportunity to clean up the language, but the question is whether failing to clean up the language violates Rule 11, and I remain totally convinced, and it's my opinion, that the law

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did not require him to do that at that time; or, to put it probably more accurately, he should not be sanctioned for having failed to do it.
Q. Well, wouldn't it be reasonable for an observer to conclude that in the absence of the specific questioning by Judge Wolf on March 7th, Attorney Bradley would not have acknowledged those mistakes?
MR. KELLY: Objection. Argumentative.
A. I really don't know. I mean I don't know whether something similar to what happened earlier on would have caused him to go back.
But, again, it's my opinion that a failure to focus on that language which is inaccurate and therefore regrettable is not the sort of thing that a lawyer reasonably would have been expected to focus on at anytime before Garrett was asked about it.
Q. All right.
MR. SINNOTT: Can I suggest a break at this time? Is this a good time for everyone?
MR. HEIMANN: Sure.
THE SPECIAL MASTER: Fifteen minutes.
MR. SINNOTT: Fifteen minutes.

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(A recess was taken.)
CONTINUED EXAMINATION BY MR. SINNOTT:
Q. We're back from the break. It's 11:46. Professor, I'm looking at paragraph 26.
A. My declaration?
Q. In your declaration, yes.
A. Hm hm?
Q. And you make the statement that only serious misconduct may be the basis for sui sponte imposition of sanctions, relying on Young.
And let me ask you what's the standard for serious misconduct? How do you define that?
A. I think the best way to think about it is -- you know, is the conduct objectively reasonable under the circumstances. The case law is a little bit confusing, but I think ultimately the standard is is -- the attorney's conduct needs to be judged under the standard was the attorney's conduct objectively reasonable.
Q. Would you agree with me that a violation of Rule 11 does not require bad faith?
A. It does not require subjective bad faith except in the second circuit.
Q. And would you agree that in the first

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circuit at least a violation can be caused by inexperience, incompetence, willfulness or a deliberate choice?
A. Um, you know, I don't know that I want to go with every word that you just used. You know, incompetence by itself may or may not give rise to Rule 11 sanctions. It depends on the paper that came out of the incompetence and how -- various types of things we've already talked about in terms of materiality.
The same thing with experience. The same -- I mean willful is -- you know, willful meaning willful. I mean really a knowing intent to mislead the Court, of course.
And what was the fourth -- the third actually I think in your list?
Q. The third was -- after incompetence was willfulness or deliberate choice.
A. Deliberate choice? You know, again, it depends on, you know, what does deliberate mean. You know, what were the circumstances around the making of the choice.
So I don't think it's in my mind helpful in a Rule 11 analysis to just focus on words like

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that. You have to really in every case take a look at the circumstances and determine whether that attorney behaved reasonably -- objectively reasonably.
Q. Well, those are the first circuit's words in Cruz versus Savage --
A. Hm hm.
Q. -- 896 F2d 626 at 631.
In paragraph 27 you write that Garrett Bradley did not violate Rule 11 because he informed the Court that a mistake had been made two days after being alerted to the duplication problem.
A. Hm hm.
Q. And, once again, I ask you that letter made no reference to the other falsities in the petition, did it?
A. No, it didn't. And, of course, this paragraph is in the duplication part of my declaration.
Q. All right. And let me point you to paragraph 31. And in that paragraph you say for the same reasons discussed in paragraphs 24 and 25, even if Garrett Bradley failed to conduct a reasonable inquiry, he did not violate Rule 11 because he

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acknowledged at the March 7, 2017 hearing that there were inaccurate statements in his declaration with respect to the nature of the staff attorneys, his firm's billing practices and the other statements when he became aware of them.
Now, once again, you'd agree that his acknowledgement was prompted by Judge Wolf's questioning, correct?
A. It appears from the record that that's the first time he focused on these issues as being problematic.
Q. And he indicated that they were a mistake, correct?
A. Yes.
Q. And with respect to conducting a reasonable inquiry, is it fair to say that there's a violation of Rule 11 when an attorney fails to make a reasonable pre-filing inquiry into the factual or legal basis of pleadings submitted to the Court?
A. That's --
Q. Is that a fair statement?
A. That's the language of the rule.
Q. Yep. But you say that his acknowledgement at the March 7th hearing that there were inaccurate

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statements in his declaration with respect to the nature of the staff attorneys, his firm's billing practices and other statements when he became aware of them somehow absolves him of that violation? Is that your testimony?
A. Um, it is because with respect to the template issues, I think it's obvious that he conceded that he had not really focused on that language, but the question then is whether it was reasonable under the circumstances for him to have relied on the Labaton template, the extent to which he should have relied on it, the purpose of the document, the nature of the inaccuracies.
So what I would say is, yes, I mean the -- when Rule 11 was amended in 1983, it was clearly designed to try to impose expressly duties on lawyers. And so both in the 83 and the 93 versions of the rule we have this language about what an attorney is supposed to do before they file a paper. But the courts have recognized that, you know, you have to judge the paper; you have to judge the reasonableness of the inquiry in the context of all the circumstances.
And so even if we say that he did not

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read the document carefully when it was presented to Nicole Zeiss for the purposes of the fee hearing, and even if back in November 8, November 9 when the November 10 letter was being drafted he did not read and focus on those particular aspects of the declaration, the bottom line is to look at what came out of that.
And in looking at what came out of that, there were mistakes, inaccuracies that he fessed up to when they were presented to him at the March 7 hearing. And, you know, in my opinion as I say later in the declaration, the misstatements were not the sort of misstatements that should give rise to a Rule 11 liability.
To put it another way, I guess, yes, Rule 11 says you're supposed to do a reasonable inquiry but not all failures, you know, in terms of a perfect world of doing a reasonable inquiry should result in sanctions. And in this case I do not believe that these are the types of inaccuracies that should lead to Rule 11 sanctions.
Q. So you're acknowledging that there was not a reasonable inquiry?
A. I'm saying that -- well, I'm not really

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saying that there's not a reasonable inquiry. I'm assuming that there wasn't.
I also would say that under the circumstances where this is a law firm working with a very experienced law firm in terms of putting together fee petitions, that it was not unreasonable at the very least for him to rely on the language in that template when again back to what we talked about before the break the essential purpose of this document was to document the hours worked and the rates.
Q. And that's a significant issue, isn't it?
A. The hours worked and the rates?
Q. Yes.
A. Yes, that's significant because that goes to the lodestar.
Q. What's the stop and think provision?
A. Well, that goes into the reasonable inquiry. And, again, that language is not in the rule, but the idea is, you know, stop and think before you do something.
The courts have recognized that sometimes there is -- there are time pressures. There are other circumstances in the hurly-burly of

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practice that make it excusable so-to-speak that an attorney hasn't stopped for long enough or thought long enough.
Q. But in this particular case that was not an issue, was it?
MR. KELLY: Objection.
A. I don't know what you mean by that's not an issue.
Q. That the attorney didn't have the time to --
A. I don't know that I buy into that because I recall towards the end of the preliminary approval hearing -- I can't remember the date; was that August? -- I can't remember -- Judge Wolf was sensitive to the time it might take for the attorneys to put together all of the settlement documents in order to have enough time to prepare notices to the class and that sort of thing.
So there's always time pressures in big complex cases.
Q. Have you read the deposition of Evan Hoffman of the Thornton Law Firm on June 5, 2017?
A. I did read that, yes.
Q. Okay.
A. I believe that was the one I read. Say the

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date again? June?
Q. June 5, 2017.
A. Yes.
MR. KELLY: Sorry. Do you have an extra copy of whatever you're reading?
MR. SINNOTT: Yeah, let me go ahead and introduce this as an exhibit, Paulette.
(Exhibit 4 marked for identification.)
BY MR. SINNOTT:
Q. So, professor, looking at Exhibit 4, if I could direct your attention to page 93.
A. Okay.
Q. And specifically to line 9 where I indicate to Mr. Hoffman -- Attorney Hoffman let's move into the fee declaration. "Could you describe what your role was in that process?"
And Mr. Hoffman responds: "So we received from Labaton, from a partner there named Nicole Zeiss, a sort of model fee declaration that was sent around in advance of submitting the total fee declaration and had a bunch of text in it, and it was like those fill-in-the-blank -- whatever that game was, but it was sort of put your information

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here."
And Judge Rosen helpfully offers "not Hangman?"
A. Haven't played that in a long time.
Q. Attorney Hoffman responds: "Not Hangman, no."
And it continues put your information here. "So there was a section on fill in what your hours are, fill in what your expenses are, fill in what your lodestar is, fill in what your specific contributions were to the case. And the rest of the language was sort of -- it was called a model fee declaration. And so that's what we did. He put in all of the hours that we had kept track of. I, along with our accounting department and Anastasia, put in the expenses, and then mostly Mike Lesser and then Garrett Bradley, Mike Thornton and myself all reviewed the sort of narrative about the firm's contribution which I believe mostly Mike Lesser drafted. And then it was sent back to Labaton for their review and maybe an edit or two, and that was the last we saw of it until it was submitted on ECF a final when it was actually given to the judge."
Did I accurately read that, professor?

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A. Yes, sir.
Q. Is it fair to say that Attorney Hoffman described a ostensibly thoughtful process with respect to the completion of that fee petition?
A. In the context of the purpose of the fee petition, yes.
Q. All right. Thank you.
So would it appear that this was not a process that was rushed based on that passage that I just read?
A. Um, well, I don't know how much time it took them at the time to gather all the numerical information. I don't have any ideas. There's nothing in the record about that.
Q. Does it appear that it was a process that involved review and efforts by multiple attorneys at the Thornton Law Firm?
A. I'm not sure I understand the question.
Q. Sure.
A. Well, I mean on its face different attorneys basically took charge of filling in the blanks on the different critical aspects of the fee petition.
Q. But they did more than that, didn't they, based on that passage? Specifically --

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A. Well, Mike Lesser, I guess Garrett Bradley and Mike Thornton reviewed the narrative -- prepared and reviewed the narrative which was important to convey to the Court what kinds of things the law firm did that contributed to the effort, and then the lodestar numbers.
Q. Sure. So you'd agree with me that three or more attorneys from the firm reviewed the fee petition, correct?
A. That's what it says.
Q. And then they sent it back to Labaton for review, correct?
A. That's what it says.
Q. So is it fair to say that at least with respect to the testimony of Attorney Hoffman, this appears to have been a thoughtful and deliberate process by the Thornton Law Firm?
MR. KELLY: Objection.
A. I mean I -- I -- I note that -- and I don't know whether I noted this at the time I originally read it -- but on line 25 on page 93 Evan Hoffman begins by put your information here. "There was a section fill in what your hours, fill in what your expenses are, fill in what your lodestar is, fill in

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what your specific contributions were to the case, and the rest of the language was sort of it was called a model fee declaration."
So, again, as I was saying before, you know, what the attorneys were focusing on were the parts that needed to be filled in. Apparently, they did not focus on the rest of the language that was sort of a model fee declaration.
Q. All right.
THE SPECIAL MASTER: Was there anything that prevented Garrett Bradley in his own declaration from reading it?
THE WITNESS: Um, no, sir. No, your Honor, there was nothing. But again --
THE SPECIAL MASTER: I'm confused about what you mean by focused on it. When you're signing a statement under oath to a Court, shouldn't you focus on the entire declaration and the language used in it?
THE WITNESS: I think in the context, your Honor, what they had to focus on were the things in this template that they had to fill in because those were the salient parts that needed to be presented to Judge Wolf so that he could do the

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lodestar check.
THE SPECIAL MASTER: So the declarations about the staff attorneys being employed by the firm, the rates being the current rates charged by the firm and the rest of the issues called out by Professor Gillers were not salient?
THE WITNESS: In my judgment I do not view them as the sort -- they're important. Everything's important. Everything should be perfect. But it not always is.
And, therefore, those aspects of the declaration I do not see as violative of Rule 11. Had they misrepresented the hours, that would have been problematic, and there were problems with the hours. We had the duplication problem. But as soon as they figured that out, they tried to correct it.
THE SPECIAL MASTER: So the only obligation under Rule 11 to correct was the duplication?
THE WITNESS: Um, I mean I think Judge Wolf would have wanted to know about the four-million-dollar difference. So, yes, the attorneys better let the judge know about that.
THE SPECIAL MASTER: Do you think Judge

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Wolf had any interest in how the double counting and the four-million-dollar difference occurred?
THE WITNESS: I believe that was explored at the March 7 hearing.
THE SPECIAL MASTER: But not in the letter.
THE WITNESS: Not in the letter because -- and I have no idea. I don't think there's anything in the record -- there may be, but I don't recall anything in the record that as the attorneys were working November 8, November 9 to prepare the November 10 letter, I don't recall seeing anything in the record that's suggesting -- sorry, I just lost my train of thought.
Could you please repeat the question, and maybe I can get back on track?
THE SPECIAL MASTER: The court reporter, please.
(Reporter read back.)
THE WITNESS: So that reflected that the attorneys at that time understood how the mistake had been made. I didn't see anything to that. And then again if -- if they had focused on that, then I think a followup question would be shouldn't they

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have put that in there, and I think my answer would be the same. Um, you know, maybe a good idea.
A plus advocacy it would be a good idea, but the main purpose of the November 10 letter was to inform the Court that a four-million-dollar mistake had been made.
THE SPECIAL MASTER: And not how or why it was made?
THE WITNESS: You know, I think that it triggered the February 6 order so that we had the March 7 hearing so that we could have a discussion about how the mistake was made, why the mistake was made.
THE SPECIAL MASTER: So the March 7th hearing was to have a discussion?
THE WITNESS: Well, exploration. I mean Judge Wolf said in the February 8 -- sorry -- February 6 order that he intended to appoint a special master, and that would be you, to investigate all of the issues that arose out of the fee petition.
BY MR. SINNOTT:
Q. Let me direct your attention, professor, to paragraphs 33 and 34.

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First looking at paragraph 33, you write: "Although counsel should engage in their own Rule 11 investigation rather than relying on the work of co-counsel, it is reasonable under some circumstances for them to do so."
And you cite the Unioil case versus -- Unioil Incorporated versus E.F. Hutton & Company a ninth circuit case from 1986.
A. Hm hm.
Q. But having read Unioil, will you agree with me that in that case the ninth circuit also said that even if an attorney relies on another attorney, the attorney must, quote, acquire knowledge of facts sufficient to enable him to certify?
Is that an accurate statement based on your familiarity with the Unioil case?
A. I don't, you know, have that specific language before me, but, you know, assuming that that's exactly what the ninth circuit said, fine.
Q. Do you also recall the ninth circuit saying that an attorney cannot simply delegate to forwarding co-counsel his duty of reasonable inquiry?
A. Um, I don't -- I don't have -- I can't have

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a quibble with that.
Q. At the bottom of the paragraph you say, "Given the complexity of the State Street litigation and the time pressures associated with preparing for the settlement hearings, it was appropriate for the Thornton Law Firm attorneys to use the Labaton template as the basis for its lodestar analysis."
And then in 34 you go on to say, "Moreover, for the reasons explained above, it was reasonable for counsel in a complex class action..." --
MR. SINNOTT: Excuse me, Paulette.
Q. -- "...it was reasonable for counsel in a complex class action such as the State Street litigation to rely on the template that was provided to them by Labaton which was lead counsel in the State Street litigation and especially experienced in submitting fee application in complex class action litigation."
Now you'd agree with me that Garrett Bradley, the certifier, had an obligation to at least read the document, correct?
A. Um, yes, but then -- then the question is whether his failure to focus on certain aspects of

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the document give rise to a Rule 11 violation. So, yes, of course.

Q. You're not in any way trying to shift the blame to the Labaton firm, are you?

A. No. I'm not trying to shift the blame. I'm just saying that it was reasonable for the Thornton firm as they were preparing for the deposition -- and I think that looking at Evan Hoffman's statements that I looked at, yeah, already is very, very important because they were relying on the boilerplate.

They were looking to do what Labaton, the experienced firm, said needed to be done for the purposes of the lodestar analysis, and that's filling in the hours, filling in the expenses, filling in the lodestar and filling in the specific contributions.

So that's what was important.

THE SPECIAL MASTER: None of which were part of the declarations that I read to you earlier, correct?

THE WITNESS: Um, I'm sorry, I don't know which declarations --

THE SPECIAL MASTER: Those blanks that

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you just recited -- you can go through them again --

THE WITNESS: Okay.

THE SPECIAL MASTER: -- none of those were part of the declarations I read to you earlier in paragraphs 3 and 4 of Garrett Bradley's declaration?

THE WITNESS: Um, would you like me to go back to those to look at them to ensure that I -- I mean I will agree with you, your Honor, if you're talking about the sorts of statements that these were members -- you know, "members of my firm," those sorts of statements?

THE SPECIAL MASTER: Yes.

THE WITNESS: Is that what you're referring to?

THE SPECIAL MASTER: None of those are parts of the blanks to fill in, correct?

THE WITNESS: No, no, no. Exactly.

THE SPECIAL MASTER: Okay. So may I ask you this question?

THE WITNESS: Yes.

THE SPECIAL MASTER: What was Garrett Bradley relying on in Nicole Zeiss' template to know that the staff attorneys were not employed by his

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own firm?

You said they were relying on the template. What in the template was he relying on to believe that the staff attorneys were employed by his firm or that the rates were charged by his firm? What in that template was he relying on?

THE WITNESS: What I say at the bottom of the last part of paragraph 33 is it was appropriate for the Thornton Law Firm to use the Labaton template as the basis for its lodestar analysis.

So that's the fill-in-the-blanks part.

THE SPECIAL MASTER: Which has nothing -- which doesn't include the statements in the declaration that we've been talking about.

THE WITNESS: Concedingly, your Honor, but I think back to what Evan Hoffman says at page 94 the rest of the language was sort -- it was a model fee declaration. So that's where there is reasonable reliance arguably; but even if it wasn't reasonable to rely on it, the nature of those statements do not give rise to a Rule 11 violation.

Does that answer your question?

THE SPECIAL MASTER: Not really. You

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haven't told me what he was relying on in the template language as to the truth of the matter asserted in paragraphs 3 and 4.

THE WITNESS: Okay. I'm not using the word "reliance" in that sense --

THE SPECIAL MASTER: Oh.

THE WITNESS: I'm using the word as a basis for its lodestar analysis.

So it took the document. They did what they were instructed to do, and they gave it back because they were accurate for the most part it appears in terms of the fill-in-the-blanks parts.

THE SPECIAL MASTER: So no independent obligation to ensure the truthfulness of the sworn statements made in paragraphs 3 and 4? Is that your view?

THE WITNESS: No. As I've said I think a few times, it's a regrettable -- it was sloppy. I don't think I'd used that word before, but Garrett used it himself. Garrett Bradley used it himself. But it's not sanctionable.

THE SPECIAL MASTER: Okay. Do you have anymore?

MR. SINNOTT: A couple more.

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BY MR. SINNOTT:
Q. Professor, based on your understanding of the facts, would you agree with me that if Garrett Bradley read those statements -- and I think we can assume he did --
MR. KELLY: Objection.
Q. -- he would have recognized --
MR. KELLY: Objection. Objection.
Q. -- the falsity of those statements?
A. Honestly, I don't know because even earlier I said that I took a look at Nicole Zeiss' September declaration. I took a look at Garrett Bradley's September -- but to say that I read it?
I mean I read it, but I read it very, very differently than I read Garrett Bradley's deposition of June, Evan Hoffman's deposition of June, Nicole Zeiss' deposition in June because those were the ones that were pertinent to the violations that Professor Gillers identified in his report.
So I mean I don't want to quibble about what the word "read" means, but we all know that sometimes we read things more carefully than others. Sometimes we read parts of things more carefully than others.

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And it seems to me that what happened here, even though he may have read the entire document before he signed it, he was not focusing on the aspects of the declaration that arose out of the use of the template.
And, again, that's regrettable. I believe that the Court has a right and you all have a right to look into it, you know, to investigate it, but I do not see the failure to correct that language and explain further as in violation of Rule 11.
THE SPECIAL MASTER: To sum up your view on whether there's a violation of Rule 11 and whether it is sanctionable, no harm was done? Is that right?
THE WITNESS: I would say that no harm was done because of the overall purpose of the document.
THE SPECIAL MASTER: And therefore there should be no sanction?
THE WITNESS: No sanction.
THE SPECIAL MASTER: So no harm, no foul?
THE WITNESS: You know, I would like to

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say that. I say that all the time in my life, but there are -- I don't see the harm here. I really don't see the harm here.
I see a careless failure to look at that language in the template that Evan Hoffman called a model fee declaration, but I do not see anything that gives rise to the level of a Rule 11 sanction.
THE SPECIAL MASTER: I think you've just agreed that the characterization "no harm, no foul" is accurate of your testimony.
THE WITNESS: Well, there was a mistake, your Honor. There was a failure to correct, okay. So I mean -- no harm, no foul, I just have a recollection that there might be some Rule 11 case somewhere that uses that language, but I do believe also that there may be situations where an attorney's, you know, conduct is so reprehensible that even though it might -- you know, might harm somebody, there is no harm to anybody where the Court would have a duty to police. But not under Rule 11.
There are other possibilities. And, again, I don't want to leave the impression that I think that anything Garrett Bradley did was along

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those lines. In fact, to the contrary. I see absolutely nothing in the record that indicates there was any kind of willful serious misconduct here. There was carelessness.
THE SPECIAL MASTER: Bill? I don't think we've got anything further.
MR. KELLY: Nothing from me.
THE SPECIAL MASTER: Brian?
MR. KELLY: No.
THE SPECIAL MASTER: No, okay. Richard?
MR. HEIMANN: No questions.
MR. SINNOTT: Stu?
MR. GLASS: No questions.
THE SPECIAL MASTER: Anybody on the phone?
MR. SINNOTT: Josh is on the phone.
THE SPECIAL MASTER: Josh?
MR. SINNOTT: Anyone besides Josh for counsel on the phone?
MR. CANTY: Mike on the line. I don't have anything.
MR. SINNOTT: Okay, Mike. Thank you. Anyone else?
(No response.)

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MR. SINNOTT: All right. Hearing none, this examination is concluded. Thank you, professor.

THE WITNESS: Thank you.

THE SPECIAL MASTER: Thank you very much, professor.

(Whereupon the proceedings adjourned at 12:21 p.m.)

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CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS)
SUFFOLK, SS.)

I, Paulette M. Cook, Registered Merit Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that GEORGENE M. VAIRO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am neither related to or employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand and seal this 11th day of April, 2018.

Notary Public

My commission expires:
February 5, 2021

B

C

D

G

M

Q

R

S

T

U

V

EX. 203

From: Goldsmith, David <dgoldsmith@labaton.com>
Sent: Wednesday, August 17, 2016 4:43 PM
To: Sucharow, Lawrence; Garrett J. Bradley
Cc: Michael Lesser; Michael Thornton; Rogers, Michael H.
Subject: RE: [redacted]--Draft Complaint
Attachments: image001.jpg; image002.jpg

Can I offer something about Paine filing an affidavit in support of our fee – there have been objections to settlement agreements that provide that defs will not oppose a certain fee.& Those objections are frivolous, and we have that provision here, but courts have expressed concern about the adversary system breaking down in the fee context and Judge Wolf specifically noted that at the last hearing.& For this reason, I am not sure Paine affirmatively saying our fee is reasonable (assuming he would do so) is a good idea.& He can provide facts supporting it, like his view of the history of the negotiations and the DOL, but I don't think he should go further.& It could draw a big objection and suggest collusion. &
&

From: Sucharow, Lawrence
Sent: Wednesday, August 17, 2016 4:36 PM
To: Garrett J. Bradley; Goldsmith, David
Cc: Michael Lesser; Michael Thornton; Rogers, Michael H.
Subject: RE: [redacted]--Draft Complaint
&
Paine can only do what his client allows.& I'm not sure another litigation before the final hearing will cause the client to feel great about us or our clients.
&

From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Wednesday, August 17, 2016 4:32 PM
To: Goldsmith, David
Cc: Michael Lesser; Michael Thornton; Sucharow, Lawrence; Rogers, Michael H.
Subject: Re: [redacted]--Draft Complaint
&
[redacted]

On Aug 17, 2016, at 4:29 PM, Goldsmith, David &<dgoldsmith@labaton.com&>wrote:

> Didn't realize you were talking about Paine.& Defendants are filing an affidavit in support of our fee?& That would be a first.& Assuming that's so, we can wait until after Sept 15 though I don't see the reason; Paine knows all about this case because of the demand letters.
> &
> My understand is that [redacted] is on board; we had some e-mails with him today in fact.& I can provide whatever summary you need.
> &
>
> **From:** Garrett Bradley [mailto:GBradley@tenlaw.com]
> **Sent:** Wednesday, August 17, 2016 4:24 PM
> **To:** Goldsmith, David
> **Cc:** Michael Lesser; Michael Thornton; Sucharow, Lawrence; Rogers, Michael H.
> **Subject:** Re: [redacted]--Draft Complaint
> &

[redacted]

On Aug 17, 2016, at 4:20 PM, Goldsmith, David &<dgoldsmith@labaton.com&>wrote:

FX case is Arkansas, not [redacted].
&

From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Wednesday, August 17, 2016 4:16 PM
To: Goldsmith, David
Cc: Michael Lesser; Michael Thornton; Sucharow, Lawrence; Rogers, Michael H.
Subject: Re: [redacted]--Draft Complaint
&
[redacted]
&
Garrett

On Aug 17, 2016, at 4:13 PM, Goldsmith, David &<dgoldsmith@labaton.com&>wrote:

Attached is the draft complaint in [redacted].& Mike L, please forward to client and ask him to focus on the [redacted] related allegations, including the description in Para 19 (highlighted in blue).
&
We can't file until after the Aug 26 deadline for Paine to respond to our second demand letter, but I think we should file soon thereafter assuming Paine doesn't make a settlement offer.
&
Comments/thoughts are welcome.

Thanks,
David
&
&
&
&
&

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&<SST Swift--Complaint (1623475_1).DOCX&>

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&

EX. 204

From: Keller, Christopher J. [ckeller@labaton.com]
Sent: 2/4/2011 6:07:11 PM
To: Garrett Bradley [GBradley@tenlaw.com]
Subject: RE:

We're trying to get him for 20% of our fee, and then hopefully we can just do an amount off the top to cover it equally.

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

From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Tuesday, February 01, 2011 4:21 PM
To: Keller, Christopher J.
Subject:

Did you work out the fee issue with Damon on state street pending the Arkansas decision?

Garrett J. Bradley, Esq. | **Thornton and Naumes, LLP**

100 Summer Street, 30th Floor | Boston, MA 02110

Phone: (617) 720-1333 | Fax: (617) 720-2445